

Office of the Attorney General  
State of North Dakota

Opinion No. 83-30

Date Issued: August 9, 1983

Requested by: Jerome Renner  
Kidder County State's Attorney

--QUESTIONS PRESENTED--

I.

Whether a limitation exists on the size of a levy to be made under Section 50-03-01 of the North Dakota Century Code for the support of the poor in the county.

II.

Whether any vote of the people is required for a levy under Section 50-03-01, N.D.C.C.

--ATTORNEY GENERAL'S OPINION--

I.

It is my opinion that a limitation does exist on the size of a levy to be made under Section 50-03-01, N.D.C.C., for the support of the poor in the county.

II.

It is my further opinion that a vote of the people is not required for a levy under Section 50-03-01, N.D.C.C., except that the levy of an additional two mills, specifically for county welfare purposes, does require a vote of the people.

--ANALYSIS--

I.

Section 50-03-01, N.D.C.C., which authorizes the board of county commissioners to levy a tax for the support of the poor, contains no limitation constraining the size of the levy. One cannot, however, conclude therefrom that there are no limitations on the levy for the support of the poor. Section 50-03-01, N.D.C.C., also contains no language which exempts it from the limitation contained in Section 57-15-06(1), N.D.C.C., which provides:

The board of county commissioners shall not levy any taxes for general or special county purposes which will exceed the amount produced by a levy of twenty-three mills on the dollar of the taxable valuation of the county.

The legislature has, however, authorized the twenty-three mill levy to be exceeded for a 'levy for county welfare.' Section 57-15-57, N.D.C.C. The purpose of the 'levy for county welfare' is functionally equivalent to the levy 'for the support of the poor in . . . [a] county.' The revenue from both is administered by the county social service board pursuant to Section 50-01-09, N.D.C.C., which sets forth the duties of that board.

II.

The levy for county general government purposes necessarily includes the levy to be made under Section 50-03-01, N.D.C.C. There exists no statutory requirement for a vote of the people prior to the determination of the board of commissioners to levy and assess a tax for the support of the poor pursuant to Section 50-03-01, N.D.C.C., so long as it is within the twenty-three mill limit of Section 57-15-06, N.D.C.C.

The board of county commissioners is also authorized, pursuant to Section 57-15-57, N.D.C.C., to levy a tax for county welfare purposes. This levy, which may not exceed 2 mills, is in addition to, and not restricted by the twenty-three mill levy limitation contained in Section 57-15-06, N.D.C.C. However, the board of county commissioners may levy the additional 2 mills only when authorized to do so 'by sixty percent of the electors voting on the question in a regular election or special election called by the county commissioners . . .' (Section 57-15-57, N.D.C.C.).

--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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