

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 92-09

Date issued: April 21, 1992

Requested by: Dr. Wayne G. Sanstead
Superintendent of Public Instruction

- QUESTION PRESENTED -

Whether a general fund tax levy for a reorganized school district created through restructuring under N.D.C.C. ch. 15-27.6 must be levied at the same rate for the entire reorganized district, or whether the general fund levy may be at the same rate for some purposes but at differing rates in different portions of the reorganized district for other purposes, resulting in a different general fund levy in various portions of the new district.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a general fund tax levy for a reorganized school district created through restructuring under N.D.C.C. ch. 15-27.6 must be a uniform levy at the same rate for the entire reorganized district.

- ANALYSIS -

The proposed tax levy for a reorganized school district created through the boundary restructuring process under N.D.C.C. ch. 15.27.6 is established by the interim district board created under N.D.C.C. ' 15-27.6-03. Under N.D.C.C. ' 15-27.6-08 the interim district board is directed to determine the amount necessary to meet the expenses of the proposed reorganized district and "shall propose a tax levy sufficient to meet those expenses." This proposed tax levy is then submitted to the county committee and then to the state board as part of the reorganization proposal. It then becomes part of the proposal that is submitted to the electors of the proposed new district. This authority is similar to the authority placed in the county committee under N.D.C.C. ' 15-27.3-06 regarding the reorganization of school districts.

School districts are directed to prepare a budget and to levy taxes based on that budget. N.D.C.C. ' 57-15-13. The general fund tax levy is provided for by N.D.C.C. ' 57-15-14.2 and its amount is limited by N.D.C.C. ' 57-15-14. It has been held that the list of general expenses provided for in N.D.C.C. ' 57-15-14.2(1) is not an exhaustive list of authorized expenditures. Peterson v. McKenzie County Public School District No. 1, 467 N.W.2d 456 (N.D. 1991). School districts may also levy taxes for certain special purposes if approved by a vote of the school district electorate. N.D.C.C. ' 57-15-14.5 (Long distance learning technology) and N.D.C.C. ' 57-15-16 (Building fund) are examples.

Our state constitution requires that no tax shall be levied except in pursuance of law. N.D. Const. art. X, ' 3. The constitution further requires that:

Taxes shall be uniform upon the same class of property including franchises within the territorial limits of the authority levying

the tax.

N. D. Const. art. X, ' 5.

Opinions by the North Dakota Supreme Court make it apparent that classification of property for tax purposes may be done only pursuant to legislative authority and that uniformity as provided in the constitution means that all property similarly situated shall be treated alike.

In Eisenzimmer v. Bell, 32 N.W.2d 891, 893 (N.D. 1948), the property owner argued that his property was agricultural land even though located within the corporate limits of a city. The supreme court determined that classification of property for tax purposes was a power vested solely in the Legislature, and that the property owner could not change the classification by usage. Later, in Souris River Telephone Mutual Aid Corporation v. State, 162 N.W.2d 685 (N.D. 1968), the supreme court considered an argument that the tax on telephone cooperatives under N.D.C.C. ch. 57-34 was not uniform under the North Dakota Constitution because the classification used was of persons for property tax purposes and that the classification was based on relative affluence of owners of telephones on a density basis. The court determined that uniformity for constitutional purposes requires that all similarly situated be treated alike. The court determined that because each telephone cooperative similarly situated (in a subclass by virtue of its density of operation) is taxed in the same manner and at the same rate as other companies within the same classification, the equality and uniformity requirement was met. 162 N.W.2d, at 691.

In Soo Line Railroad Company v. State of North Dakota, 286 N.W.2d 459 (N.D. 1979), the property owner alleged a lack of tax uniformity between property assessed by counties and similar property assessed by the State Board of Equalization. The North Dakota Supreme Court determined that something must be done to correct the problem of classification without authorization by statute which existed in North Dakota. The court determined it would no longer countenance de facto classification of property for tax purposes. The court stated that the use of a higher percentage of assessed value for centrally assessed property than was used for similar locally assessed property was impermissible. 286 N.W.2d, at 465.

It is therefore apparent that if taxing authorities are to classify property for the purposes of applying a different tax levy, it must be done pursuant to legislative authority. Signal Oil and Gas Company v. Williams County, 206 N.W.2d 75 (N.D. 1973).

School boards have only such powers as are expressed or necessarily implied by statute. The rule of strict construction applies in defining the powers of school boards. Peterson, supra, at 458. In reviewing the law concerning tax levies by school boards, it appears that N.D.C.C. ' 15-27.6-08, as well as ' 15-27.3-06, only contemplate a single tax levy applicable to the entire reorganized school district for any individual purpose allowed by law.

Prior law, now repealed, had authorized a proportionate rate of tax between

agricultural land and personal property located thereon and other property of a reorganized school district where an unequal tax burden would result from a uniform rate of tax on all property in the district. Once established, this proportionate tax rate could be altered by the school board only after a vote of the majority of the school district electors. See, N. D. C. C. " 15-53.1-37 and 15-53.1-38 (N. D. C. C. 1981). When N. D. C. C. ch. 15-53.1 was repealed in 1985, ' 15-27.3-21 required the continuation of a proportionate tax rate if it existed on December 31, 1984. However, that section provided that no other school district may impose such a proportionate rate of tax for different classes of property within the school district.

With this background, it appears the Legislature has not authorized subclassifications within reorganized school districts for the application of different rates of tax, other than the proportionate tax rate provision noted above. It is, therefore, my opinion that a general fund tax levy proposed by an interim district board for application to a reorganized school district created through school district boundary restructuring under N. D. C. C. ch. 15-27.6 must be at a uniform rate for the entire reorganized district.

- EFFECT -

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

Nicholas J. Spaeth
Attorney General

Assisted by: Robert E. Lane

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