

N.D.A.G. Letter to Witham (Aug. 1, 1988)

August 1, 1988

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

Dear Mr. Witham:

Thank you for your letter of July 22, 1988, concerning attempts to cause a special election to be had concerning excess levies in McHenry County. With your letter, you enclosed your analysis of the law on this issue as well as a copy of your opinion. I appreciate receiving these additional materials which help our research efforts.

North Dakota law provides that the governing body of any county, by two-thirds vote of all the members of the body, may declare by resolution the insufficiency of the current county taxes and the need to levy excess taxes. N.D.C.C. § 57-17-01. Upon passage of the resolution authorized by N.D.C.C. § 57-17-01, the governing body of the county may call a special election for the purpose of voting on the question of authorizing an excess levy or may submit the question to the voters at the next primary election. N.D.C.C. § 57-17-02.

Apparently, in McHenry County the governing body of the county has not followed the procedures outlined in N.D.C.C. §§ 57-17-01 and 57-17-02. The question then is whether other persons may by petition cause the excess levy special election to be held.

After reviewing the statutes and applicable case law, it is my conclusion that only the governing body of the county may declare current taxes insufficient and, furthermore, call for a special election or submit the excess levies question to the voters at the next regular primary election. There are two reasons for my conclusion.

First, the statutes themselves mention the need for a resolution of the governing body of the county. No provision is made to initiate the action contemplated by petition or otherwise. When statutes are clear and unambiguous, it is not proper to attempt to construe the provisions so as to legislate that which the words of the statute do not themselves provide. Haggard v. Meier, 368 N.W.2d 539 (N.D. 1985); Haider v. Montgomery, 423 N.W.2d 494 (N.D. 1988). The statutes found at N.D.C.C. §§ 57-17-01 and 57-17-02 authorize the governing body of the county to take the action needed to cause an excess levy to be approved. As the statute mentions no other entity or procedure, one must conclude that the excess levy process outlined in N.D.C.C. ch. 57-17 may be initiated only by resolution of the governing body.

Second, there is no authority for the initiation of this process by a petition for a resolution concerning the issue of whether excess levies should be approved or placed upon the

ballot for approval. The power of initiative is not provided for by the Legislature with respect to non-home rule counties. Furthermore, the action required pursuant to N.D.C.C. §§ 57-17-01 and 57-17-02 is a resolution approved by the county governing body rather than an ordinance. This office has previously concluded that the power of initiative, where it does exist, is not available where the action required is a resolution rather than an ordinance. 1983 N.D. Op. Att'y Gen. 105.

For these reasons, I concur with your opinion that the excess levy may be allowed only as provided for by N.D.C.C. ch. 57-17. As the statutes do not provide for a petition/initiative process causing the issue to be placed before the voters, such an attempt is of no legal effect.

Sincerely,

Nicholas J. Spaeth

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