

**LETTER OPINION  
2014-L-10**

July 11, 2014

Mr. Ladd R. Erickson  
McLean County State's Attorney  
PO Box 1108  
Washburn, ND 58577-1108

Dear Mr. Erickson:

Thank you for your letter requesting my opinion regarding whether a school district may amend its budget property tax estimate after a statutory deadline prohibits it, even if that amendment is the result of a clerical or human error.

**ANALYSIS**

Section 57-15-31.1, N.D.C.C., which identifies the deadline for amending budgets and certifying taxes, provides:

No taxing district may certify any taxes or amend its current budget and no county auditor may accept a certification of taxes or amended budget after the tenth day of October of each year if such certification or amendment results in a change in the amount of tax levied. The current budget, except for property taxes, may be amended during the year for any revenues and appropriations not anticipated at the time the budget was prepared.

This office has previously stated a school district does not have authority to amend its property tax levy after the October 10th statutory deadline.<sup>1</sup> In that opinion, Attorney General Wefald wrote:

The last sentence of Section 57-15-31.1, N.D.C.C., was added to the section by the 1981 Legislature. The language of that sentence and the notes of the Committees of the 1981 Legislature which heard the bill that added the sentence show that it was intended to change the first sentence by

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<sup>1</sup> N.D.A.G. 81-138.

authorizing a taxing district to amend the budget during the year but that the amendment could not result in a change of the amount of property tax previously levied. The last sentence therefore provides authority for a taxing district to amend its budget during the year but neither that sentence nor the first sentence of the section authorizes a taxing district to amend the amount of property tax levy previously made.<sup>2</sup>

As you point out in your letter, in a subsequent letter, this office also weighed in on the statutory limitation forbidding the amendment of a property tax levy:

According to legislative history, the purpose of this amendment was to authorize a taxing district to amend the budget during the year so long as the amended budget could not result in a change of the amount of property tax previously levied. . . . The only restriction is that the property tax levy may not be changed by the amendment of the budget.<sup>3</sup>

On two recent occasions, the 60th and 61st Legislative Assemblies enacted legislation allowing for political subdivisions to correct mistakes in the amount of tax levied after the October 10 deadline.<sup>4</sup> These statutory exceptions, however, have since expired.<sup>5</sup> If lawmakers intended to authorize correction of human error on tax levies in perpetuity, these exceptions would remain in the law.

You phrase your inquiry in a number of ways, each eliciting a comparable conclusion. You first ask your principal question, “Can a county auditor correct clerical or human errors in political subdivision tax levy submissions under NDCC § 57-15-31.1 if those corrections increase the property tax levy?” Similarly, you ask, “In other words, is there a difference between a statutorily prohibited increase in a property tax levy after October 10th, and a correction of a property tax levy that was mistakenly conveyed to the county auditor wherein an auditor could determine that a mistake occurred by reviewing the school board minutes or other evidence?” Finally, you ask, “Does Attorney General Wefald’s opinion forbidding property tax levy changes extend beyond prohibited policy type tax levy amendments to the correction of human errors to avoid absurd or illogical results?”

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<sup>2</sup> Id.

<sup>3</sup> N.D.A.G. Letter to Koppy (Feb. 23, 1987).

<sup>4</sup> See 2007 N.D. Sess. Laws ch. 508, § 1 (House Bill 1312 authorized a school district to include an amount mistakenly not levied in the district’s budget if the mistake was discovered by February 1 following the October 10 deadline in N.D.C.C. § 57-15-31.1); 2009 N.D. Sess. Laws ch. 537, § 1 (House Bill 1505 similarly allowed for a township to levy a tax mistakenly not levied in the previous year).

<sup>5</sup> See 2007 N.D. Sess. Laws ch. 508, § 1; 2009 N.D. Sess. Laws ch. 537, § 1 (expiration dates of House Bills 1312 and 1505, respectively).

It is my opinion the law and precedent are clear that a school district's property tax levy may not be amended after the October tenth deadline found in N.D.C.C. § 57-15-31.1 regardless of whether the previous levy was made in error.

Within your inquiry you pose another scenario that I must address separately in regard to a governing body's amendment of a district's tax levy and budget before the October tenth deadline in N.D.C.C. § 57-15-31.1. You ask:

Under this opinion, if a school board submits its budget and tax levy certification before October 10th, notices human error in that submission before that date and submits a corrected certification to the county auditor, the county auditor is prohibited from using the corrected certification because Attorney General Wefald stated that political subdivisions cannot amend their property tax levy "either before or after October tenth." Is that a correct reading of that opinion?

(Emphasis added).

A governing body of a school district has statutory authority to levy a tax.<sup>6</sup> In N.D.A.G. 81-138, Attorney General Wefald, when asked whether a governing board of a public school district may amend its budget and property tax levy it had previously approved if it makes the amendment prior to October tenth, concluded,

We have not found any provision of law which authorizes the governing board of a public school district, city, or county to amend its tax levy and the certification of the tax levy to the county auditor after the levy has been made and certified as provided in [statute]. Nor have we found any statutory provision from which any such authority must necessarily be implied.<sup>7</sup>

That conclusion, however, is no longer accurate. The 1989 Legislative Assembly amended N.D.C.C. § 57-15-13, adding language providing authority to a school district's governing body to amend a district's tax levy and budget before October tenth, which to this day provides, in part:

57-15-13. School district tax levies. School districts taxes shall be levied by the governing body of each school district on or before the last day of July of each year. The governing body of the school district may amend its tax levy and budget for the current fiscal year on or before the tenth day of October

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<sup>6</sup> See N.D.C.C. § 57-15-13.

<sup>7</sup> N.D.A.G. 81-138.

LETTER OPINION 2014-L-10  
July 11, 2014  
Page 4

of each year but the certification must be filed with the county auditor within the time limitations under section 57-15-31.1.<sup>8</sup>

In response to your question of whether it is an appropriate reading of N.D.A.G. 81-138 that a political subdivision cannot amend its property tax either before or after October tenth, it is my opinion, consistent with N.D.C.C. § 57-15-13, that a governing board of a school district, city, or county may amend its property tax levy before the statutory October tenth deadline. To the extent opinions of this office conclude to the contrary, including N.D.A.G. 81-138, they are overruled.

Sincerely,

Wayne Stenehjem  
Attorney General

nrm/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.<sup>9</sup>

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<sup>8</sup> 1989 N.D. Laws ch. 211, § 2.

<sup>9</sup> See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).