

**N.D.A.G. Letter to Lashkowitz (April 11, 1985)**

April 11, 1985

Honorable Herschel Lashkowitz  
State Senator  
District 21  
P. O. Box 2621  
Fargo, North Dakota 58108

Dear Senator Lashkowitz:

Thank you for your letter of January 21, 1985, which posed several questions regarding the statutory authority of a board of county commissioners in North Dakota.

The first question was whether a board of county commissioners has the authority to accumulate unexpended general fund monies.

N.D.C.C. §11-23-09 provides in part:

11-23-09. EXPENDITURES--BILLS APPROVED--UNEXPENDED BALANCES. . . .At the closing of the auditor's books on December thirty-first, the balance to the credit of each annual appropriation shall become a part of the general unappropriated balance in the county treasury.  
...

N.D.C.C. §11-23-05 provides:

11-23-05. COMPUTING AMOUNT OF LEVY. The amount which the board of county commissioners shall levy as the county tax shall be computed by adding together the amounts of the annual appropriation and of that part of any special appropriation which is to be raised by taxation and deducting therefrom so much of the probable receipts from all sources, except loans, and so much of the unappropriated balance in the county treasury at the close of the auditor's books for the previous year as the board deems advisable. The board, on or before October first of each year, shall determine the amount of taxes that shall be levied for county purposes and shall levy all such taxes in specific amounts.

Pursuant to N.D.C.C. §§11-23-05 and 11-23-09, unexpended general fund monies become part of the unappropriated balance in the county treasury and must be used to reduce the amount of the yearly tax levy, and therefore, cannot be accumulated.

Your second question is whether the board of county commissioners has the authority to construct a public facility without a vote of the people. N.D.C.C. §11-23-06 provides:

11-23-06. EXPENDITURE CANNOT BE MADE IN EXCESS OF APPROPRIATION. No county expenditure shall be made or liability incurred, nor shall a bill be paid for any purpose, in excess of the appropriation therefor, except as provided in sections 11-23-07 and 11-23-08.

In order to construct a public facility without submitting it to a vote, an appropriation must be made by the county commission and put into the annual budget. Pursuant to N.D.C.C. §§11-23-03 and 11-23-04, a hearing must be held prior to the adoption of the budget, at which any taxpayer may appear in favor or in opposition of any proposed expenditure.

If the funds necessary to construct a public facility are in excess of the amount which can statutorily be raised by the annual tax levy, N.D.C.C. §11-11-18 allows the county commissioners to submit the proposed expenditure to the voters.

Sincerely,

Nicholas J. Spaeth

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