April 26, 1996

Honorable David Nething
State Senator
PO Box 1059
Jamestown, ND 58402-1059

Honorable Lyle Hanson
State Representative
337 15th Avenue NE
Jamestown, ND 58401

Dear Senator Nething and Representative Hanson:

Thank you for your April 2, 1996, letter inquiring about the ramifications of a public school district election which results in the loss of unlimited mill levy authority provided for under N.D.C.C. § 57-15-14. You question whether, if a school district loses its unlimited mill levy authority, the school district would be limited to the 185 mill statutory maximum in N.D.C.C. § 57-15-14 or whether the district levy would be merely frozen at the levy existing at the time of the election.

Absent elector-authorized levies for either a specific number of mills or an unlimited mill levy, N.D.C.C. § 57-15-14 provides for a 185 mill limit for the purposes provided in N.D.C.C. § 57-15-14.2.

However, since 1981, the Legislature has enacted two-year temporary authority for North Dakota taxing districts to increase their mill levies in dollars by certain percentages. (N.D.C.C. § 57-02-01(9) defines "taxing district" to include a school district.) In 1995, the Legislature enacted similar legislation, but without an ending date. Consequently, the authority for tax levy increases now appears as N.D.C.C. § 57-15-01.1. Under N.D.C.C. § 57-15-01.1(6), "a taxing district may supersede any applicable mill levy limitations otherwise provided by law, or a taxing district may levy up to the mill levy limitations otherwise provided by law without reference to this section." For school districts, the "otherwise provided by law" section, for general fund purposes, is N.D.C.C. § 57-15-14. This section, therefore, provides options to taxing districts for levying taxes for the purpose, as indicated in the title of the section, of "protection of taxpayers and taxing districts." Under that section, the taxing district board must take conscious action in its budget and tax levy processes to determine which of its sources of authority it will use. See 1994 N.D. Op. Att'y Gen. L-323.

After initial enactment in 1961 N.D. Sess. Laws ch. 158, § 87, unlimited mill levy authority provisions were amended to provide that "the approval of discontinuing such unlimited taxing authority shall not affect the tax levy in the calendar year in which the election is held." 1969 N.D. Sess. Laws ch. 485, § 1.

Therefore, if a school district which had unlimited tax levying authority and had been levying in excess of the statutory maximum fails to exercise other authority after a vote of its electors discontinuing unlimited levy authority, then the statutory limits would apply in the year after the election. Currently, those statutory limits are 185 mills for general fund purposes provided in N.D.C.C. § 57-15-14.

However, if such a school district as part of its tax levying and budgeting responsibilities pursuant to N.D.C.C. §§ 15-29-08(15) and 57-15-13 exercises its option to use N.D.C.C. § 57-15-01.1, then its levy limitations would not drop to the statutory mill levy limit under N.D.C.C. § 57-15-14. That is, if the district acts pursuant to N.D.C.C. § 57-15-01.1 to calculate its "base year," it may rely on authority provided in that section to levy, for at least taxable year 1996, 2% more in dollars than its base year. By exercising the authority of N.D.C.C. § 57-15-01.1, the taxing school district can maintain its current levy or raise that levy, only for tax year 1996, by not more than 2%. This control may be exercised pursuant to the introductory paragraph of that section which provides that the taxing district may levy the lesser of the amount in dollars as certified in the budget of the governing body or the amount in dollars as allowed by the section. But, to take advantage of tax levying authority in N.D.C.C. § 57-15-01.1 the taxing district must resolve by board action to use that statute.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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