

Date Issued: June 22, 1982 (AGO 82-47)

Requested by: Roger D. Schell, City Attorney  
Bottineau, North Dakota

- QUESTION PRESENTED -

Whether a city that has been making an annual tax levy pursuant to section 57-15-56 of the North Dakota Century Code for programs and activities for senior citizens may continue to make the levy if the county in which the city is located begins making a tax levy pursuant to that section for programs and activities of senior citizens.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a city that has been making an annual tax levy pursuant to section 57-15-56, N.D.C.C., for programs and activities for senior citizens may continue, until directed otherwise by the voters, to make the levy even though the county in which the city is located begins making a tax levy pursuant to that section for programs and activities for senior citizens.

- ANALYSIS -

Section 57-15-56(1), N.D.C.C., provides that 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" for the senior citizen program and activity purposes specified in that subsection. The tax cannot exceed the amount produced by one mill on a dollar of the net taxable valuation of the county or city.

Section 57-15-56(3), N.D.C.C., provides as follows:

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.

If, as provided in section 57-15-56(1), (3), N.D.C.C., a city has been authorized by the voters to levy not more than one mill for senior citizen programs and activities because the county in which it is located was not making a levy for those purposes, the city can continue making the annual levy even though the county is later authorized by its voters to make a similar levy. This is because section 57-15-56(3), N.D.C.C., expressly provides that the city's authority to make the levy can be removed only by a vote of at least sixty

percent of the electorate of the city directing the city governing body to remove the levy. The procedure for calling the election for removal of the mill levy authorization is provided in the second sentence of section 57-15-56(3), N.D.C.C.

If the voters in a city have authorized a city mill levy as provided in section 57-15-56, N.D.C.C., and thereafter the voters of the county authorize a county mill levy under the same section, the taxable property in the city would of course be subject to both the city levy and county levy in any year in which both actually made the levy. This is because there is no provision in section 57-15-56, N.D.C.C., that excludes from the county levy the taxable property in any city that also makes a levy under that section.

- 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 or the applicable provisions of law are amended or repealed.

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