

N.D.A.G. Letter to Witham (May 30, 1990)

May 30, 1990

Mr. Lyle G. Witham
McHenry County State's Attorney
P.O. Box 390
Towner, ND 58788

Dear Mr. Witham:

Thank you for your April 5, 1990, letter asking for my response to several questions regarding the property tax exemption for a farm residence and the maximum mill levy limitations for a school district.

My response to your questions has been divided into two parts by subject. Because the property tax exemption for a farm residence involves significant public law issues with statewide application, my response regarding this exemption will follow this letter in the form of a formal opinion. My response to your questions regarding the maximum mill levy limitations for a school district is found in this letter.

You have informed me that due to a reevaluation of all agricultural property in McHenry County, the tax base for the Karlsruhe Public School District (District) has been reduced and the superintendent of the District has expressed concern to you about the possibility of revenue reductions. Therefore, you have asked for my response to the following three questions:

1. When the taxable evaluation of a school district has dropped drastically due to a reevaluation of property within the district by the County and State, what is the maximum that the school board can raise the mill levy?
2. Does the maximum five percent increase over the 180 mill cap apply to the mill levy only, or can it be based on the previous year's revenue under the old property evaluations?
3. May the Karlsruhe School Board (Board) take the maximum five percent increase over the 180 mill cap for the 1990-91 school year without putting the matter to the vote of the people?

I will address your questions in the order presented.

I.

Under N.D.C.C. § 57-15-14, without voter approval for an additional amount,

[t]he aggregate amount levied each year for [general fund] purposes listed in section 57-15-14.2 by any school district . . . may not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of one hundred eighty mills on the dollar of the taxable valuation of the district.

However, the 1989 Legislative Assembly enacted legislation, effective only for the first two taxable years beginning after December 31, 1988, that provides limited authority for an optional tax levy increase. 1989 N.D. Sess. Laws ch. 689, § 1. This legislation was not codified because of its temporary status. 1989 N.D. Sess. Laws ch. 689, § 1, provides:

SECTION 1. Protection of taxpayers and taxing districts. Each taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body, or the amount in dollars as allowed in this section, subject to the following:

1. No taxing district may levy more taxes expressed in dollars than the amounts allowed by this section.
2. For purposes of this section "base year" means the taxing district's taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year and "budget year" means the taxing district's year for which the levy is being determined under this section.
3. A taxing district may elect to levy at most five percent more in the budget year than the amount levied in dollars in the base year. Any levy of a percentage increase under this section must be specifically approved by a resolution approved by the governing body of the taxing district. Before adding the increase, the dollar amount levied in the base year must be:
 - a. Reduced by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final base year taxable valuation of any property that is not included in the assessment for the budget year but was included in the assessment for the base year.
 - b. Increased by an amount equal to the sum determined by the application of the base year's mill rate for that taxing district to the final budget year taxable valuation of any property that was not included in the assessment for the base year but which is included in the assessment for the budget year.

- c. Reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district.
4. A taxing district may levy an amount in dollars equal to the amount levied in any of the previous three years reduced to reflect expired temporary mill levy increases authorized by the electors of the taxing district and increased by an amount equal to the sum determined by the application of any unused mill levy authority from that year, which was authorized by law or by the electors of that taxing district but not levied for that year, to the budget year taxable valuation of the taxable property in that taxing district. A taxing district electing to increase its levy under this subsection may not add the percentage increase permitted by subsection 3 to the amount levied under this subsection.
5. In addition to any other increase under this section, a taxing district may increase its levy in dollars to reflect new or increased mill levies authorized by the legislative assembly or authorized by the electors of the taxing district.
6. Under the provisions of this section a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section, but the provisions of this section do not apply to the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.
7. A school district choosing to increase its levy authority under this section may apply the allowable percentage increase only to the amount in dollars levied for general fund purposes under section 57-15-14 or, if the levy in the base year included separate general fund and special fund levies under sections 57-15-14 and 57-15-14.2, the school district may apply the allowable percentage increase to the total amount levied in dollars in the base year for both the general fund and special fund accounts. School district levies under any section other than section 57-15-14 may be made within applicable limitations but those levies are not subject to the allowable percentage increase under this section.

8. Optional levies under this section may be used by any city or county that has adopted a home rule charter unless the provisions of the charter supersede state laws related to property tax levy limitations.

In summary, this temporary legislation enables the Board to elect to levy the greater of the amount authorized under N.D.C.C. § 57-15-14 or "at most five percent more in the budget year [1990] than the amount levied in dollars in the base year." 1989 N.D. Sess. Laws ch. 689, § 1(2), (3).

Finally, the Board must adhere to these limitations even though the District's tax base has been reduced because of a reevaluation of the agricultural property in McHenry County. Counties and school districts may levy property taxes only as prescribed by the constitution and Legislative Assembly. Dornacker v. Olson, 248 N.W.2d 844, 849-50 (N.D. 1976).

II.

As noted in my summary to the first question, 1989 N.D. Sess. Laws ch. 689, § 1, provides that "[a] taxing district may elect to levy at most five percent more in the budget year than the amount levied in dollars in the base year." Id. § 1(3) (emphasis supplied). "Base year" is defined as the "taxable year with the highest amount levied in dollars in property taxes of the three taxable years immediately preceding the budget year." Id. § 1(2) (emphasis supplied). Thus, the District may base the maximum five percent increase over the 180 mill cap permitted by the temporary legislation upon its previous year's budget under the old property valuations.

III.

Any levy under 1989 N.D. Sess. Laws ch. 689, § 1, "must be specifically approved by a resolution approved by the governing board of the taxing district." 1989 N.D. Sess. Laws ch. 689, § 1(3). The Board may elect to use the optional five percent tax levy increase without voter approval. Id. § 1(3), (6).

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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