

**OPINION
79-93**

January 11, 1979 (OPINION)

Mr. Howard J. Snortland
Superintendent
Department of Public Instruction
State Capitol
Bismarck North Dakota 58505

Dear Mr. Snortland:

This is in response to your letter of December 8, 1978, wherein you requested an opinion from this office on the subject of the authority of the county auditor to reduce the county mill levy payable to a school district sinking fund established for retirement of bonds. In your letter you set forth the following facts and questions:

We have received a letter from the superintendent of the Steele public school district with a request for an opinion in regard to Section 21-03-15 of the North Dakota Century Code.

Mr. Erdelt has been informed by the county auditor that he (county auditor) has the authority to change the Sinking and Interest Fund levy to retire a bond issue.

When a school district bond has been authorized by the electorate, a schedule of payments must be established to retire the bond issue and pay the interest. As we understand it, those levies in dollars must be made until the bond issue has been retired.

You then set forth pertinent language from North Dakota Century Code Section 21-03-15, and pose the question:

Are we correct in stating that only the school board has this authority, or is the county auditor correct in stating that he has the authority to make the reduction without the approval of the school board?

North Dakota Century Code Section 21-03-15 provides an applicable part as follows:

21-03-15. DIRECT, ANNUAL, IRREPEALABLE TAX. - The governing body of every municipality (definition includes a public school district) issuing bonds under the authority of this chapter, before the delivery thereof, shall levy by recorded resolution or ordinance a direct, annual tax which, together with any other moneys provided by, or source of revenue authorized by, the legislative assembly, shall be sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity. The municipality shall be and continue without power to repeal such levy or levies or to obstruct the collection of any such tax until such payments have been made or provided for, except that if the governing

body in any year makes an irrevocable appropriation to the sinking fund of moneys actually on hand, or if there is on hand in the sinking fund an excess amount, the governing body may cause its recording officer to certify the fact and amount to the county auditor with the direction that the county auditor should reduce by the amount so certified the amount otherwise to be included in the tax rolls next thereafter prepared. A copy of such resolution or ordinance shall be certified to and filed with the county auditor, and after the issuance of such bonds, any such tax on property from year to year shall be carried into the tax roll of the municipality and collected as other property taxes are collected. No further annual levy for that purpose shall be necessary. (Parenthesis added)

We believe it to be clear from the plain language of Section 21-03-15, that the decision to reduce the amount of the levy is to be made by the "governing body", in this instance the school board of the school district involved. The statute is clear that the county auditor is to take his directions from the governing body and must act accordingly by reducing the amount of the levy to be included on the next tax roll. Insofar as it is the county auditor, as opposed to any other county officer, that must make the actual change on the tax rolls, the county auditor does indeed have the "authority" to change the levy to be spread upon the tax rolls. However, the law does not provide that the county auditor may make this decision upon his own initiative, but that he act only at the direction of the governing body.

We trust that the foregoing will prove of assistance to you.

Sincerely,

ALLEN I. OLSON

Attorney General