

**OPINION
71-424**

November 9, 1971 (OPINION)

Mr. Thomas Kelsch

State's Attorney

Burleigh County

RE: Taxation - Personal Property Replacement - Reduction of Levies

This is in response to your letter in which you state that some questions have come up as to the manner in which the county auditors shall apply the provisions of Section 57-58-01.1. You stated the questions as follows:

1. Does Section 57-58-01.1 apply in a case where the 1971 bonded indebtedness levy of a political subdivision is for retirement of a bond issue that was approved by the voters at an election that was held after December 31, 1969, or does it apply regardless of when the election was held?
2. Does Section 57-58-01.1 require the county auditor to reduce the levy for the general fund (current operating purposes) of a political subdivision in a case where the political subdivision did reduce its general fund levy by the amount of estimated bonded indebtedness payback but the dollar amount of the general fund levy as made by the political subdivision is larger than the amount that can be raised by the maximum general fund mill rate for that political subdivision?

For example, the City of Bismarck reduced its 1971 general fund levy by the amount it estimated the general fund would receive from bonded indebtedness replacement revenue but the dollar amount of its general fund levy is greater than the amount that can be raised under the maximum mill rate limitation of 33 mills that applies to Bismarck. Should the county auditor reduce Bismarck's maximum 33 mill rate by the mill rate that would be required to raise the same amount that the Bismarck general fund will receive from bonded indebtedness replacement revenue?

3. Under Section 57-58-01.1, if the political subdivision did not reduce its general fund levy because of the bonded indebtedness replacement revenue, should the county auditor apply the reduction to the maximum general fund levy that the political subdivision could have made under the mill levy limitation that applies to it or should he apply it to the actual general fund levy that was made if the actual levy was less than the amount that could be raised under the maximum general fund mill levy limitation?

For example, if the City of Bismarck had not reduced its 1971 general fund levy by the amount of bonded indebtedness

replacement revenue and if general fund levy could then be raised by 31 mills and if the amount of bonded indebtedness replacement revenue was the equivalent of a one mill levy, should the county auditor subtract the one mill from the maximum levy of 33 mills or the actual levy of 31 mills?

4. The same question as in number 3 above except that the political subdivision did reduce its general fund levy by amount of bonded indebtedness replacement revenue."

The pertinent provision, of course, is Section 57-58-01.1 which provides as follows:

"COUNTY AUDITORS TO REDUCE CERTAIN LEVIES. If any political subdivision which has an existing bonded indebtedness for which a tax levy must be made does not reduce its levy for current operating purposes as provided in section 57-58-01, the county auditor of the county in which the political subdivision is located shall, after receiving the budget for such political subdivision, reduce the levy for current operating purposes by the amount which such political subdivision's tax levy on taxable property for the retirement of bonded indebtedness is increased because of the exemption of personal property from taxation."

This section makes immediate reference to and incorporates the first sentence of Section 57-58-01 which provides as follows:

"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 subsection 25 of section 57-02-08."

The object of this legislation is to assure that adequate taxes are levied to pay the principal and interest of bonded indebtedness as same become due, and at the same time give proper credit to replacement funds to avoid increasing taxes. A somewhat similar question was asked with relation to school districts. The answer in an opinion dated May 11, 1971, and addressed to Bruce Howe, State's Attorney of Stark County, stated as follows:

"If a school district has a maximum permitted mill levy of 34 mills and certifies less than the 34 mills and the increase on taxable property for retirement of bonded indebtedness is increased by four mills for that year because of the exemption of personal property, the amount to be levied should be reduced by four mills. If the school district does not reduce the amount certified by the amount which would be raised by four mills, the county auditor must do so.

"This does not mean the school district, in the first example, would receive less than the 34 mills in total, since the amount which the general fund of the school district would receive

would be increased by a sum equal to four mills by virtue of the deposit of this amount in the general fund of the district from the replacement tax which is allocated to bonded indebtedness. Thus, assuming that all computations are correct, the school district would receive the same amount of money as if the 34 mills had been levied. Since the school district cannot, in any event, levy more than 34 mills, the school district has not lost any funds. It has not gained any funds but the exemption of personal property from taxation and the replacement of such sums by state appropriation was not intended as a windfall to the political subdivisions. The enactment of House Bill 1521 makes this evident."

As to question number 1, the first sentence of Section 57-58-01 provides as follows:

"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 35 of section 57-52-08." (Emphasis ours)

It should be noted that the initial act provided "because of the exemption of personal property by this act." It appears that the Legislature intended to have the provisions of the first sentence apply only to bond issues in existence which by reason of exemption of the personal property tax, taxes on other taxable property such as real property were increased. The date of election per se is not necessarily the controlling factor. However, it is difficult to envision a situation where the election was held after 1969 which would come within the provisions of the first sentence of Section 57-58-01. For all practical purposes, an election on a bond issue held after 1969 would not result in increase of taxes on real property because of the exemption of personal property. The taxes would be increased in all probability, but the increase would be as a result of a new bond issue and not as the result of an existing bond issue and the exemption of personal property taxes to satisfy the constitutional requirement that an irrevocable tax be imposed to pay off the principal and interest as same become due. With this thought in mind, the answer to the first question is that whenever the first sentence of Section 57-58-01 is operative, then Section 57-58-01.1 applies if the taxing district did not make the reduction.

As to question number 2, the replacement money in lieu of the exemption of personal property tax is not for purposes of providing a windfall to the taxing district. If, for example, the maximum levy of a taxing district is 33 mills, and if the taxing district has certified a tax levy in an amount greater than 33 mills, the county auditor would have to reduce the tax levy to 33 mills and in certain instances would even have to reduce it below 33 mills. If the tax district has a maximum tax levy of 33 mills, and after making the adjustment (reduction) of current operating expenses by the amount of taxes levied on tax book property for the retirement of bonded indebtedness as provided for in Section 54-58-01, replacement tax,

(and the levy as certified to the county auditor still reaches 33 mills) then the county auditor will be required to reduce the 33 mills by the amount of replacement tax. The net result of the adjustment taking into account the replacement funds in lieu of personal property exemption, the taxing district should be in the same position as it was before the repeal of the personal property tax. If, of course, the taxing district does not have a mill levy limitation, which is true of certain school districts, then the aggregate gross tax levy may exceed the tax levies in previous years, not because of the replacement tax but because of the authority of the taxing district to increase its taxes.

As to question number 3, the county auditor is required to reduce the levy by the amount of the replacement revenue (current operating expenses) from the levy certified, not from the maximum levy authorized for the taxing district. For example, if the taxing district has a maximum of 33 mills and the district certified a mill levy of 31 mills but in this certification the adjustment was not made as required by Section 57-58-01, the county auditor would make the adjustment downwards from the 31 mills rather than the 33 mills.

As to question number 4, the answer given to question number 3 applies.

HELGI JOHANNESON

Attorney General