

Date Issued: April 22, 1983 (AGO 83-15) (AMENDED OPINION)

Requested by: Elmer Huber, Deputy Superintendent
Department of Public Instruction

- QUESTIONS PRESENTED -

I.

Whether there is a procedure for discontinuing the tax levy authorized by section 57-15-16 of the North Dakota Century Code when there has been no lease in effect with the state school construction fund.

II.

Whether there is any limitation upon a school board which does not make the levy prescribed by section 57-15-16, N.D.C.C., on an annual basis.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that there is a procedure for discontinuing the tax levy authorized by section 57-15-16, N.D.C.C., when there has been no lease in effect with the state school construction fund.

II.

It is my further opinion that there is a limitation upon a school board which does not make the levy prescribed by section 57-15-16, N.D.C.C., on an annual basis.

- ANALYSIS -

I.

Although the maxim that "where a manner of performance is designated, there is an inference that all omissions should be understood as exclusions" ordinarily applies to statutory interpretation, "The maxim has been held to be 'inapplicable if there is some special reason for mentioning one thing and none for mentioning another which is otherwise within the statute.'" 2A C.D. Sand Sutherland Statutory Construction section 47.23, at 123 (Fourth Ed. 1975) (hereinafter Sutherland)

Therefore, although section 57-15-16, N.D.C.C., refers to discontinuance of the levy authorized by that section "upon completion of all payments to the state school construction fund," it is apparent that if no payments were ever due to the state school construction fund the same procedure for discontinuance should apply. The above-quoted

language is protective in nature. That is, it ensures that the levy authorized by section 57-15-16, N.D.C.C., cannot be discontinued while payments are owed to the state school construction fund. There is a special reason for mentioning one thing - payments to the school construction fund - to protect the state fund. There is no reason to mention other preliminaries to discontinuance which would be local concerns only.

In addition, according to Sutherland:

"The maxim . . . requires great caution in its application, and in all cases is applicable only under certain conditions." As an aid to interpretation, the maxim emphasizes the language of the statute and inferences to be drawn from the way it is written. In this regard, it is closely akin to literalism and the plain meaning rule. And so, where the meaning of the statute is plainly expressed in its language and if it does not involve an absurdity, contradiction, injustice, invade public policy, or if the statute is penal in nature or derogation of the common law, a literal interpretation will prevail. Conversely, where an expanded interpretation will accomplish beneficial results, serve the purpose for which the statute was enacted, is a necessary incident to a power or right, or is the established custom, usage or practice, the maxim will be disregarded and an expanded meaning given. In all cases the numerous intrinsic and extrinsic aids of interpretation are of importance in ascertaining whether the maxim will prevail. (Emphasis supplied). 2A Sutherland at 132.

An "expanded interpretation" would provide for a method of discontinuance of such levies. Without such an interpretation, there would be no statutory method for discontinuance and the authority to discontinue a levy is "a necessary incident to" the power to impose a levy. Therefore, the maxim should not apply so as to eliminate the authority to discontinue a levy.

It follows that if no payments were ever owed to the state school construction fund, the levy may be discontinued at any time pursuant to the prescribed procedures. That is, a levy may be discontinued by the governing body of the school district at its discretion or by a vote of sixty percent of the electors voting at a regular or special election if the question of discontinuance is raised by petition of twenty percent of the electors who voted in the last school election.

II.

If sixty percent of the electors approve the levy authorized by section 57-15-16, N.D.C.C., that statute provides that the governing body of the school district "shall levy taxes annually for a school building fund." Sutherland says:

Thus a grant of authority to a governmental subdivision to levy a tax for a public purpose is mandatory because the public has an interest in securing

the benefit for which the statute provides. 2A Sutherland Section 57.20 at 450.

There is a division of authority on the question of whether taxation statutes relative to timeliness of levy are mandatory or directory. But it is generally held:

Power to levy a tax must be exercised in strict compliance with a tax statute conferring the power and any conditions imposed thereby; and such grants, as to their nature and extent, are construed with strictness, any doubts therein being given to the taxpayer.

...

Except where the language of the statute is merely permissive, the action of the local authorities in this particular is not generally discretionary, but is an imperative duty, and it is the duty of the proper officers or board to levy a tax for the purposes authorized by statute, where required by public interests or by individual rights. 84 C.J.S. Taxation section 353, at 686 (1953).

In addition:

The power of a political subdivision to levy taxes must be expressly and distinctly granted, and must be exercised in strict conformity with the terms of the grant. A grant by the legislature of the power of taxation will be strictly construed, since the reasonable presumption is that the state has granted in clear and unmistakable terms all that it intended to grant. 84 C.J.S. Taxation section 8 at 57 (1953).

The language of section 57-15-16, N.D.C.C., provides that the annual levy is mandatory, not directory. If the governing body of a school district does not levy the taxes annually as prescribed, and if there has been no vote of the electors to discontinue the levy, the governing body has, in effect, utilized its discretion to discontinue the levy.

- 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 questions presented are decided by the courts.

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