

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 94-F-20

Date issued: July 1, 1994

Requested by: Jeanne L. McLean, Bottineau County State's Attorney

- QUESTION PRESENTED -

Whether the county auditor may accept the certification and extend an excess levy on the tax lists of township property under North Dakota Century Code (N.D.C.C.) ch. 57-17, when the certification of election filed under N.D.C.C. ? 57-17-07 does not include all four specific items required by that section.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the county auditor may not accept the certification and extend an excess levy on the tax lists of township property under N.D.C.C. ch. 57-17, when the certification of election filed under N.D.C.C. ? 57-17-07 does not include all four specific items required by that section.

- ANALYSIS -

N.D.C.C. ch. 57-17 contains the statutory provisions relating to excess tax levies in counties, municipalities, and townships.

The governing body of any county, city, or township, by a two-thirds vote . . . may declare by resolution that the amount of taxes which may be raised at the maximum rate authorized . . . will be insufficient to provide an amount adequate for the necessary requirements of the municipality, county, or township in question, and that it is necessary to levy taxes in excess of said limitations for the purpose of meeting the current expenses of the municipality, county, or township.

N.D.C.C. ? 57-17-01.

Upon the passage of the resolution . . . the governing body . . . may call a special election for the purpose of voting upon the question of authorizing an excess levy . . . or may submit the question to the voters at the regular primary election. If a special election is called, such election must be held not later than September first of

the year in which the tax is to be levied, and, except as otherwise provided in this chapter, the election must be conducted as other elections of such political subdivision are conducted.

N.D.C.C. ? 57-17-02.

N.D.C.C. ? 57-17-03 specifies what is required regarding the notice of election for an excess levy. N.D.C.C. ? 57-17-04 specifies the form of the ballot:

Form of ballot. The form of the ballot on election on the question of authorizing an excess levy must be substantially in the following form:

Shall (naming the taxing district) levy taxes for the years (naming the year or years), which shall exceed the legal limit by _____ dollars, so that the taxes levied instead of being _____ dollars, which is the limit authorized by law, shall be _____ dollars?

Yes ?
No ?

"If sixty percent of all votes cast . . . are in favor of such excess levy, it is authorized thereby and the county auditor shall extend such excess levy upon the tax lists with other taxes." N.D.C.C. ? 57-17-05. N.D.C.C. ? 57-17-07 provides:

Certification of results of election. The election board shall certify the result of such election on the question of authorizing an excess levy to the county auditor within ten days after the election The certificate must include a statement of the question as the same appeared upon the ballot, together with the total number of votes cast upon the question, the number of votes cast in favor of it, and the number of votes cast against authorizing the excess levy.

(Emphasis added.)

As the foregoing statutes demonstrate, approval of an excess levy requires specific procedures and documentation thereof. In the case of a township, even though elections may be conducted with a different procedure for some purposes, the procedure of N.D.C.C. ch. 57-17 is required for excess mill levy elections. N.D.C.C. ? 57-17-02. The notice of election must contain certain information.

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N.D.C.C. ? 57-17-03. The paper ballot¹ form distributed to electors must be in a certain form so the ballots can be tallied and reported accurately after being marked at the election. N.D.C.C. ? 57-17-04. (Note that the excess mill levy election would be another circumstance, in addition to electing officers under N.D.C.C. ? 58-04-10, where paper ballots must be used.)

The ballots must be counted and the 60 percent favorable vote determined by the election board within 10 days after the election. N.D.C.C. ? 57-17-05 and 57-17-06.

The election board must then prepare the certificate of election containing the four specific items required by N.D.C.C. ? 57-17-07. It must include in that statement the same question voted on as it appeared on the ballot distributed to electors as well as the three items of arithmetic performed to show the 60 percent voter approval from the canvass of the ballots.

A county auditor is a ministerial officer and has only the powers and duties expressly or impliedly conferred by statute, and those powers necessary to carry into effect the powers delegated. Brink v. Curless, 209 N.W.2d 758, 769 (N.D. 1973). Thus, when the county auditor receives the certificate prepared in accordance with N.D.C.C. ? 57-17-07 containing all of the required information and statements indicating that sixty percent of the voters approved the excess levy, the county auditor is required to extend the excess mill levy on the township tax lists. However, if the certificate does not contain the specific information required by N.D.C.C. ? 57-17-07, it is invalid and the county auditor may not accept it.

- 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.

¹Both N.D.C.C. ?? 57-17-04 and 57-17-07 use the term ballot in referring to the manner in which the question of authorizing an excess levy is put to the voters. The word ballot has been defined as a "sheet of paper used to cast or register a vote" The American Heritage Dictionary 154 (2nd Coll. ed. 1991), and as a [p]iece of paper . . . on which the voter gives expression to his choice." Black's Law Dictionary, 143 6th ed. 1990).

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