

**OPINION
69-451**

April 18, 1969 (OPINION)

Honorable Don Halcrow

Representative, Eleventh District

RE: Taxation - Personal Property Tax Repeal - Bonded Indebtedness

This is in response to your inquiry as to section 20 of Senate Bill No. 137. Your inquiry relates to the situations where a political subdivision has an existing bonded indebtedness and where the political subdivision does not have a bonded indebtedness.

For purposes of discussion we will recite the pertinent provisions of section 20, except the last paragraph.

SECTION 20. DISTRIBUTION TO COUNTIES AND LOCAL SUBDIVISIONS. It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter, shall reduce its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property by this Act. On or before March 15, 1971, the county auditor of each county shall certify to the state tax commissioner the total amount of taxes levied in the year 1968 for the state, county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes, and levies voted by the people, new or present levies increased by legislative action of such county on those items of personal property exempt under the provisions of section 57-02-08, and, in addition, the total valuation of real estate and taxes levied on real estate for the year 1968. On or before May 1, 1971, and each year thereafter, the state tax commissioner shall certify for payment to the state treasurer an amount for payment by the state treasurer to each county equal to fifty percent of the amount determined to be due such county based upon the personal property taxes levied in the year 1968 for the political subdivisions herein mentioned on the items of personal property exempt from the personal property tax under the provisions of section 57-02-08, the per capita school tax under the provisions of section 57-15-23, and the grain tax under the provisions of chapter 57-03, together with any adjustments to be made according to the manner hereinafter provided. The remaining fifty percent due each county shall be paid on or before June 1, 1971, and each year thereafter. Within sixty days after the receipt of the revenue as provided by this section, the county treasurer shall allocate and remit to the county, cities, park boards, school districts, airport authorities, townships, and all other units of government having the authority to levy taxes that amount of revenue which is received from the state in the same ratio as he would have distributed the revenue from the personal property tax,

adjusting such amount by any increase or decrease in real property taxes as levied by each taxing authority according to the formula hereinafter provided. Any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, shall be credited to the general fund of the political subdivision. In the years after 1971, payments to the counties under this section shall be made based upon such payment for 1971 together with a growth factor which shall be based upon the dollar amount of increase or decrease in real property taxes levied within each county. For each four-dollar increase in real property taxation within a county, the state shall contribute an additional one dollar over that amount which was remitted in the base year. For each four-dollar decrease in real property taxation within a county, the state shall contribute one dollar less than that amount which was remitted in the base year.

"On or before May 1, 1971, and each year thereafter, the state tax commissioner shall certify to the state treasurer the amount determined to be due to the state based upon the personal property taxes levied in the year 1968 for the North Dakota state medical center. In the years after 1971 the amount so certified shall be computed in accordance with the formula provided in this section for computing the amounts to be certified and paid to the counties. The state treasurer upon receiving the certification from the tax commissioner shall transfer from the general fund to the credit of the North Dakota state medical center the amount so certified." (Emphasis supplied.)

It is noted that a political subdivision which has an existing bonded indebtedness for which a levy must be made in 1970 or any year thereafter, is required to reduce its levy each year for its current operating expenses. The reduction of the current operating expenses is in direct proportion to what the increases on levies of remaining taxable property would be resulting from the exemption of the personal property. The amount by which the current operating expenses are reduced in the general fund will be theoretically replaced by the state through the replacement formula.

The legislature could not safely have required that the levies for bond issues be reduced on the proposition that the state would provide for a replacement because whenever a political subdivision issues bonds it promises and actually states in legal terms that it will levy an irrepealable tax until the bond issue has been paid. The net effect of same is that the political subdivision by law obligates itself to levy an irrepealable tax until all outstanding bond issues have been redeemed or paid up. It is because of this provision the legislature required that political subdivisions having existing bonded indebtedness reduce its operating expenses corresponding to the theoretical increases on real and other remaining taxable property and provided for a replacement of the tax revenue which would have been available had the personal property been subjected to a tax.

It also anticipates that the political subdivision will be required to spread a levy on all taxable property to bring in sufficient

revenue to pay off the bond issues together with interest as same becomes due. The only taxable property of any consequence which remains is real property and public utility property. Consequently such property will be the property which will be subjected to the tax in sufficient amount to produce the necessary revenue to pay off the obligations of the bonds as they become due. Naturally the tax on public utility and real property as related to the bond issue, only, will be greater than it was before the repeal of the personal property tax; however, to compensate for the tax increase on this property the political subdivision is, by the provisions of section 20 of Senate Bill No. 137, required to reduce the operating expenses by the same amount as such political subdivision will receive from the state as replacement revenue. The net result of this theoretically is the same as if the tax on personal property had remained. Such procedure we presume was employed so that the political subdivision would not be subjected to an accusation of levying insufficient tax to provide the necessary revenues to take care of the obligations of existing bonds as they occur. By reducing the current operating expense comparable to the replacement money the political subdivision would end up with approximately the same amount of dollars and cents as it would before the repeal of the personal property tax. At least this is the theory of section 20 of Senate Bill No. 137.

As to those political subdivisions which do not have an existing bonded indebtedness as of the year 1970 or thereafter, the governing body of same could continue its levy substantially on the same basis. Of course the current and necessary expenditures would have to be taken into account to determine what the levy should be. It is anticipated that the revenue loss sustained by the political subdivision would be made up by the replacement money.

The replacement money, however, appears to be tied to the personal property taxes as a result of the 1968 levy.

The county auditors of the respective counties are required on or before March 15, 1971, to certify to the state tax commissioner the taxes resulting from the 1968 levy as well as the total valuation of real estate and taxes levied on real estate for the same year. The state tax commissioner on or before March 15, 1971, certifies to the state treasurer the amount equal to fifty percent which would be due to the counties based on personal property taxes levied in the year 1968, including the per capita school tax and the grain tax. The remaining fifty percent would be paid on or before June 1, 1971.

The county treasurer within sixty days of receipt of such moneys is required to disburse same to the various political subdivisions of the county in the same ratio as he would have distributed revenues from personal property tax, per capita school tax, and grain tax. While the Act does not specifically so provide, nevertheless, from the legislative intent, title of the Act, and objectives of the Act there is a strong implication from which we conclude that the political subdivisions upon receiving the money from the county treasurer will be required to allocate such replacement money to the various funds and purposes in the same manner as the personal property revenue would have been distributed, except that in political subdivisions having outstanding bonded indebtedness the

sinking fund for outstanding bonded indebtedness would not participate in such replacement money because its revenue was not reduced. In addition the reduction made for "current operating purposes" would be replaced in direct proportion to the reduction made. The language, "any amount that would (have been) be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, shall be credited to the general fund of the political subdivision.", simply states in another manner that the reduction made "for current operating purposes" shall be replenished by direct proportion from the replacement money in the amount that it was reduced. (Language in parenthesis is ours and was placed there for clarification.) Those political subdivisions which do not have outstanding bond issues will be required to allocate the replacement money received to its various funds or purposes for which levies were made in the same ratio as the personal property revenue would have been distributed.

Senate Bill No. 137 does not make a clear distinction between political subdivisions having outstanding bonded indebtedness and those not having any but by taking into account the declaration of legislative intent in section 22 and the title of the Act this is the result reached.

After 1971, payments to the counties will also take into account increases or decreases in real property taxes levied by the political subdivisions within the county. For every four dollars increase in taxes on real property, the state will contribute or remit to the counties one dollar which will be distributed to the political subdivisions within the county correspondingly. For every four dollars decrease of taxes on real property in the political subdivisions of the county, the state will reduce its contribution to the county by one dollar. Such loss would affect all of the political subdivisions within the county. The increase or the loss as the case may be would affect all of the political subdivisions within the county.

The Act also provides that the state tax commissioner will be required to determine the amount of revenue which would have been produced under the mill levy for the medical center resulting from personal property taxes. The amount so determined would then be paid to the medical center from the state general fund. This would be on a replacement basis.

The above discussion in general terms explains how section 20 will operate. Unresolved at this point, and we necessarily have to allow this to remain unresolved, is the question: When does a bonded indebtedness begin to exist? The statute is couched in general terms. For example, "* * * which has an existing bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter, * * *". (Underscoring supplied.) This necessarily becomes a factual situation; and whenever the facts compel a legal conclusion that a political subdivision is obligated to levy a tax for the bonded indebtedness in the year 1970, it would come within this provision. There are several factors which would come into play which makes it extremely difficult to attempt to put a fine ruling on this provision without having the benefit of the facts which must be taken into

consideration. By saying this we also realize that some facts will not compel such conclusion, but other facts coupled with certain actions could result in such legal conclusion. This also takes into account the legal concept that if certain action is taken by the board and the electorate, the board thereafter is merely required to perform an administrative function and the legal consequences have already attached. For example if a political subdivision were to undertake the issuance of bonds and follow the appropriate procedures whereupon an election was held resulting in a favorable vote, the governing body by law would be required to proceed with the bond issue even though a buyer has not yet been obtained. The difficult question arises: "Is the political subdivision required to levy a tax for the bonds even though the bonds have not been sold?" It is for this reason that we cannot without any factual basis make any firm conclusions based on generalities.

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