

OPINION
74-76

June 27, 1974 (OPINION)

Mr. A. S. Benson
Attorney at Law
616 Main Street
Bottineau, ND 58318

Dear Mr. Benson:

This is in reply to your letter of June 10, 1974, in which you state the following:

"The Senior Citizens of our community have asked me to write you to obtain an opinion as to whether or not they can borrow in anticipation of a mill levy which was voted and carried in the last election in the City of Bottineau.

It is my opinion that they may borrow for one year in anticipation of this levy but not beyond a years time as the statute (sic) seems to be silent for anything over a year, which is common.

They were wondering if they could borrow ten years in advance on this levy and in my opinion they can't. I shall appreciate your response to this question."

The applicable law is section 57-15-56 of the North Dakota Century Code which permits the local communities to participate in the development of services for senior citizens.

N.D.C.C. 57-15-56 "Authorization of mill levy for programs and activities for older persons - Elections to authorize or remove the levy - Contract with governing body.

1. The board of county commissioners of any county is hereby authorized to levy a tax, or in the event no levy is made by the board of county commissioners, the governing body of any city is authorized to levy a tax, in addition to all levies now authorized by law, for the purpose of establishing or maintaining programs and activities for older persons, including the expansion of existing senior citizen centers which will provide recreational and other leisure time activities, informational, health, welfare, counseling, and referral services for older persons, and assisting such persons in providing volunteer community or civic services. Such tax shall not exceed the amount produced by the levy of one mill on a dollar of the net taxable valuation of the county. The proceeds of such tax shall be kept in a separate fund and shall be used exclusively for the public purposes provided for in this section, but in no event shall the accumulated fund exceed the amount produced by a one mill annual levy.
2. The levy authorized by this section shall not be used to

defray any expenses of any organization or agency until such organization or agency is incorporated under the laws of this state as a nonprofit corporation and has contracted with the board of county commissioners or the governing body of the city in regard to the manner in which such funds will be expended and the services to be provided. An organization or agency and its program which receives funds under the provisions of this section shall be reviewed or approved annually by the board of county commissioners or the governing body of the city to determine its eligibility to receive funds under the provisions of this section.

3. The levy authorized by this section shall be imposed or removed only by a vote of at least sixty percent of the electorate of the county or city directing the governing body to do so. The governing body shall put the issue before the people either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election is presented to said governing body."

We note that the organization or agency receiving funds as authorized is required to be incorporated as a nonprofit corporation. Additionally, the governing body of the city or county is required to approve or review the specific organization or agency and its program to determine its eligibility to receive funds under this section. It is apparent that the governing body must closely examine the expenditures of such funds together with the quality of services provided for older persons. This is to be done annually so as to ensure the continued eligibility of the organization and program.

It is important to note that subsection one prohibits an accumulated fund in excess of an amount derived from a one mill annual levy. It appears, therefore, that borrowing in excess of a forthcoming annual levy, or for ten years as stated in your letter, would circumvent the obvious intent of this provision. It is our opinion that the legislature has intended some control over the use of moneys received for the stated purpose in that a levy for one year must be committed and expended prior to committing a levy for another year. No more than one mill levy can, therefore, be committed. If such was intended, the legislature would have so provided.

Furthermore, the levy when imposed can be subsequently removed by sixty percent of the electorate. Since the legislature made no provision in this provisions for any indebtedness that may be outstanding when the levy is removed, this certainly indicate the absence of authority to commit future levies.

I trust that the foregoing sufficiently answers your inquiry.

Sincerely yours,

ALLEN I. OLSON

Attorney General