

**OPINION
62-71**

February 27, 1962 (OPINION)

COUNTY FAIR

RE: Levy Limitation - Mandatory or Discretionary Levy

This is in reply to your letter of February 10, 1962, concerning the above matter.

You state that in 1918, an election was held in Towner County on the question of supporting the county fair with tax money. The vote carried in favor of the fair. In preparing the budget, the commissioners now feel that funds are not available within the eighteen mill limitation and made no budget for the fair.

It is your opinion that an appropriation for a fair comes within the eighteen mill limitation and that budgeting the general fund is within the discretion of the Board of County Commissioners. Representatives of the Fair Board have taken exception to your position, contending that funds for a fair were not within the eighteen mill limitation and the election of 1918 approving the expenditures of county funds made it mandatory that the Commissioners budget funds in support of the fair.

Considering first the question of whether the county fair levy comes within the eighteen mill limitation upon counties for general fund purposes, we note the provisions of section 57-15-06(3) of the N.D.C.C. in this regard:

The eighteen mill limitation shall apply to all tax levies which the county is authorized to levy for general and special county purposes, including taxes levied for road and bridge purposes. Any unexpended balance in the county road fund at the end of the fiscal year may be transferred to a special road fund, except that such special fund shall never exceed the amount a ten mill levy on the assessed valuation of the county would yield, and the balance in said fund shall not be considered in determining the budget or the amount that may be levied. Such mill limitation shall not apply:

- a. To tax levies made for the purpose of paying the principal and interest on any obligations of the county evidences by the issuance of bonds;
- b. To tax levies made to pay the county tuition provided for by section 57-15-24;
- c. To taxes levied for the purpose of combatting the grasshopper pest, pursuant to section 4-15-01;
- d. To taxes levied for the purpose of combatting gophers pursuant to section 4-16-02;

- e. To taxes levied pursuant to any statute which expressly provides that the taxes authorized therein shall not be subject to the eighteen mill limitations for general and special county purposes;
- f. To the tax levied pursuant to the provisions of chapter 15-42 of the Title Education, for support and maintenance of county agricultural and training schools, up to a maximum of two and one-half mills on the assessed value in the county for such purpose. Nothing herein contained shall be construed to prevent the appropriation of money from the county general fund for the support and maintenance of county agricultural and training schools; or
- g. To taxes levied for the purpose of establishing and maintaining a library fund for public library services."

The only one of the above listed exceptions which might be applicable to the county fair levy is subdivision "e". However, upon examining the provisions of chapter 4-02 of the N.D.C.C., we find that the initial one-fourth mill levy statute contains no provision which provides expressly that the taxes authorized therein shall not be subject to the eighteen mill limitations for general and special county purposes. We do note that section 4-02-32 authorizes a tax over and above the amount authorized to be levied for general purposes, not to exceed one-half mill in any one year, to raise the necessary money for the purchase or lease of land on which to hold the fair and for the erection of buildings and the making of necessary improvements. This is not, however, the tax in question. In view of the provisions of section 57-15-06(3) of the N.D.C.C. and in view of the fact that the provisions authorizing the tax in question do not exempt such tax from the eighteen mill limitation, it is our conclusion the tax in question is within the eighteen mill limitation.

In regard to the question of whether the county commissioners must levy the tax for the aid of the fair, we note that in 1918, the voters of the county approved such levy under the provisions of section 1874 of the 1913 Compiled Laws. This section provided in part: "If a majority of the ballots cast at such election is in favor of continuing said tax the county commissioners may continue to levy the same annually, but if a majority is against levying said tax, the county commissioners shall not thereafter levy any tax under this article; provided, however, the provisions of this article may be submitted by said county commissioners to the electors of the county at any general election, but the result of any election held under the provisions hereof shall remain in force until changed at some subsequent election held hereunder." (Emphasis supplied). Under this section it appears that although a favorable vote was cast at the election, the levying of the tax was within the discretion of the county commissioners.

Section 4-02-30 of the N.D.C.C., as amended, was derived from section 1874 of the 1913 Compiled Laws. This section was first enacted in 1905 and the provisions thereof were not amended until 1947. Chapter 2 of the 1947 S.L. amended section 4-02-30 to provide for voting upon the discontinuance of this tax. No such provision had

been provided in the original Act. The 1947 amendment also amended the portion of section 1874 of the 1913 Compiled Laws (quoted above) to provide as follows:

If a majority of the ballots heretofore or hereafter cast on the question at any such election is in favor of continuing such tax, the board of county commissioners shall continue the annual levy hereof as long as the provisions of section 4-0229 are complied with and until otherwise directed as herein provided." (Emphasis supplied).

It appears that under the 1947 amendment, a favorable vote at the election held upon the question of continuing the levy of this tax compels the board of county commissioners to levy the tax as long as section 4-02-29 is complied with and until otherwise directed as provided.

This section was further amended by chapter 99 of the 1961 S.L. to provide for a method of again submitting the question of levying the tax should the question receive an unfavorable vote at a previous election. The 1961 amendment does not seem pertinent to the question at hand.

While section 4-02-20 of the N.D.C.C., as amended, apparently makes the levy of the tax mandatory upon the board of county commissioners if a favorable vote is received at the election, the 1918 election in Towner County was held under the provisions of section 1874 of the 1913 Compiled Laws which only authorized but did not command the county commissioners to levy the tax. Since the tax is included in the eighteen mill limitation, we do not believe it unreasonable to have vested the county commissioners with a certain discretion in the levying of this tax. Thus, if the other needs of the county were so large as to require the levy of the full eighteen mills for such needs, the county commissioners could discontinue the levy in aid of the fair. This is apparently not the case under the provisions of section 4-02-30 of the N.D.C.C., as amended.

In view of the fact that the 1918 election was held under a statute authorizing the county commissioners, in their discretion, to levy the tax and in view of the fact that this section further provided that the result of any election held under the provisions of that section should remain in force until changed at some subsequent election, it is our belief that the 1947 amendment did not make it mandatory upon the Board of County Commissioners of Towner County to levy the tax in aid of the fair. Statutes will be construed to operate prospectively only unless contrary intention appears. Where legislative intention with respect to the meaning of a tax statute is doubtful, the doubt must be resolved against government and in favor of the taxpayers. (See Great Northern Railway Co. v. Severson, 50 N.W.2d. 889, N.D., 1951.)

Since the meaning of the 1947 amendment making it mandatory upon the county commissioners to levy this tax if a favorable vote was received at the election is doubtful, we believe it should be construed to operate prospectively only. It is our conclusion that this amendment applies only to those elections held subsequent to its enactment. In order for the levy of the tax in aid of the fair to be

mandatory upon the County Commissioners of Towner County, we believe another election would have to be held under the provisions of section 4-02-30 of the N.D.C.C., as amended, and a favorable vote received at such election.

LESLIE R. BURGUM

Attorney General