

LETTER OPINION
98-L-136

September 9, 1998

Mr. J. Thomas Traynor, Jr.
Edmore City Attorney
PO Box 838
Devils Lake, ND 58301-0838

Dear Mr. Traynor:

Thank you for your letter asking my opinion on whether the city of Edmore may use tax funds levied for a certain purpose for an alternate purpose. You further ask what the city could do with the funds if they may not be used for any other purpose.

At a June 11, 1996, election, the citizens of Edmore passed the following ballot measure:

Shall Edmore City levy taxes for the years of 1996 and 1997, which shall exceed the legal limits by \$8,100, so that the general fund taxes levied instead of being \$17,000 dollars, which is the limit authorized by law, shall be \$25,000, for the purpose of providing police protection for the residents of Edmore City.

Neither the minutes of the city council meeting nor the resulting resolution indicate under which statute the city council proposed this tax increase. However, the form of the ballot language closely parallels the language required by N.D.C.C. § 57-17-04. Therefore, given the form of the ballot, as well as the language in the city council meeting minutes and resolution and the percentage increase in the property tax levy, it appears the proposal was pursuant to N.D.C.C. ch. 57-17.

N.D.C.C. § 57-17-04 gives the form the ballot language must follow. That section does not require the ballot language to state a specific purpose for the excess levy. However, the ballot language as passed by the voters did specify the purpose for which the tax was to be levied. That purpose was to provide police protection.

Absent legislative authority, taxes levied for a specific purpose cannot be used for other purposes. Huber v. Miller, 101 N.W.2d 136,

Mr. J. Thomas Traynor, Jr.
September 9, 1998
Page 2

142 (N.D. 1960); 16 Eugene McQuillin, Municipal Corporations § 44.186 (3d. rev. ed. 1994). "Using the proceeds of such levy for any other purpose would be an unlawful and wrongful diversion of tax monies raised by such levy." Huber at 142. There is no legislative authority to use these funds for anything other than the stated purpose. Therefore, it is my opinion that the tax money levied for the purpose of providing police protection to the city of Edmore must be used for that purpose, and may not be used for any other.

The requirement that Edmore use the money to acquire police protection appears absolute. Because it is a creature of statute, Edmore only has those powers given it by the Legislature, or those implied from the powers expressly given. E.g., Letter from Attorney General Nicholas Spaeth to Richard Gallagher (Dec. 16, 1991). The North Dakota Century Code does not authorize a city to refund the money collected under a valid tax levy to the taxpayers based on a decision by the city governing body to not spend the money for the purpose it was levied. Therefore, it is my opinion that Edmore must use the money to obtain police protection.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

sam/pg