

OPINION
71-127

August 27, 1971 (OPINION)

Mr. Donavon K. Stetson

State's Attorney

Ransom County

RE: Counties - Taxation - Levy for Historical Works

This is in response to your letter in which you call our attention to Section 11-11-53 which authorizes a one-quarter mill levy for historical works. You then ask whether or not the one-quarter mill levy is subject to the twenty-mill limitation as prescribed by Section 57-15-06.

Section 11-11-53(2) as amended among other things provides that the board of county commissioners is authorized to levy a tax "in addition to all levies not authorized by law," not to exceed one-quarter of one mill for historical works. It further provides as follows:

"Such levy shall be in addition to any moneys appropriated from the general fund of the county for historical work as provided in subsection 1 of section 11-11-53."

Section 57-15-06 as is material to the question in subsection 3(d) provides as follows:

"Such mill limitation shall not apply:

- d. To taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein shall not be subject to the twenty-mill limitations for general and special county purposes;"

The basic question is whether or not the underscored language satisfies the provisions of Section 57-15-06(3)(d).

The mere fact that a mill levy is authorized which was not previously authorized constitutes an additional levy. Therefore, if the Legislature merely wanted to restate what it already had done, the underscored language would be redundant.

In construing language employed by the Legislature, every effort should be made to give meaning to all the language, words and phrases used by the Legislature. It is also presumed that the Legislature does not perform an idle act. Resorting to such rules or maxims, we must conclude that the Legislature had something specific in mind when it used the language "in addition to all levies now authorized by law." By using this phrase, the Legislature intended to convey a thought and not merely restate what it already had done because by authorizing a levy which had not been previously authorized, that in itself constitutes an additional levy.

We have examined other statutory provisions where the Legislature authorized the levy beyond the general limitations and we find that the Legislature employed specific language clearly indicating that the mill levies would not be subject to the limitation. For example, in Section 7-15-06.3 the Legislature said "which levy shall not be subject to the county mill levy limitations." In section 57-15-16.4, the Legislature said such levy shall not be limited by the provisions of Section 57-15-06.

In Section 18-06-11 it used the expression "the mill levy provided herein shall be over and above any mill levy limitations provided by law" and in Section 1-18-05 it uses the expression "the mill levy herein authorized over and above any mill levy limitation provided by law."

We are also aware that laws imposing taxes must be strictly construed.

As mentioned earlier, we are convinced that the Legislature had something more specific in mind when it used the underscored language than merely repeating that it was an additional tax. We cannot state that the underscored language has no specific purpose or meaning. It could be argued that such language merely authorizes an additional tax, but such tax must be within the general limitation. However, this would be true without the underscored language. Consequently, we must ascribe some purpose and meaning to the underscored language.

While the language does not in express terms state that it is an exception to the general limitations, nevertheless, this is the only significant purpose of such language. We are inclined to believe that the Legislature employed such language to indicate that the tax levy was not subject to the general twenty-mill limitation.

It is therefore our opinion that the one-quarter mill tax levy authorized by Section 11-11-53 for historical works is not subject to the twenty-mill levy limitations as set forth in Section 57-15-06. Our conclusion is further supported by the last sentence in subsection 2 of Section 11-11-53 because the levy is in addition to moneys appropriated from the general fund, which fund receives its revenues from general taxation. The last sentence strongly suggests and indicates that the one-quarter mill levy shall be in addition to other taxation and not be subject to the limitations imposed by Section 57-15-06.

HELGI JOHANNESON

Attorney General