

LETTER OPINION
93-L-340

November 26, 1993

Ms. Laurie Fontaine
Pembina County State's Attorney
PO Box 328
Cavalier, ND 58220

Dear Ms. Fontaine:

Thank you for your November 2, 1993, letter wherein you inquire whether Pembina County may levy three mills for county agent work without further approval of the electors.

For the following reasons, it is my opinion that Pembina County may levy three mills for county agent work without further approval of the electors.

You state that in 1976 the electorate approved an additional mill levy pursuant to N.D.C.C. ? 4-08-15.1.

The measure on the ballot read: "Shall the Pembina County Board of County Commissioner be authorized to levy up to one (1) additional mill for county agent work?"

In 1987 in an apparent attempt to clarify the mill levy authorized, the Legislature added the following language to N.D.C.C. ? 4-08-15: "The statutory mill levy limitation in effect during any biennium, and not the limitation in effect at the time of a county's vote for county agent work or the number of mills that may have been stated in the ballot for such a vote, is the applicable limitation." 1987 N.D. Sess. Laws ch. 80, ? 1. Under this amendment when the basic mill levy limitation in N.D.C.C. ? 57-15-06.7(4) increased from one mill to two mills in 1983 the county could have levied two mills even without the 1976 authorization to assess an extra mill. See 1983 N.D.

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Sess. Laws ch. 606, ? 55 and ch. 89, ? 3.

The 1987 Legislative Assembly also amended N.D.C.C. ? 4-08-15.1 to add the following language: "The number of mills approved by the electors as an additional annual levy may not be increased by the board of county commissioners without voter approval of such increased levy as set out in this section, even if there is a subsequent increase in the mill levy limitation in subsection 5 of section 57-15-06.7." 1987 N.D. Sess. Laws ch. 80, ? 2.

Based on the language of the 1976 ballot, the additional amount the county may levy, over and above the basic mill levy limitation for county agent work, is still one mill. It did not automatically increase to authorize an additional two mills even though the 1983 Legislature authorized counties to pass up to two additional mills pursuant to N.D.C.C. ? 4-08-15.1. 1983 N.D.Sess. Laws ch. 606, ? 55 and ch. 89, ? 3.

Since the 1976 measure authorized levying one additional mill and contained no language which would set the maximum levy at two mills or less, the authority remains for the Board of County Commissioners to levy one mill in addition to the two mills authorized under N.D.C.C. ? 4-08-15, for a total of three mills, for county agent work.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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