

**LETTER OPINION
2001-L-48**

November 9, 2001

Ms. Merle A. Torkelson
McLean County State's Attorney
PO Box 1108
Washburn, ND 58577-1108

Dear Ms. Torkelson:

Thank you for your request for my opinion on several issues relating to the renovation or reconstruction of the McLean County Courthouse. I will address your questions in the order presented in your letter.

Your first question relates to borrowing money from the coal development trust fund for purposes of constructing a new county courthouse. In order to be eligible for a loan from the coal development trust fund, an impacted county must "demonstrate actual or anticipated extraordinary expenditures caused by coal or oil and gas development and the growth incidental thereto." N.D.C.C. §57-62-01(3). You question whether the phrase "extraordinary expenditures" in N.D.C.C. § 57-62-01(3) has the same meaning the phrase has in N.D.C.C. ch. 11-11. If it has the same meaning, you believe the county would need to obtain voter approval prior to obtaining a loan.

N.D.C.C. ch. 11-11 does not provide a definition of "extraordinary expenditures." However, N.D.C.C. § 11-11-18 states there is an "extraordinary outlay of money by the county when the proposed expenditure is greater in amount than can be provided for by the annual tax levies." One other statute within N.D.C.C. ch. 11-11 refers to "extraordinary outlay." See N.D.C.C. § 11-11-24. Other statutes within N.D.C.C. ch. 11-11 refer to "extraordinary expenditures" rather than an "extraordinary outlay." See N.D.C.C. §§ 11-11-20, 11-11-21, 11-11-22, and 11-11-25. Accordingly, it appears that in enacting N.D.C.C. ch. 11-11 the Legislature intended the phrases to be interchangeable. Accord McKinnon v. Robinson, 139 N.W. 580 (N.D. 1913). Thus, the phrase "extraordinary expenditure" for the purposes of N.D.C.C. ch. 11-11 refers to an outlay of money that is greater than the county's annual tax levies.

Similarly, N.D.C.C. ch. 57-62 does not provide a definition of “extraordinary expenditures” as that phrase is used in N.D.C.C. § 57-62-01(3). While it might be expedient to use the meaning created for that phrase in N.D.C.C. ch. 11-11, nothing in N.D.C.C. ch. 57-62 can be interpreted to require an impacted county to hold an election every time it wanted to obtain a loan from the coal development trust fund.

Further, the plain meaning of “extraordinary expenditures,” which N.D.C.C. § 1-02-02 requires us to consider, would seem to include expenditures that are not so excessive in amount as would be required to meet the annual tax levy threshold. “Extraordinary” means something which is “[b]eyond what is ordinary or usual.” The American Heritage Dictionary, 480 (2nd coll. ed. 1991). Thus, an “extraordinary expenditure” would be an expenditure that is out of the ordinary or unusual. As used in N.D.C.C. § 57-62-01(3), an “impacted county” is one that demonstrates actual or anticipated expenditures caused by coal or oil and gas development and the growth incidental thereto, that are unusual or uncommon in the normal operation of a county’s business.

The Board of University and School Lands’ (Board) interpretation of this provision further supports a plain meaning interpretation of “extraordinary expenditures.” See N.D.C.C. § 1-02-39(6) (administrative construction of a statute may be considered in determining the intention of legislation). The Board’s employee in charge of administering these loans indicated to one of my staff members that the Board only looks for some way to tie or connect the proposed expenditure to coal or oil and gas development. If the Board can find that connection, it approves the loan. The Board does not require that the expenditure be in excess of the county’s annual tax levies or that the county submit the proposed loan to a vote .

Accordingly, the phrase “extraordinary expenditure” as used in N.D.C.C. § 57-62-01(3) does not have the same meaning as used in N.D.C.C. ch. 11-11. Therefore, it is my opinion that the use of the phrase “extraordinary expenditure” in N.D.C.C. § 57-62-01(3) does not require a county to obtain voter approval prior to obtaining a loan from the coal development trust fund.

Your second question is whether “the cost of renovation of the existing courthouse [would] also be an extraordinary expenditure that requires submission of the question to the voters if the total anticipated expenditure would be greater than could be paid out of funds on hand and the anticipated revenue of McLean County for the current year.” As I stated in my July 3, 2001, letter to Representative Jeff Delzer, “N.D.C.C. § 11-11-18 specifically requires a vote if the proposed expenditure is greater than the annual tax levies.” Thus, it is my opinion that if the cost of renovating McLean County’s existing courthouse exceeds the county’s annual tax levies, the voters must approve the proposed expenditure.

Your third question involves the following language from N.D.C.C. § 11-11-18:

If the board considers the courthouse, jail, or other public buildings of the county inadequate for the needs of the county or deems it necessary to build a county hospital, and if it is thought that it is not for the best interests of the county to issue bonds to aid in the construction of such buildings or that the construction of such buildings by any other procedure is not for the best interests of the county, it shall submit to the electors of the county, at any regular or special election, the proposal for the construction of a courthouse, jail, or other public building by establishing a building fund to aid in the construction thereof.

(Emphasis added.) This language immediately follows the language that requires the board of county commissioners to submit an extraordinary expenditure to the voters. You question whether the use of a loan from the coal development trust fund would be considered an “other procedure” the board could use to construct a courthouse without voter approval.

The above language is not an exception to the requirement that extraordinary expenditures be approved by a vote. Nothing in the above language obviates the requirement of the statute’s first sentence that extraordinary expenditures must be submitted to a vote. Instead, this language simply states that if the county chooses to finance the building by issuing bonds, or by another procedure that does not require a building fund, then the county does not have to vote on whether to establish a building fund. In any case, the county still must have an election on the proposal for an extraordinary outlay of money by the county.

As I stated in my July 3, 2001, letter to Representative Jeff Delzer, “monies the county obtains through a financing arrangement resulting in payments to be made by the county in future years should not be included in the amount determined to be county ‘revenues’ in N.D.C.C. § 11-11-16.” Accordingly, it is my opinion that monies the county borrows to aid in the construction of a courthouse, regardless of their origin, do not affect the requirement of submitting the question to a vote.

Your fourth question involves the requirement in N.D.C.C. §§ 11-11-20 and 11-11-21 that the notice of election and ballot submitted for a vote contain information regarding any proposal to levy a tax to aid in the construction. You state that the last paragraph of my July 3, 2001, letter to Representative Jeff Delzer “left open the possibility that if a new or additional tax is not required to pay for the project then there is a possibility that a vote may not be required.” Because McLean County will not need to levy a tax for the construction, you question whether McLean County is required to hold an election on the question of whether the county should construct a new courthouse.

The intent of the last paragraph of my July 3, 2001, letter to Representative Delzer was not to leave that possibility open, but instead to clarify that it is not a possibility. As I stated at the end of that paragraph, "N.D.C.C. § 11-11-18 specifically requires a vote if the proposed expenditure is greater than the annual tax levies." Accordingly, it is my opinion that McLean County is required to hold an election on the question of whether the county should construct a new courthouse even if the county proposes no new or additional taxes to pay for the construction.

You also question what wording McLean County should include in its notice of election and on the ballot regarding new or additional taxes if it proposes no such taxes but is still required to submit the construction question to a vote. Sections 11-11-20 and 11-11-21, N.D.C.C., specifically require information regarding taxes to be levied be placed in the notice of election and on the ballot. Because those requirements are meant to advise and inform the county's voters, the requirements may not be ignored merely because no tax will be levied. Instead, the county should explain how it intends to finance the construction and specify that no new or additional taxes will be levied for the purpose of such construction.

Your next question results from the State Historical Board director's notification that the director considers the McLean County courthouse to be significant in understanding and interpreting the history of the state pursuant to N.D.C.C. § 55-02-07. Because of that notification, the McLean County courthouse "may not be destroyed, defaced, altered, removed, or otherwise disposed of in any manner without the approval of the state historical board." N.D.C.C. §55-02-07. If McLean County wishes to do any of the foregoing, it must request the approval of the State Historical Board. The State Historical Board then has sixty days in which to communicate its answer to the McLean County commissioners. Id. You question whether the county may destroy the courthouse if it does not receive the board's answer within sixty days.

Nothing in N.D.C.C. § 55-02-07 would allow McLean County to destroy the courthouse if it did not receive the board's answer within the sixty-day period. In fact, as quoted above, N.D.C.C. § 55-02-07 specifically states that significant sites, such as the McLean County courthouse, may not be destroyed without the State Historical Board's approval. The sixty-day deadline is a specific requirement of the board, but the board's failure to meet its statutory requirements is unrelated to the statutory prohibition against destroying significant sites. Accordingly, it is my opinion McLean County may not destroy its courthouse if the State Historical Board fails to comply with the sixty-day deadline.

Your final question is as follows: "[I]f direction [from the State Historical Board] is provided within 60 days and the direction is that the courthouse is not to be destroyed,

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does the county have a responsibility to maintain the old courthouse? If so, to what extent?" North Dakota law grants the State Historical Board broad power to regulate the disposition and maintenance of historical sites. Section 55-02-07, N.D.C.C., requires the State Historical Board to respond to a request to destroy a significant site and further requires the board to "provide the governing official written direction for the care, protection, excavation, storage, destruction, or other disposition of the significant artifact or site." Pursuant to that authority, McLean County is obligated to follow the State Historical Board's direction in protecting the courthouse. N.D.C.C. § 55-02-07. It is therefore my opinion that McLean County must follow the written direction of the State Historical Board regarding the county's responsibility to maintain the old courthouse.

Sincerely,

Wayne Stenehjem
Attorney General

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