June 18, 1970 (OPINION)

Mr. Michel W. Stefonowicz

State's Attorney

Divide County

RE: Taxation - Personal Property Tax Repeal - Duties of County Audit

This is in response to your letter of May 28, 1970, in which you requested an opinion on several questions which have been submitted to you by the Divide County Auditor, relating to the duties or responsibilities of the county auditor under section 57-58-01 of the North Dakota Century Code and distribution of revenues pursuant thereto.

For convenience we will recite the various questions presented followed by the answers to each question:

> As to the first question, the opening sentence of section 57-58-01 states that:
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> '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 subsection 25 of section 57-02-08.'"
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> Your question is: "Where a political subdivision has made a 1970 tax levy for retirement of a bonded indebtedness, should the county auditor reduce the political subdivision's 1970 levy for current operating purposes by the amount which its tax levy on taxable property in 1970 for retirement of the bonded indebtedness is increased because of the exemption of personal property by subsection 25 of section 57-02-08?"

The general powers and duties of the county auditor are set out in chapter 11-13 of the North Dakota Century Code. Other powers and duties of the county auditor relating to taxation are found in various sections of Title 57 of the North Dakota Century Code. In examining these various provisions, we find no express provision authorizing the county auditor to reduce a political subdivision's levy for current operating purposes by the amount which its tax levy on taxable property in the year 1970 for retirement of bonded indebtedness is increased because of the exemption of personal property pursuant to subsection 25 of section 57-02-08.

The amount to be levied by any political subdivision authorized to levy taxes is based upon the annual budget prepared and adopted by the political subdivision which levy ultimately may not exceed the maximum allowed by law. In preparing and adopting their annual

budget, the various political subdivisions have the authority and duty to take into account the amount of replacement revenue they will receive with respect to bonded indebtedness retirement as well as any other 'estimated revenues from sources other than direct property taxes' when they are determining the total dollar amount of taxes pursuant to section 57-15-31 that they will levy.

In examining the budget, tax levy and limitation laws of this state, it appears that the governing bodies of political subdivisions rather than the county auditor determine and make the necessary tax levies in specific amounts of money and after same has been made and certified to the county auditor, the auditor computes the tax rate within the limitation prescribed by statute. If any subdivision levy is a greater amount than the prescribed maximum legal rate of levy will produce, the county auditor must then extend only that amount of tax as the prescribed maximum legal rate of levy will produce.

Thus, there appears to be no statutory authority in section 57-58-01 or elsewhere authorizing the county auditor to reduce the dollar amount of levy made by the taxing districts by the amount of replacement revenue that the district will receive from the state other than the general statutory responsibility of the county auditor to calculate and fix the rates within the levy limitations prescribed by statute. However, if the maximum legal rate has been exceeded, the county auditor is then expressly authorized to extend only such amount of tax as the maximum legal rate of levy will produce.

As taxes are levied by the political subdivisions and as the county auditor's statutory authority is limited to the calculation of the tax rate as well as to insure that the legal maximum rate is not exceeded and as the county auditor has no express authority to determine whether or not the budget of a particular taxing district indicates that the anticipated replacement revenues that will be received by the district from the state have been properly taken into account, pursuant to section 57-15-31(2), it is our opinion that the county auditor has not had the legal authority or responsibility to supervise the preparation and adoption of the budget of the various taxing districts to determine whether the district properly took into account as estimated revenue the contemplated replacement revenue because only the taxing districts themselves have this statutory duty and authority. The county auditor, however, will continue to apply the mill levy limitations as prescribed by section 57-15-02 of the North Dakota Century Code. However, where it appears that the taxing district has overlooked the "reduction provision" it would be advisable to call attention to it.

Your second question is quoted as follows:

> The second question is: Whether or not a taxing district has made a 1970 levy for bonded indebtedness, does the county auditor have the authority or the duty to reduce the 1970 levy certified by a taxing district for all other purposes by the amount of replacement revenue that it is expected the taxing district will receive in 1971 if the taxing district in computing the amount of its levy did not deduct from the amount of its estimated expenditures for the current fiscal year the amount of estimated revenue it expects to receive in 1971 from

> the distribution that will be made by the state under section 57-58-01?"

Pursuant to the reasoning employed in answer to question number one, it appears that the county auditor does not have the statutory power or duty to reduce the 1970 levy as certified by a taxing district unless the taxing district certifies a greater amount than the prescribed maximum legal rate in which event the county auditor must extend only such amount of tax as the prescribed maximum legal rate of levy will produce. However, if the taxing district has overlooked a legal requirement the auditor should call attention to it.

Your third question is quoted as follows:

> As to both the first and second questions, the organized townships in each county made their levy under section 57-15-19 this past March for the current year. This raises the third question, which is: If a township in making its levy this year did not take into account the amount of state distribution it will receive in 1971 under 57-58-01 and if the county auditor does not have the authority or duty to reduce the township levy in order to take the amount of distribution into account, can the township electors now reduce that levy in order, first, give effect to the first sentence of section 57-58-01, if the township has a bonded indebtedness and, second, in order to take into account the amount of replacement revenue that will be distributed to it that is in addition to any amount that may be received in connection any levy for bonded indebtedness?"

This question apparently does not relate to a factual situation where the amount levied by a township would produce more than could be raised within the mill levy limitations because under this factual situation the county auditor would be required pursuant to section 57-15-02 to extend only such amount of tax as the prescribed maximum legal rate of levy will produce and, thus, the exclusion of anticipated state replacement revenue for budgeting and levying purposes would not under normal circumstances affect the levy to be made. Your question rather must relate to a factual situation where the amount levied by a township was not sufficiently large to require the county auditor to reduce it because of the mill levy limitation, in which event, the levy as applied in 1970 to the reduced tax base would increase local real estate and utility taxes in the township. Without adoption of a new budget in 1970, which would take into consideration the amount of state revenue replacement that it will receive, the township presumably would have a larger cash balance at the end of 1970 because of the increased levy and thus increased 1970 taxes, plus state replacement revenue. Under these circumstances, presumably the 1971 levy should be correspondingly lower if a new budget cannot be adopted in the year 1970.

With respect to this question, it is noted that the township levy is to be made by the board of supervisors of the township in March of each year, pursuant to section 57-15-19 of the North Dakota Century Code and section 57-15-32 requires certification of the tax levy made by a township to the county auditor immediately following the action of the governing body or within ten days thereof.

Chapter 58-04 of the North Dakota Century Code does provide for special township meetings. However, as section 57-15-19 requires the township to levy its taxes in the month of March and as these levies must be certified to the county auditor within a prescribed time who in turn also is performing his duties within statutory time limitations, it would appear that once the township has adopted and certified its budget and levy, pursuant to section 57-15-19, the township electors may not after that date change the budget or raise or lower the levy. However, as previously stated, as a cash surplus would normally result, under the above circumstances, the 1971 levy should be correspondingly lower because the cash balance should be considered in the preparation and adoption of the township budget in 1971 to determine the necessary levies to be made for that year.

Your fourth question is quoted as follows:

> The fourth question is: Should the distribution under section 57-58-01 by the state of replacement revenue for the political subdivisions include any amount for taxes on the contents of noncollapsible travel trailers that had been included as part of the mobile home valuation and taxed as mobile homes before chapter 354, S.L. 1969, was enacted?"
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> Some explanation of this question is necessary. When a noncollapsible travel trailer or mobile home is purchased, it normally includes items of furniture or furnishings that are not attached or built into the trailer but are really personal property similar to that in a person's home. The assessed value for these trailers in 1968 as well as other years included these items of personal property."
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> When the 1969 legislature passed chapter 354 and provided that these travel trailers would no longer be taxed as mobile homes but would be licensed by the motor vehicle registrar, it would seem that the travel trailer license was intended to cover both the travel trailer itself and the unattached furniture or furnishings that are normally included with it. If this is the case, then the repeal of personal property taxation by chapter 528 of the 1969 Session Laws would not seem to apply to these items. Therefore the question above is whether the state should pay back any replacement revenue to the political subdivisions for the 1968 mobile home tax paid on these noncollapsible travel trailers that included some amount of tax for the standard items of furniture or furnishings that normally come with the trailer but that are not actually built into the trailer or attached to it."

Noncollapsible travel trailers prior to the passage of chapter 354, S.L. 1969, were taxed under the provisions of chapter 57-55 of the North Dakota Century Code. This chapter required the county auditor to collect the tax on the trailer and its contents, including the personal property contained therein. The 1969 Legislature, however, in chapter 354, S.L. 1969, reclassified the noncollapsible type travel trailer which had been previously taxed as a mobile home and made the trailer subject to an annual license fee providing that the "annual license fee * * * shall be in lieu of all personal property taxes upon such trailer * * *." In this connection, see section

39-18-03 of the North Dakota Century Code. Whether it is called a fee or a tax makes little difference, it still amounts to an exaction of money.

Chapter 354, S.L. 1969, was passed as an emergency measure by the legislature on March 13, 1969, and became effective on March 26, 1969. Thus, this bill was passed by the legislature prior to the passage of Senate Bill No. 137 (chapter 528, S.L. 1969), the bill which repealed personal property from taxation. That portion of Senate Bill No. 137 creating subsection 25 of section 57-02-08 (repeal of personal property from taxation), expressly provides that the subsection "shall not apply to any property that is * * * subjected to a tax which is imposed in lieu of ad valorem taxes * * *."

In view of the above, it appears that the legislature intended the travel trailer license fee to include the contents that are a part of the normal equipment of a travel trailer and because of the in lieu provision which is expressly contained in section 39-18-03, including the fact that the legislature expressly provided that the personal property tax exemption did not apply to any property subjected to a tax which is imposed in lieu of property taxes, it is our opinion that the legislature did not contemplate any replacement revenue with respect to the normal contents of noncollapsible travel trailers which have been subjected to the annual license fee.

Your fifth question is quoted as follows:

> The fifth question also concerns chapter 354, S.L. 1969, and section 57-58-01 but only as to travel trailers of the collapsible type. Before section 57-55-01 of the mobile home tax law was amended by chapter 354, mobile homes did not include sleeping trailers of the type that are collapsed or folded for the purpose of moving them and they therefore were assessed by the local assessors. Chapter 354 passed by the 1969 legislature included these collapsible sleeping trailers in the definition of travel trailers and required them to be licensed by the motor vehicle registrar before they could be pulled on the streets or highways. As provided by the amendment to section 39-18-03 by chapter 354, this license fee is in lieu of personal property taxes on these travel trailers."
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> As to these collapsible travel trailers that were subject to local assessment in 1968 but subject to licensing as a travel trailer in 1969, should the state make any distribution in 1971 for the 1968 personal property tax on these trailers since they apparently became exempt from local assessment and taxation in 1969 by enactment of chapter 354 rather than having become exempt in 1970 by the repeal of personal property taxation by chapter 528?"

Our answer to question number five is that the legislature did not contemplate any replacement revenue from the state with respect to collapsible travel trailers. The reasons for this conclusion are substantially the same as stated in answer to question number four.

HELGI JOHANNESON

Attorney General