

LETTER OPINION
98-L-150

September 22, 1998

Mr. Michael S. McIntee
McHenry County State's Attorney
PO Box 90
Towner, ND 58788-0090

Dear Mr. McIntee:

Thank you for your letter asking my opinion on two issues regarding McHenry County's budget levy. I will address your questions in the order you presented them in your letter.

Your first question is whether the levy allowed by N.D.C.C. § 24-05-01 is mandatory. N.D.C.C. § 24-05-01 states in relevant part:

In each county having a population of two thousand or more, there must be levied and collected a property tax of not less than one-fourth mill. . . .

Words in a statute are to be given their plain, ordinary, and commonly understood meanings unless specifically defined in the Century Code. N.D.C.C. § 1-02-02; Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990). The word "must" in the phrase "must be levied" is conclusively directory, rather than optional. Accordingly, it is my opinion that the levy allowed by N.D.C.C. § 24-05-01 is mandatory, and counties must include that levy in their budget.

Your second question relates to an apparent conflict McHenry County faces between N.D.C.C. § 24-05-01 and N.D.C.C. § 11-23-04. N.D.C.C. § 11-23-04 states, in relevant part, that "[a]ll taxes . . . shall not exceed the amount specified in the published estimates." As stated above, N.D.C.C. § 24-05-01 provides that "[i]n each county having a population of two thousand or more, there must be levied and collected a property tax of not less than one-fourth mill. . . ."

McHenry County neglected to provide for a levy pursuant to N.D.C.C. § 24-05-01. McHenry County has published its budget without the mandatory levy, and will have the final hearing on its budget on September 23, 1998. Given that such a levy is mandatory, but was not included in the published budget, McHenry County would like to add it to its budget estimate. However, N.D.C.C. § 11-23-04 precludes any

Mr. Michael S. McIntee
September 22, 1998
Page 2

increase in "the amount specified in the published estimates." Your question is how McHenry County can comply with N.D.C.C. § 24-05-01 without violating N.D.C.C. § 11-23-04.

The plain language of the requirement in N.D.C.C. § 11-23-04 that the tax levy cannot exceed the published estimates indicates that the requirement relates to the total amount of the proposed levies. If a county determines it must increase a specific levy, it may do so as long as it decreases another levy so that the total amount levied does not exceed the published estimates. Accord Letter from Assistant Attorney General Gerald W. VandeWalle to Mae GrandPre (Aug. 5, 1969). Therefore, it is my opinion that McHenry County may alter its budget to include a levy pursuant to N.D.C.C. § 24-05-01 without violating N.D.C.C. § 11-23-04 if it makes a corresponding reduction in another levy.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

sam/pg