

LETTER OPINION
97-L-1

January 3, 1997

Mr. Ted D. Seibel
Wells County State's Attorney
PO Box 347
Fessenden, ND 58438-0347

Dear Mr. Seibel:

Thank you for your letter requesting my opinion on N.D.C.C. § 57-15-56(3), dealing with a vote on a tax levy for senior citizen programs. You indicated that the Wells County Commission on its own motion placed a ballot measure before the voters on whether an additional 1 mill should be levied for services and programs for senior citizens. You further indicated that while 2,657 ballots were cast at the election only 2,511 were cast on the senior citizens measure. Of those voting on the measure, 1,290 voted "yes" and 1,221 voted "no."

N.D.C.C. § 57-15-56(3) provides as follows:

The levy authorized by this section may be imposed or removed only by a vote of a majority of the qualified electors of the county or city directing the governing body to do so. The governing body shall put the issue before the qualified electors either on its own motion or when a petition in writing, signed by qualified electors of the county or city equal in number to at least ten percent of the total vote cast in the county or city for the office of governor of the state at the last general election, is presented to said governing body.

Your question concerns the first sentence in N.D.C.C. § 57-15-56 and turns on the meaning of the language "vote of a majority of the qualified electors of the county." The "yes" votes were a majority of the votes cast on the measure but were not a majority of the total ballots cast. Consequently, you ask whether N.D.C.C. § 57-15-56(3) requires that the ballot measure garner a majority of votes cast in the election, or only a majority of the votes cast on the question.

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The primary purpose of statutory construction is to determine the intent of the Legislature, which must initially be sought from the language of the statute. Kim-go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990); County of Stutsman v. State Historical Society, 371 N.W.2d 321, 325 (N.D. 1985). "It must be presumed that the legislature intended all that it said, and that it said all that it intended to say." City of Dickinson v. Thress, 290 N.W. 653, 657 (N.D. 1940). Words in a statute are to be understood in their ordinary sense unless a contrary intention plainly appears, but any words explained in the North Dakota Century Code are to be understood as explained. N.D.C.C. § 1-02-02. Kinney Shoe Corp. v. State By Hanson, 552 N.W.2d 788, 790 (N.D. 1996).

The term "qualified electors" is defined in both the North Dakota constitution and in state statute. Article II, Section 1 of the North Dakota Constitution provides in part that "[e]very citizen of the United States, who has obtained the age of eighteen years and who is a North Dakota resident, shall be a qualified elector." Similarly, N.D.C.C. § 16.1-01-04(1) provides that "every citizen in the United States who is: eighteen years old or older; a resident of this state; and has resided in the precinct at least thirty days next preceding any election, except as otherwise provided in regard to residency in chapter 16.1-14, is a qualified elector." Read literally, the levy authorized by N.D.C.C. § 57-15-56 may only be imposed by a vote of the majority of the qualified electors of the county, i.e., those persons in the county who are citizens of the United States, 18 years or older, and residents of North Dakota. However, there is no provision in the statute which gives any guidance regarding how the qualified electors are to be determined and counted. Nevertheless, in enacting a statute it is presumed that a just and reasonable result feasible of execution is intended. N.D.C.C. § 1-02-38(3) and (4).

Since the statute does not contain any mechanism for measuring the number of qualified voters in the county, I conclude that the vote of the majority of the qualified electors of the county authorizing the imposition of a levy for senior citizens programs means the majority of qualified electors voting in the election. This is consistent with a number of other provisions contained in N.D.C.C. ch. 57-15 which utilize a similar phrase for authorizing various levies by a vote of a majority of qualified electors voting in the election. See e.g. N.D.C.C. § 57-15-50 (levy authorized for county ambulance service); N.D.C.C. § 57-15-51 (levy authorized for city ambulance service).

Moreover, the North Dakota Supreme Court in State v. Longlie, 67 N.W. 958, 959 (N.D. 1896) in discussing election statutes from other jurisdictions phrased similarly to N.D.C.C. § 57-15-56(3) noted:

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In those cases there was no room for construction. There was a plain statement in the law that, to carry the measure before the people. . . a majority of the electors or voters of the county or city or town must vote in favor of it. When a majority of the electors is spoken of, the highest number of votes cast at the election must furnish the standard for determining whether the particular measure which must have such a majority has been carried. When 1,000 votes are cast at an election, and the particular measure which must receive the votes of a majority of the electors has in its favor only 400 votes, it is obvious that it has not received the vote of the majority of such electors, although there be no votes whatever against it.

(Citations omitted.)

Had the Legislature intended that the vote for the senior citizen program levy would turn on a majority of the electors voting on the particular issue, it clearly could have stated so as it has done in a number of instances. See e.g., N.D.C.C. § 21-03-07 (No authorized political subdivision "may issue bonds without being first authorized to do so by a vote equal to sixty percent of all the qualified voters of such municipality voting upon the question of such issue."); N.D.C.C. § 16.1-16-01(1)(c) (A recount of a question or measure submitted to the qualified voters may only be held if it has "been decided by a margin not exceeding one-fourth of one percent of the total vote cast for and against the question at any election."); N.D.C.C. § 57-15-12 (Question of increasing tax levy for park districts to be allowed 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.") N.D.C.C. § 57-15-57 (County commission may levy welfare tax "when authorized by sixty percent of the qualified electors voting on the question in a regular election or special election.")

"If the law recites qualified voters 'voting on the proposition,' or 'voting on the question,' or 'a majority of all votes cast upon the question,' or a majority or two-thirds of the electors or qualified voters 'voting thereon,' or the like, the clear intention is to require the specified vote only on the particular proposition, and this appears to be the judicial ruling in most of the cases. Such language establishes the legislative intention to treat the vote on the particular proposition as separate and distinct from the election on other issues." 3 Eugene McQuillen, The Law of Municipal Corporations (3rd ed. 1987).

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Consequently, it is my opinion based on a plain reading of N.D.C.C. § 57-15-56(3) that the authorization for a tax levy for senior citizens programs must be approved by a vote of the majority of the qualified voters of the county voting in the election, rather than a majority of those voting on the question. To conclude otherwise, would be to ignore the plain meaning of the first sentence of subsection 3 of N.D.C.C. § 57-15-56 and engraft a qualification that limits the phrase "majority of the qualified electors of the county," to only those voters voting on the question presented, a limitation which the Legislature did not include.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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