

Date Issued: June 11, 1987 (AGO 87-9)

Requested by: David M. Crane
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- QUESTION PRESENTED -

Whether a school district, whose general fund levy is at a maximum of seventy mills, may increase its levy, upon resolution of the school board and without voter approval, by three percent in 1985, and an additional three percent in 1986.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a school district, whose general fund levy is at a maximum of seventy mills, may increase its levy, upon resolution of the school board and without voter approval, by three percent in 1985, and by an additional three percent in 1986.

- ANALYSIS -

The general statutory provision setting forth mill levy limitations in school districts is N.D.C.C. section 57-15-14 which provides, in part, as follows:

57-15-14. TAX LEVY LIMITATIONS IN SCHOOL DISTRICTS. The aggregate amount levied each year for the purposes listed in section 57-15-14.3 by any school district, except the Fargo school district, shall not exceed the amount in dollars which the school district levied for the prior school year plus eighteen percent up to a general fund levy of seventy mills on the dollar of the taxable valuation of the district

Pursuant to N.D.C.C. section 57-15-14, a school district can levy up to a maximum of seventy mills without voter approval.

In 1985, the legislative assembly enacted 1985 N.D. Session Laws, chapter 612, section 3, which reads, in pertinent part, as follows:

School district levy limits. Any school district may increase its levy for the purposes listed in section 57-15-14.3 by at most three percent in 1985 from the amount levied in dollars in 1984 and three percent more in 1986 from the amount levied in dollars in 1985. . . .

This statutory provision authorizes a school district to increase its mill levy by three percent in 1985 and by an additional three percent in 1986. However, the statute does not specifically discuss whether this increase can be accomplished upon resolution of the school board without voter approval. In reviewing the relationship between N.D.C.C. section 57-15-14 (maximum of seventy mills without voter approval) and 1985 N.D. Session Laws chapter 612, section 3 (additional mill levy), an ambiguity results.

The construction and interpretation of ambiguous statutes is governed by N.D.C.C. section 1-02-39 which provides, in part, as follows:

1-02-39. AIDS IN CONSTRUCTION OF AMBIGUOUS STATUTES. If a statute is ambiguous, the court, in determining the intention of the legislation, may consider among other matters:

. . . .

3. The legislative history.

. . . .

Upon scrutinizing the legislative history of 1985 N.D. Session Laws chapter 612, section 3, it is clear that the Legislature intended that a school district be able to increase its general fund levy by three percent in 1985 and by an additional three percent in 1986, upon resolution of the school board. Specifically, in the House Finance and Taxation Committee hearing on this bill, Senator Moore, a cosponsor of the legislation, stated as follows:

This bill would allow an increase in dollars in the budget . . . This increase cannot be done unless it is authorized by the governing board of the political subdivision. They must specifically have a motion to do this.

Hearing on S. 2345 before House Finance and Taxation Committee 49th Leg., (1985) (Statement of Senator Moore).

Having established that 1985 N.D. Session Laws chapter 612, section 3 authorizes a school district to increase its general fund levy upon resolution of the school board without voter approval, we turn to the question of whether this statute authorizes a school district, whose general fund levy is at a maximum of seventy mills, to increase its levy by three percent in 1985 and by an additional three percent in 1986. Resolution of this issue is governed by N.D.C.C. section 1-02-07 which provides, in part, as follows:

1-02-07. PARTICULAR CONTROLS GENERAL. Whenever a general provision in a statute shall be in conflict with a special provision in the same or in another statute, the two shall be construed, if possible, so that effect may be given to both provisions

In this instance, both the general and special statutory provision authorize a school district to increase its general fund levy upon resolution of the school board without voter approval. However, 1985 N.D. Session Laws chapter 612, section 3 is in conflict with N.D.C.C. section 57-15-14 because it would possibly allow any school district, including a school district whose general fund levy is at a maximum of seventy mills, to increase its levy by three percent in 1985 and by an additional three percent in 1986.

When general and special statutory provision are in conflict, the provisions should be construed "so that effect may be given to both provisions." N.D.C.C. section 1-02-07. Accordingly, to give effect to both 1985 N.D. Session Laws chapter 612, section 3 and N.D.C.C. section 57-15-14, the former statute must be construed to allow a school district, whose general fund levy is at a maximum of seventy mills, to increase its levy by three percent in 1985 and by an

additional three percent in 1986 upon resolution of the school board. If this interpretation were not given to 1985 N.D. Session Laws chapter 612, section 3, the statute would be meaningless because N.D.C.C. 57-15-14 already gives a school district the authority to increase its general fund levy to seventy mills upon resolution of the school board. Therefore, by enacting 1985 N.D. Session Laws chapter 612, section 3, the Legislature gave school districts, whose general fund levies were at a maximum of seventy mills, the option of increasing their levies by either resolution of the school board pursuant to N.D. 1985 Session Laws chapter 612, section 3 or by approval of the electorate pursuant to N.D.C.C. section 57-15-14(1), (2).

- EFFECT -

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

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