

OPINION  
66-84

March 8, 1966 (OPINION)

Mr. Harold D. Bullis

State's Attorney

Richland County

RE: Counties - Taxation - Roads

This is in response to your request for an opinion of this office with regard to a mill levy for a county farm to market federal aid road program in accordance with the provisions of section 57-15-06.3 of the 1965 Supplement to the North Dakota Century Code.

You inform us that at the November 6, 1962, general election the voters of your county approved a mill levy of not to exceed three mills annually for a county farm to market federal aid road program in accordance with the provisions of section 57-15-06.3 of the North Dakota Century Code. Your county commissioners now propose submitting to the voters of the county a second program under this statute which would authorize a mill levy of not to exceed seven mills annually until such program is completed. Both contemplated programs would apparently come within the total ten mill levy limitation set by said section 57-15-06.3 of the 1965 Supplement to the North Dakota Century Code. However, information has been received to the effect that the second program cannot be submitted to the voters under this same statute.

You ask whether there is anything in the law which would prohibit the board of county commissioners from submitting a second program to the voters of the county under the statute in question provided that the combined cost of the program originally approved by the voters and the second program to be submitted to the voters would not exceed the limit of ten mills as set forth in the statute.

In view of the decision of our Supreme Court in *Huber v. Miller*, 101 N.W. 2d., 136, it is, of course, not possible to divert a part of funds raised pursuant to such voted program and subsequent levies from the originally presented program. However, considering that the general concept of this statutory provision has been on the books since 1951, originally providing for a five mill levy and currently providing for a ten mill levy, it is our opinion that additional programs under this statutory provision can be adopted pursuant to the procedures specified in this statute provided, of course, that the total levies during a current taxing year for such program or programs do not exceed the ten mill limit expressed in the statute.

HELGI JOHANNESON

Attorney General