

**OPINION
70-302**

March 11, 1970 (OPINION)

Mr. Orrin B. Lovell
State's Attorney
Golden Valley County

RE: Schools - Excess Levies - Reduction of Basic Mill Levy

This is in reply to your letter with regard to application of school district mill levy increase election.

You inform us that, at the present time, the school district is operating a high school unit. We presume, under subsection 3 of section 57-15-14 of the 1969 Supplement to the North Dakota Century Code, that as such, their legal mill levy limit is thirty-four mills. You further inform us that in 1968 the residents of the district voted to increase this limit by fifty percent. You indicate further that the notice of election provided that this carry through for the years 1968, 1969, 1970, 1971 and 1972.

You also inform us that the district is now contemplating the closing of the high school and if and when the high school is closed, we presume pursuant to subsection 4 of section 57-15-14 of the 1969 Supplement to the North Dakota Century Code, that the legal levy would drop to twenty-two mills.

Your questions are stated as follows:

1. After the high school is closed, if such should be done, would the district still be entitled to levy 50 percent above the legal limit by virtue of the 1968 election?
2. In the event the high school is closed, and in the event that the answer to the above is in the affirmative, would the legal levy then drop to 22 mills in determining the 50 percent factor?"

While the form of ballot prescribed by section 57-16-06 of the North Dakota Century Code does indicate a designation of the amount in dollars to be raised for the current year, it is very definitely also indicative that the increase is to be determined as a percentage of the legal limit, (section 57-16-05). The notice of election is required to state also the percentage of excess which is to be voted upon, (section 57-16-04, 1969 Supplement to the North Dakota Century Code). If a fixed dollar or fixed mill increase was considered desirable by the legislative assembly, the legislation adopted could have provided for same. In view of the fact that such was not done, we can assume that the Legislature did actually intend that the amount of increase in total sum to be raised each of several years could vary with the base figure against which such percentage is applied.

The problem does become a bit more difficult where there is a sizeable change in the mill limitation. The only occasion where we

note our Supreme Court dealing with the precise question is Great Northern Railway Company v. Severson, 78 N.D. 6120, 50 N.W.2d. 889, where, due to a legislative increase in basic mill rate, the base against which the percentage was taken was changed from twenty-two mills to thirty-six mills. We note in that decision, with two justices dissenting, the Court held that, insofar as it did not appear that the Legislature, in increasing the base rate, intended such increase to apply to elections previously held, on which basis the Court would not construe the statute to have such a retrospective application, and concluded that the increases previously voted did not apply to the increased basic mill rate.

In the instant case, however, it would appear that there is no legislative change which would be given retrospective effect in applying the percentage increase to what would become the basic rate in the event the high school were discontinued. The twenty-two mill levy limitation has changed, from being applicable to any school district maintaining a consolidated elementary school, to being applicable to any school district maintaining an elementary school with two or more teachers, but has not changed as to amount. We would assume the school district in questions would have been eligible for the twenty-two mill levy in the absence of their high school, in any event, at the time of the election and to the date that the high school might actually be discontinued. On such basis there is no question here of giving retrospective operation to any statute. The only question relates to applying the percentage voted to basic mill rate changes due to foreseeable factual changes in facilities furnished by the district. Insofar as we feel the reason for adopting a percentage increase provision in the first instance is to enable the increase to be applied to varying bases, we must conclude that such percentage can be applied to a factually varied base rate. It is thus our conclusions that both your questions must be answered in the affirmative, as follows:

1. After the high school is closed, if such should be done, the district would still be entitled to levy fifty percent above the legal limit by virtue of the 1968 election, assuming the validity of the procedure then undertaken to authorize a percentage increase.
2. In the event the high school is closed, and assuming the criteria of Subsection 4 of section 57-15-14 of the 1969 Supplement to the North Dakota Century Code is met, and the district then becomes a school district maintaining an elementary school with two or more teachers, the legal levy limitation would then drop to twenty-two mills for purposes of applying the fifty percent increase factor.

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