

OPINION
72-276

February 24, 1972 (OPINION)

Mr. Dale W. Moench

City Attorney

Dickinson, ND

RE: Public Recreation System - Mill Levy - Election

This is in reply to your letter of February 4, 1972, with regard to the application of sections 40-55-08 and 40-55-09 of the North Dakota Century Code to a contemplated city park district recreation system.

You indicate petitions are being circulated in your community with regard to the above. You state there is no public recreation system in the community at present and that the question thus arises as to whether or not the mill levy placed on the ballot should be 2.5 and 3.5 mills. You paraphrase this question as whether the "question of 3.5 mills can be placed on the ballot where a public recreation system is being established or created, rather than 2.5 mills, or whether it is necessary to establish a public recreation system with 2.5 mills and then at a later election increased to 3.5 mills."

Section 40-55-08 of the North Dakota Century Code provides insofar as here applicable:

* * * The governing body * * * shall submit to the electors the question of the establishment, maintenance, and conduct of a public recreation system, and the levying of an annual tax for the conduct and maintenance thereof of not more than two and five-tenths mills on each dollar of assessed valuation of all taxable property within the corporate limits or boundaries * * *."

Section 40-55-09 of the North Dakota Century Code provides insofar as here applicable:

* * * Upon the adoption of such proposition at an election by a majority of the votes cast upon such proposition, the governing body of such municipality, * * * shall * * * thereafter levy and collect annually a tax of not more than two and five-tenths mills, or not more than three and five-tenths mills if the same is authorized as herein provided, on each dollar of all taxable property within the corporate limits or boundaries * * *. The mill levy herein authorized may be raised to not more than three and five tenths mills when such increase is approved by the citizens * * * after the submission of such question in the same manner as provided in section 40-55-08 for the establishment of the public recreation system. * * *"

Looking to the wording of these statutes, it would appear to us that the voters are entitled to pass on both the question of whether a public recreation system shall be established with a 2.5 mill levy

limit, and of whether the 2.5 levy limit shall be raised to a 3.5 mills levy limit, if the 3.5 mill levy limit is to be considered by them, in the circumstances you describe.

We see no reason why both questions cannot be presented to the voters at the same time, though such presentation would necessarily require two separate ballot questions.

We hope the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON

Attorney General