

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-16

Date issued: April 19, 1994  
Requested by: Blake Vander Vorst  
North Dakota State Soil Conservation  
Committee

- QUESTIONS PRESENTED -

I.

Whether the provisions of N.D.C.C. ? 57-15-28.1(1) through (5) apply to a soil conservation district.

II.

Whether a soil conservation district may levy for employee social security benefits pursuant to N.D.C.C. ? 57-15-28.1(5).

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that N.D.C.C. ? 57-15-28.1(1) through (5) applies to a soil conservation district.

II.

It is my further opinion that a soil conservation district may not levy for employee social security benefits under N.D.C.C. ? 57-15-28.1(5), even though that provision applies to a soil conservation district.

- ANALYSES -

I.

N.D.C.C. ? 57-15-28.1 provides exceptions to tax levy limitations in political subdivisions. N.D.C.C. ? 57-15-28.1(1)(2)(3)(4)(5) pertains to a political subdivision as

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defined by N.D.C.C. ? 32-12.1-02 while N.D.C.C. ? 57-15-28.1(6) pertains only to a county. N.D.C.C. ? 32-12.1-02(5)(a) defines "[p]olitical subdivision" as follows:

Includes all counties, townships, park districts, school districts, cities, and any other units of local government which are created either by statute or by the Constitution of North Dakota for local government or other public purposes, except no new units of government or political subdivisions are created or authorized by this chapter.

(Emphasis added.)

N.D.C.C. ch. 4-22 relates to soil conservation districts. N.D.C.C. ? 4-22-02(3) defines "soil conservation district" to mean "a governmental subdivision of this state, and a public body, corporate and politic, organized in accordance with the provisions of this chapter for the purposes, with the powers, and subject to the restrictions hereinafter set forth."

Numerous opinions of this office have concluded that soil conservation districts are political subdivisions. See, e.g., 1955 N.D. Op. Att'y Gen. 52. The status of soil conservation districts as political subdivisions is further evidenced by their authority to levy a tax. In 1980, Article X, Section 1, of the North Dakota Constitution was amended to prohibit the state from levying a property tax. 1979 N.D. Sess. Laws ch. 703. In 1983, the Legislature granted soil conservation districts specific authority to levy a property tax. N.D.C.C. ? 4-22-26(17); 1983 N.D. Sess. Laws ch. 97, ? 3. Therefore, it is my opinion that soil conservation districts are political subdivisions as defined by N.D.C.C. ? 32-12.1-02. Previous opinions of this office which have reached a contrary conclusion are superseded by this opinion, see, e.g., Letter from Attorney General Nicholas J. Spaeth to Blake Vander Vorst, Executive Secretary, North Dakota State Soil Conservation Committee (March 18, 1987)(stating that soil conservation districts are part of state government and not political subdivisions).

II.

N.D.C.C. ? 57-15-28.1 provides exceptions to tax levy

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limitations specified by law. N.D.C.C. ? 57-15-28.1(5) provides an exception for "levying a tax for old-age and survivors' insurance according to section 52-09-08 . . . not exceeding thirty mills."

N.D.C.C. ch. 52-09 relates to old-age survivor insurance. N.D.C.C. ? 52-09-08(3) provides, in relevant part, that a "political subdivision . . . shall levy a tax sufficient to meet its obligations under this chapter, up to a maximum levy not exceeding the limitation in section 57-15-28.1."

Any tax levied under N.D.C.C. ? 52-09-08(3) is placed in the old-age survivors' fund which may be used for purposes described in N.D.C.C. ? 52-09-07(3) including "to provide coverage under federal social security retroactive to December 31, 1954, and up to July 1, 1957 . . . ." With this exception, all other proceeds from a levy under N.D.C.C. ? 52-09-08(3) must be deposited in the old-age survivors' fund. Therefore, a soil conservation district may not levy for employee social security benefits under N.D.C.C. ? 57-15-28.1(5).

It may be of interest to you that N.D.C.C. ch. 52-10 relates to public employees under federal social security. There is no authority under this chapter for a political subdivision to levy a tax for federal social security purposes. A city is authorized to levy for a separate fund for federal social security purposes under N.D.C.C. ? 40-46-26. All other political subdivisions must use the general fund for federal social security purposes.

- 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 questions presented are decided by the courts.

Heidi Heitkamp

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