

OPINION
59-266.doc

May 1, 1959 (OPINION)

TAXATION

RE: Levies and Limitations - Park Districts - Levy Increase

This is in reply to your letter of April 24, 1959, requesting and interpretation of subsection 3 of section 57-1512 of the 1957 Supplement to the N.D.R.C. of 1943. You wish to know if this section permits an increase of the levy from four to fourteen mills or if it restricts the increase from four mills to a maximum of ten mills. The section reads as follows:

3. Whenever the board of park commissioners deem it advisable to raise moneys by taxes in excess of the levy herein provided, for any purpose for which the park district is authorized to expend moneys raised by taxes, such board of park commissioners shall submit to the voters of the district the question of increasing the levy by a certain number of mills, but not to exceed ten mills, on the dollar of the net taxable assessed valuation of the district and when authorized by a majority of the qualified electors of the park district voting on the question at an election in which the question has been submitted, may increase the levy in the amount so authorized." (Emphasis supplied.)

The pertinent portion of this section, underscored above, read as follows in the N.D.R.C. of 1943:

Such additional levy may not exceed four mills on the dollar of the net taxable assessed valuation of the district for the current year."

This section was amended by Chapter 301 of the 1945 Session of the Legislature to read as follows:

3. Whenever the board of Park Commissioners deem it advisable to raise moneys by taxes in excess of the levy herein provided, for any purposes for which the park district is authorized to expend moneys raised by taxes, such board of Park Commissioners may increase the levy as herein provided in any amount not to exceed ten (10) mills on the dollar of the net taxable assessed valuation of the district when authorized by a majority of the qualified electors of the park district voting at any regular election in which the question has been submitted."

You will notice that all three versions of this statute are considering the increase or additional levy to be made. The statute as it now reads provides that the levy may be increased by a certain number of mills, but not to exceed ten mills. The statute as it reads now is not explicit and clear and is subject to interpretation

and construction. Where a statute is subject to interpretation and construction pertaining to revenue measures the rule of law is that the construction should 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 (82 C.J.S. Sections 396(b) and 396(c)). Applying this rule to section 57-1512, it is our conclusion and opinion that the levy limit may not exceed in the aggregate ten mills.

You also state that you assume that the Tioga Park Commission cannot conduct the special election but that it must be called by the City Commission. While we can find no specific statute setting forth the procedure to be followed for election, section 57-1512 as quoted above does provide that "the board of park commissioners shall submit to the voters of the district the question of increasing the levy. . . ."

In 18 AM. Jur. 243, Section 100 of the title ELECTIONS, we find this quote:

There is no inherent right in the people, whether of the state or of some particular subdivision thereof, to hold an election for any purpose. Such action may be taken only by virtue of some constitutional or statutory enactment which expressly or by direct implication authorized the particular election. The rule is firmly established that an election held without authority of the law is void, even though it is fairly and honestly conducted."

It is our opinion that section 57-1512 does by direct implication give the board of park commissioners the authority to conduct the election. As to the manner in which it is to be conducted, section 40-4918 of the N.D.R.C. of 1943 provides:

GENERAL CODE PROVISIONS TO GOVERN PARK DISTRICTS. Except as otherwise provided in this chapter, the board of park commissioners and its officers and the park district shall be governed, in the issuing of warrants and certificates of indebtedness and in the levying of any tax or special assessment, or in carrying out, enforcing, or making effective any of the powers granted in this chapter, by the provisions of the laws of this state applicable to municipalities of the kind in which the park district is established."

Therefore, the above quoted statute would appear to indicate that the elections should be conducted in the manner of other municipal elections.

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