

Office of the Attorney General
State of North Dakota

Opinion No. 81-128

Date Issued: November 30, 1981

Requested by: Richard C. Wilkes
Ward County Assistant State's Attorney

--QUESTION PRESENTED--

Whether a county auditor may spread a property tax levy of ten mills for a rural fire protection district pursuant to Section 18-10-07 of the North Dakota Century Code, as amended in 1981, if the certification of the levy is made to the county auditor after June 30, 1981, but before October 10, 1981, and if a certification of a tax levy by the fire district had already been made for the same year.

--ATTORNEY GENERAL'S OPINION--

It is the Attorney General's opinion that a county auditor may not spread a property tax levy of ten mills for a rural fire protection district pursuant to Section 18-10-07, N.D.C.C., as amended in 1981 if the certification of the tax levy is made to the county auditor after June 30, 1981, but before October 10, 1981, and if a certification of a tax levy by the fire district had already been made for the same year.

--ANALYSIS--

Section 18-10-07, N.D.C.C., provides in part as follows:

18-10-07. FIRE PROTECTION POLICY TO BE DETERMINED--MILL LEVY. The board of directors shall have the power and duty to determine upon a general fire protection policy for the district and shall annually estimate the probate expense for carrying out such contemplated program. Such estimates shall be certified by the president and secretary to the proper county auditor or county auditors, on or before June thirtieth of each year, who shall levy a tax upon the taxable property within said district for the maintenance of the fire protection district for the fiscal year as provided by law. The tax shall not exceed five mills, except upon resolution adopted by the board of directors after receipt of a petition by not less than twenty percent of the electors residing within the district, the levy may be made in an amount not to exceed ten mills. . . . In no case shall the amount of tax levy exceed the amount of funds required to defray the expenses of the district for a period of one year as embraced in the annual estimate of expense

including the amount of principal and interest upon the indebtedness of the district for the ensuing year.

Section 18-10-07, N.D.C.C., was amended by the 1981 Legislative Assembly. Prior to the amendment, the board of directors of a rural fire protection district could levy up to five mills. The 1981 amendment, which became effective on July 1, 1981, authorizes the board of directors to levy an additional five mills 'after receipt of a petition by not less than twenty percent of the electors residing within the district.' Therefore, when the board of directors of the district certified the tax levy to the county auditor on or before June 30, 1981, it could not certify a levy of more than five mills because the amendment to Section 18-10-07, N.D.C.C., allowing an additional five mills did not become effective until July 1, 1981.

If after June 30, 1981, the board of directors of the fire district can certify a new and increased tax levy to the county auditor for 1981, that would mean the board has the authority under the law to amend both its tax levy and annual estimate of expense (budget) after they had been certified to the county auditor on or before June 30, 1981, as required by Section 18-10-07, N.D.C.C. If the board has authority to do that in 1981, it would have authority to do so in 1982 and later years.

There is, however, no provision in Section 18-10-07, N.D.C.C., or in other provisions of the rural fire protection district law or elsewhere which authorizes the board of directors of such a district to amend its budget and tax levy after they have been certified to the county auditor as provided in Sections 18-10-07 and 57-15-32, N.D.C.C. In *Kopplin v. Burleigh County*, 47 N.W.2d 137 (N.D. 1951), the Court said:

'The powers of public officers are to be measured by the terms and necessary implications of the grant conferring the power on them.' 47 N.W.2d 137, 140.

To the same effect, see *Burchard v. State*, 227 N.W. 564 (N.D. 1929); 67 C.J.S., *Officers*, §§ 190-192; and 84 C.J.S., *Taxation*, §§ 8, 353, and 369. Also applicable here is 'the general rule that where the legislative intention with respect to the meaning of tax statutes is doubtful, the doubt must be resolved against the government and in favor of the taxpayer.' *Great Northern Railway Company v. Severson*, 50 N.W.2d 889, 892-893 (N.D. 1951).

Section 57-15-31.1, N.D.C.C., which includes the provision that county auditors shall not accept amended certifications of taxes by taxing districts after October tenth, does not include language which either expressly or by necessary implication empowers taxing districts to amend their certifications of taxes before that date. If a taxing district has such authority, it must be found in some other statute.

For these reasons we conclude that Section 18-10-07, N.D.C.C., does not expressly or by necessary implication empower the board of directors of a rural fire

protection district that has made and certified a tax levy as provided in Section 18-10-07, N.D.C.C., to increase that levy by an amendment made after June thirtieth.

--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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