

**OPINION
66-71**

June 1, 1966 (OPINION)

Mr. Linn Sherman

Attorney for Kidder County Fair Association

RE: Counties - County Fair Levy - Election

This is in reply to your letter of May 11, 1966, in regard to levy in aid of a county fair.

You inform us that:

"In either 1957 or early 1958, pursuant to an application for a grant duly made by the Kidder County Fall Fair Association, the county commissioners of Kidder County levied a tax in aid of the fair, and at the general election held on November 4, 1958, the question of continuing a tax levy in aid of the fair was submitted to the voters of the county. The result of the election was that the voters disapproved the continuance of the tax, and no further tax levies have been made to assist the fair, although a fair has been held each year.

"The fair association would like another attempt made to have the tax levy approved, and the county commissioners are apparently agreeable, but we do not know exactly how to proceed. As attorney for the fair association, I would appreciate your opinion on the following questions:

1. May the county commissioners of Kidder County, upon receipt of a proper application, make a levy of not to exceed one half mill to aid the fair association, and thereafter submit the question of continuing a levy to the voters, as provided by sections 4-02-26 and 4-02-30 of the Century Code:
2. If no levy may now be made without prior approval of the voters, what procedure is to be followed to have the question submitted to them? May the county commissioners submit it on their own motion, or must a petition be filed, either on behalf of the fair association, or signed by a certain number of voters?"

On the basis of the information you submit we assume that in 1958 or 1959 the voters of your county indicated by their vote that they did not choose to have the annual levy and collection of the tax continued pursuant to the provisions of the first paragraph of the statute, now section 4-02-30 of the 1965 Supplement to the North Dakota Century Code, which provides:

"4-02-30. TAX PROVIDED FOR TO BE SUBMITTED TO VOTE. - Whenever the board of county commissioners shall have voted and ordered a tax levied in aid of an agricultural fair, at the next general election the question of continuing the annual levy and

collection of the tax shall be submitted to a vote of the people of the county. The county auditor shall certify and give notice of the submission of the question as in such cases provided by law. The ballots to be used at the election shall be in the following form:

For tax in aid of county fair:

YES..... / /

NO..... / /

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 4-02-29 are complied with and until otherwise directed as herein provided. * * *."

On such basis, apparently the county commissioners discontinued levy and collection of such tax. There was also apparently no petition to discontinue the tax presented to the board of county commissioners. Recognizing history of this (note construction placed on the prior act by this office, see copies of correspondence attached) it is our opinion that your first question must be answered in the affirmative and it becomes therefore unnecessary to answer your second question.

HELGI JOHANNESON

Attorney General