OPINION
59-265

June 30, 1959 (OPINION)

TAXATION

RE: Levies and Limitations - Park District - Levy For Airport

This is in reply to your letter of June 19, 1959 in regard to expenditure of funds of your park district for the construction of a swimming pool and in regard to the tax levy of the district.

You inform us that the district operates an airport and has for a period of many years maintained a special levy therefor. You further inform us that the district also holds lands not now used for the airport but held for future use of the airport. In the meantime the city's share of crops grown upon the land has been put into the district's airport fund with the result that the district has accumulated a sum slightly in excess of seven thousand thousand dollars in its airport fund.

The district has now transferred the sum of seven thousand dollars from the airport fund into the general fund, and subsequently transferred the sum of eleven thousand dollars from the general fund to special park improvement fund, with the intention of using such fund for the construction of additional swimming pool facilities. Apparently, the crop share income had not been segregated and the funds received therefrom have been commingled with the special airport levy.

The specific authority for the raising of money by the airport levy, section 2-0207 of the N.D.R.C. of 1943, does provide that the political subdivision may appropriate and cause to be raised by taxation or otherwise, moneys sufficient to carry out therein the provisions of chapter 2-02. Subdivision 2 of section 57-1512 of the 1957 Supplement to the N.D.R.C. of 1943 does provide that the tax therein provided is to be used "solely for the purpose of purchasing or acquiring lands necessary for said airport, paying for land previously acquired for said airport, and for operating and maintaining the same; . . ."

On the basis of the purpose of the tax therein provided, it seems very doubtful that so long as the airport remains existent and requiring further support from the park district in circumstances such as you set out in your letter, no part of said tax could be used for another purpose. To the extent, however, that such seven thousand dollars was received from sources other than the airport levy, we can see no legal reason why same should not be expended for the proposed swimming pool.

You also call attention to our opinion of date May 1, 1959 in regard to the maximum levy that might be authorized under section 57-1512 of the 1957 Supplement to the N.D.R.C. of 1943 and suggest reconsideration of same.

I agree with your thought that there are several possibilities for the interpretation of the statutory provision, and, of course, there has to date been no decision of our supreme court that would give a final determination of the question.

As the statute appears in the 1957 Supplement, it first provides for a basic levy of four mills, a levy for airport purposes of an additional four mills and finally authorizes the board of park commissioners whenever it deems it advisable to raise moneys by taxes in excess of the levy provided for, for any authorized purpose, to submit to the voters the question of increasing the levy by a certain number of mills, but not to exceed ten mills.

Under such language, it would perhaps be possible to assume that whenever a proper purpose appears for the levy of a park district the park commissioners would have discretion to call an election to determine whether or not a levy for that purpose could be made subject only to the provision that the levy for that purpose could not exceed ten mills. In so far as there is apparently no limitation on the number of instances in which subsection 3 could be used, this could result in an unlimited total park district levy.

It has been suggested that it would be possible to construe subsection 3 as limiting the total increased levy to an additional ten mills over and above the four or eight mill levy that has been levied under subsections 1 and 2.

Lastly, in the opinion this office has issued, it has been held that the ten mill limit is a limit on the levy (all taxes levied by the district) rather than on the increase or any increase voted pursuant to subsection 3 of the statute.

It is my thought that on strictly grammatical principles, the statute could be properly construed any of the three ways. However, from the general custom of imposing total limits on tax levies, it seems extremely doubtful that our Legislature intended to authorize additional excess levies without limit for park district purposes. Also there exists that general principle of construction set out in the opinion to the effect that: "Where a statute is subject to interpretation and construction pertaining to revenue measures, the rule of law is that the construction could be in favor of the taxpayer. The rule of law also provides that the statute must be construed strictly and will not be extended by implication beyond the clear import of the language." (Citing 82 C.J.S. section 396(b) and 396(c)). On such basis and applying such rule of construction to the possible interpretations of the statute, I am unable to come to any conclusion but that the statute was intended to limit the total park district levies, with or without the airport levy, to ten mills.

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