

Office of the Attorney General
State of North Dakota

Opinion No. 81-105

Date Issued: October 6, 1981

Requested by: Homer M. Engelhorn, Manager, Garrison Diversion Conservancy District

--QUESTION PRESENTED--

Whether 1981 North Dakota Session Laws, Chapter 565, Section 1, requires the Garrison Diversion Conservancy District to make its property tax levy in 1981 and 1982 in dollars rather than mills.

--ATTORNEY GENERAL'S OPINION--

It is the Attorney General's opinion that 1981 N. D. Sess. Laws, Ch. 565, § 1 does not require the Garrison Diversion Conservancy District to make its property tax levy in 1981 and 1982 in dollars rather than mills.

--ANALYSIS--

1981 N. D. Sess. Laws, Ch. 565, § 1 amended Section 3 of Senate Bill No. 2323 enacted by the 1981 Legislature to read as follows:

SECTION 3. PROTECTION OF TAXPAYERS AND TAXING DISTRICTS FOR 1981 AND 1982--EXCEPTIONS AND LIMITATIONS.

1. Each taxing district may levy in 1981 and 1982 the same amount in dollars as that taxing district levied the prior year plus seven percent, subject to the adjustments provided in this section.

We do not believe that either this provision or any other provision of that section clearly and expressly requires Garrison Diversion Conservancy District to make its 1981 and 1982 tax levies in dollars rather than in mills so as to repeal by implication for those two years the express requirement in the last sentence of Section 61-24-09, N.D.C.C., that the levy shall be made in mills.

The North Dakota Supreme Court has held numerous times that implied repeals are not favored and are to be avoided when possible. See, for example, *Walsvik v. Brandel*, 298 N.W.2d 375 (N.D. 1980), and *City of Grand Forks v. Board of County Commissioners*, 284 N.W.2d 420 (N.D. 1979).

The Garrison Diversion Conservancy District is, however, a taxing district that is subject to the tax levy limitations in 1981 and 1982. In order to determine whether those limitations are exceeded in 1981, we believe the county auditor in each of the counties in the Garrison Diversion Conservancy District of the total soon as possible, advise the Conservancy District of the total amount of the 1981 assessed valuation in the county as finally equalized by the State Board of Equalization, together with, first, the amount of final assessed valuation of property in 1980 in the county that is not on the assessment rolls in 1981; second, the amount of final assessed valuation of property in 1981 in the county that was not on the assessment rolls in 1980; and, third, the dollar amount of taxes levied in the county in 1980 for the Conservancy District.

If, the amount in dollars that the Conservancy District wants to raise from its 1981 mill levy does not exceed by seven percent the amount it raised in 1980, the 1981 final equalized assessed values in all of the counties in the Conservancy District can then be totalled and one-half of that total (see Section 57-02-28 of the North Dakota Century Code) divided into the dollar amount of taxes to be raised to determine the amount of the mill levy. That mill levy rate must then be certified to each of the counties in the Conservancy District along with sufficient information relating to the 1980 and 1981 assessed values and levies of the Conservancy District to establish for the county auditors that the District's 1981 levy does not exceed the prescribed limitations. This is necessary because the county auditor is prohibited by Section 57-15-02, N.D.C.C., from extending any tax in excess of the rate allowed by law.

The tax levy limitations prescribed 1981 N. D. Sess. Laws, Ch. 565, § 1 must be applied to Garrison Diversion Conservancy District as a single taxing district and are not separately calculated limitations within each county in the District.

On the basis of the information furnished it seems unlikely that the Conservancy District's 1981 levy of .6 mill that was certified to the counties would result in a dollar amount of 1981 taxes levied that would exceed the limitations prescribed by 1981 N. D. Sess. Laws, Ch. 565, § 1 but the procedure outlined above should be followed to establish that those limitations are not in fact exceeded. Otherwise, as already noted, the county auditors will not be able to determine, as required by Section 57-15-02, N.D.C.C., if the Conservancy District's levy exceeds the limitations.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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