

**OPINION**  
**57-25**

February 6, 1957 (OPINION)

CITIES

RE: Excess Levy - Board of Budget Review - Submission of  
Indebtedness to

This is in reply to your letter of January 31, 1957 in regard to financing a special street lighting system.

You call our attention to section 40-2410 of the 1953 Supplement to the N.D.R.C. of 1943 in regard to the provision thereof that up to one-fifth of the cost of such improvement may be paid by general taxation of all the taxable property in the municipality. Your first question is stated as: "Does the amount of indebtedness for such one-fifth have to be submitted to the Board of Budget Review, even though no bonds are issued (See: Sections 40-4106 and 40-4107)?"

The pertinent portion of said section 40-2410 states:

" \* \* \* No municipality having a board of budget review shall incur such debt or hold any election to increase its limit of indebtedness to carry such debt until after compliance with the provisions of sections 40-4106 and 40-4107 \* \* \*."

It is the opinion of this office that this section as amended and re-enacted in chapter 271 of the 1949 Session Laws was intended to and does have the effect of requiring that debts to be contracted payable from general taxation under said section 40-2410 be first submitted to the Board of Budget Review and a public hearing held on same regardless of whether or not bonds are issued.

Your second question is as to whether a city of five thousand population levying the full twenty six mills and the additional three mills for supporting a public library, may levy an additional tax to finance the one-fifth cost of a special improvement. It is our opinion that such a city, levying a general tax to pay part of the cost of the designated improvement pursuant to said section 40-2410 is by subsection 1 of section 57-1510 of the N.D.C.R. of 1943 permitted to levy in excess of the general tax levy limitation prescribed in section 57-1508 of the 1953 Supplement to the N.D.R.C. of 1943 for such purpose.

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Attorney General