

**OPINION
62-81**

April 10, 1962 (OPINION)

DISTRICT HEALTH UNITS

RE: Levy by Counties - Failure to Levy Certified Amount

Your letter of March 23, 1962, has been received.

You have requested an opinion concerning the county levy for the district health unit fund as provided in section 23-14-11 of the North Dakota Century Code.

You relate that a situation has arisen in one of the health districts where two counties in a six county multiple health district have practiced levying less for the health unit fund than the amount approved by the Joint Board of County Commissioners of the whole unit. You have also attached certain correspondence in regard to this matter for our consideration.

You then ask, "May a county which is a member of a health district legally levy less than the amount approved for the budget by the Joint Board of County Commissioners?"

You conclude by asking, "If the answer to the first question is in the negative, what course of action may or should be taken to obtain compliance?"

Section 23-14-11 of the North Dakota Century Code provides:

HEALTH FUND - HOW PROVIDED. All salaries, mileage, compensation, and expenses provided for herein shall be paid as the salaries, mileage, compensation, and expenses of other county officers now are paid, out of a health district fund as follows:

1. The district board of health, as provided in this chapter, shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and it shall be submitted to the joint board of county commissioners for approval. The amount budgeted and approved shall be prorated, in health districts composed of more than one county, among the various counties in the health district according to the assessed valuation of the respective counties comprising the said health district, and shall be certified by the district health board to the respective county auditors of such counties within ten days thereafter, and shall be included in the levies of such counties. The amount called for in the budget shall not exceed the amount which can be raised by a levy of three-fourths mill on the assessed valuation. Such levy shall not be subject to the limitation on county tax levy for general and special county purposes, and the amount derived therefrom shall be placed in a special health fund.

The health fund shall be deposited with and disbursed by the treasurer of the district board of health, and all counties comprising the health district shall remit and make settlements with such treasurer quarterly. Any funds remaining at the end of any fiscal year may be carried over to the next fiscal year;

2. All claims against the district health fund shall be audited by the district board of health, and shall be paid from the district health fund by the treasurer upon order of the district board of health."

We also note that Mr. Arnold Goplen of the State Health Department has already indicated in a letter dated September 28, 1961, to Mr. Merle Horner of Devils Lake, North Dakota, that in his opinion this practice was not in conformance with section 23-14-11 of the code. In other correspondence we note that the State's Attorney of Cavalier County was informed of Goplen's view and that said state's attorney then notified the Health Unit at Devils Lake that the Cavalier County Commissioners had refused to make the .7 levy, but instead authorized only a .6 mill levy. We are informed by other correspondence that of the six counties in the Health District Unit, a majority of the boards of five counties were represented at the joint meeting and that a majority of those represented approved the .7 mill levy.

We believe that the provisions of section 23-14-11 of the North Dakota Century Code are clear, and that the language used therein is not ambiguous. It would appear that the essential elements of making a proper levy in this situation would include the following:

1. The district board of health is to prepare a budget for the next fiscal year in the manner provided.
2. This budget is then submitted to the joint board of county commissioners for their approval.
3. The amount budgeted and approved (by the joint commissioners) shall be prorated among the counties within the health district according to the assessed valuation of the counties comprising the health district.
4. This amount must then be certified by the district health board to the respective county auditors within ten days thereafter, and (the amount agreed upon by the joint commissioners) shall be included in the levies of such counties.
5. Further, the levy cannot exceed the three-fourths mill limit on the assessed valuation.
6. The amount of money levied is then placed in a special health fund, and is disbursed by the treasurer of the District Board of Health.
7. Finally, section 23-14-11 provides that all counties comprising the health unit shall remit and make settlements with the (district board) treasurer quarterly. (Emphasis

supplied)

The language used in the section is also worded in mandatory terms, for example, the use of the word "shall" (as underlined above) in regard to the making of the levy.

It is our conclusion then, and our opinion that the statute in this case provides adequate authority for a majority of the county commissioners meeting jointly to set the amount of the levy, and to approve the budget containing the levy and that such acts of the commissioners acting jointly, and as a majority are proper legal acts, so long as the essential elements of procedure as outlined above are followed.

In other words, the counties which have refused to make the levy are without authority to so refuse, whether or not one of the counties was not represented at the joint meeting, the essential element being that a majority of those county commissioners in the district approved the particular amount of the budget and the levy.

By the non-complying counties maintaining this particular position, the commissioners and the county auditor leave themselves open to a mandamus action which could be maintained by any of the complying counties, through their state's attorneys, and on behalf of the District Health Unit.

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Attorney General