

LETTER OPINION
96-L-157

September 11, 1996

Ms. Patricia L. Burke
Burleigh County State's Attorney
514 East Thayer Avenue
Bismarck, ND 58501

Dear Ms. Burke:

Thank you for your August 22, 1996, letter asking whether the 1995 amendment to N.D.C.C. § 4-02-26 revives the county's ability to levy a tax in support of a county fair association even though the voters, prior to 1995, had voted against such a levy.

The Burleigh County Commissioners, apparently in 1986 or 1987, approved, for a first year grant of aid to the Missouri Valley Fair Association under N.D.C.C. § 4-02-26, a tax levy not exceeding one-half of a mill. As required by the terms of N.D.C.C. §§ 4-02-27 and 4-02-30 in 1988, an election was held on June 14, 1988, on the question of whether to continue the annual levy for the purpose of aiding the Missouri Valley Fair Association. A majority of the voters voted not to continue the levy.

In 1988, N.D.C.C. § 4-02-27 provided that if the board of county commissioners is satisfied with the reports received from the county fair association regarding the use of the first year grant of aid monies received from the county, the county commissioners shall continue to levy a tax if the levy is approved by the voters. The ballot language and procedure was provided in N.D.C.C. § 4-02-30.

In 1988, N.D.C.C. § 4-02-30 provided:

Whenever the board of county commissioners has voted and ordered a tax levied in aid of an agricultural fair, at the next general election the question of continuing the annual levy and collection of the tax must be submitted to a vote of the qualified electors of the county. The county auditor shall certify and give notice of the submission of the question as in such cases provided by law. The ballots to be used at the election shall be in the following form:

For tax in aid of county fair
Yes

No

If a majority of the ballots heretofore or hereafter cast on the question at any such election is in favor of continuing such tax, the board of county commissioners shall continue the annual levy hereof as long as the provisions of section 4-02-29 are complied with and until otherwise directed as herein provided.

Whenever a petition addressed to such board, asking the discontinuance of such tax and containing the signatures of the qualified electors of the county in a number equal to twenty percent of the total vote cast in the county at the last preceding general election, is filed in the office of the county auditor, the board shall submit to the qualified electors of the county at the next succeeding general election the question of whether or not the levying of such tax shall be continued. The ballot must be in the following form:

Shall the board of county commissioners continue the annual levy of a tax in aid of county fair?	Yes No
--	-----------

If a majority of all the ballots cast at such election is in favor of discontinuing the tax, the board of county commissioners may not thereafter levy any tax under this chapter until the question of resuming such annual levy and collection of the tax is submitted to a vote of the qualified electors of the county. The ballots to be used at such election must be in the following form:

Shall the board of county commissioners resume the annual levy of a tax in aid of a county fair?	Yes No
--	-----------

If a majority of all of the ballots cast at such election is in favor of resuming the tax, the board of county commissioners shall resume the annual levy thereof as long as the provisions of section 4-02-29 are complied with and until otherwise directed as herein provided.

Before every such election, the county auditor shall certify and give notice of the submission of the question as in such cases provided by law.

Emphasis added. The election held on June 14, 1988, was not held as the result of receiving a petition asking for the discontinuance of the tax, but, instead, was held pursuant to the first paragraph of N.D.C.C. § 4-02-30, as quoted above. The language underlined in the above-quoted section prohibiting the levying of a tax for county fair purposes until the question is submitted to a vote only applies when an election is held as the result of receiving a petition for the discontinuance of the tax. The Burleigh County Auditor has

Ms. Patricia L. Burke
September 11, 1996
Page 3

determined that the election held on June 14, 1988, was not the result of the receipt of a petition to discontinue the tax, but was held pursuant to the first paragraph of N.D.C.C. § 4-02-30. Thus, the underlined language does not apply under these circumstances. Instead, the county fair association may again apply under N.D.C.C. § 4-02-26 for a first year grant of aid from the county commission.

One sentence was added to N.D.C.C. § 4-02-26 in 1995 which provides: "The board of county commissioners may continue the levy under this section after the first year's grant of aid upon the board's own motion." This new language has no effect on the board of county commissioner's authority to approve a first year grant of aid to a county fair association. The new language applies immediately after the first year's grant of aid, and authorizes the board of county commissioners to continue the levy after the first year's grant of aid upon the board's own motion.

In conclusion, it is my opinion that, because the election held on June 14, 1988, was not held as the result of the receipt of a petition to discontinue the levy, the county fair association may proceed pursuant to N.D.C.C. § 4-02-26, to request a first year grant of aid from the board of county commissioners. It is my further opinion that, under the circumstances where no election was held in the past as the result of the receipt of a petition to discontinue a levy for county fair purposes, the board of county commissioners has the authority to approve a levy pursuant to N.D.C.C. § 4-02-26 without putting the question of resuming the annual levy to a vote. See 1966 N.D. Op. Att'y Gen. 71.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

las\jrs