

OPINION
63-260

December 13, 1963 (OPINION)

TAXATION

RE: Park Districts - Purpose of Levy

This office acknowledges receipt of your letter of December 9, 1963, with reference to the above-captioned section of our law.

You state that during the past year there have been improvements made in the city of New Rockford by the special assessment method, and this will result in special assessments being made against park board properties. A substantial payment will be required from the Park Board each year in order to meet the special assessment obligations.

You further state: "From reading subsection 1 of Section 57-15-12 I am of the opinion that the park board may levy for the amount necessary to meet special assessment installments and in addition to this may levy the four mills for general operation."

Your question is, "whether or not the park board may levy an amount sufficient to meet special assessment installments, together with a four mill levy for general operation, without the necessity of voting on an increase of the park board levy?"

Section 57-15-12(1) of the North Dakota Century Code reads:

In park districts tax levies shall have the following limitations:

1. The aggregate amount levied for park district purposes, exclusive of levies to pay interest on bonded debt and levies to pay and discharge the principal thereof, and levies to pay the principal and interest on special assessments assessed and levied against park board properties by other municipalities, shall not exceed such amount as will be produced by a levy of four mills on the dollar of the net taxable assessed valuation of the district for the current year;"

The plain reading of subsection 1 leads us to believe that in placing the limitation of four mills on the dollar of the net taxable assessed valuation the Legislature clearly intended the levies for payment of principal and interest on bonded indebtedness as well as principal and interest on special assessments should be excluded. If these exclusions be omitted from subsection 1 it would read: "The aggregate amount levied for park district purposes shall not exceed such amount as will be produced by a levy of four mills on the dollar of the net taxable assessed valuation of the district for the current year." It is our opinion that the four mills is intended to cover the cost of operation of the park district for the current year.

This view is supported by the fact that the bonded indebtedness is a fixed and determined obligation of the Park District, an existing and continuing obligation, the provision for payment of principal and interest having already been made before the bonds were delivered.

Section 21-03-15 of the 1963 Pocket Supplement of the North Dakota Century Code reads as follows:

DIRECT, ANNUAL, IRREPEALABLE TAX. The governing body of every municipality issuing bonds under the authority of this chapter, after the sale of such bonds and before the delivery thereof, shall levy by recorded resolution or ordinance a direct, annual tax sufficient in amount to pay, and for the express purpose of paying the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity. The municipality shall be and continue without power to repeal such levy or to obstruct the collection of said tax until such payments have been made or provided for. * * * * No further annual levy for the that purpose shall be necessary* * * *."

A park district is included in the statutory definition of the word "municipality." Section 21-03-01, 1963 Pocket Supplement of the North Dakota Century Code.

Our position in this matter is further substantiated by the provisions of chapter 40-23 of the North Dakota Century Code entitled "ASSESSMENT OF BENEFITS." This chapter deals with special assessment. We call your attention to section 40-23-07 which concerns itself with the powers and duties of the special assessment commission, and particularly to the following language:

* * * *Benefited property belonging to * * * park districts,* * * shall not be exempt from such assessment, and such public corporations whose property is so assessed shall provide for the payment of such assessments, installments thereof and interest thereon, by the levy of taxes according to law."

The determination of special assessments does not rest with the park district but is the prerogative of the special assessment commission of the municipality. It is something separate and apart from the current operations of the park district by its governing board.

Taking these factors into account, it is the opinion of this office that the park board may levy for the payment of principal and interest on the bonds issued by the district, and for the payment of special assessment installments and interest, and in addition to such levies, the governing board may levy the four mills to cover the operations for the current year.

HELGI JOHANNESON

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