

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 98-F-15

Date Issued: June 8, 1998

Requested by: Charles J. Peterson, Golden Valley County State's Attorney

- QUESTION PRESENTED -

Whether a county commission may continue to levy, in a dissolved civil township, the same number of mills levied by the civil township's governing body before the civil township was dissolved.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a county commission may not continue to levy, in a dissolved civil township, the same number of mills levied by the civil township's governing body before the civil township was dissolved, but the county commission may levy certain taxes as authorized by law in the dissolved civil township.

- ANALYSIS -

A "civil township" has generally been construed to mean a legal subdivision of the county for governmental purposes, and the phrase has been used interchangeably with the phrase "organized township." 1994 N.D. Op. Att'y Gen. L-16 (January 20 letter to Odegard). In contrast, the phrase "congressional township" denotes the geographical areas resulting from the comprehensive land survey by the United States government. An organized or civil township may often comprise the whole of the territory of a congressional township. Id. The phrase "congressional township" is often used to denote an "unorganized township," i.e., a geographical area that is not a legal subdivision of the county for governmental purposes.

A county may only exercise those powers specifically provided by law, or which are necessary to the exercise of the powers specifically provided by law. Murphy v. Swanson, 198 N.W. 116, 119 (N.D. 1924). Accordingly, a county commission may levy a tax in a dissolved civil township only if there is statutory authority to levy that tax.

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A civil or organized township can be dissolved pursuant to N.D.C.C. §§ 58-02-25 through 58-02-31. The dissolution of a civil township results in the transformation of an organized township into an unorganized township. See Letter from Attorney General Nicholas Spaeth to Steven Wild (October 20, 1986). Also, the dissolution of a civil or organized township renders ineffective, upon the effective date of the dissolution, all levies previously approved by the township's governing body, because after dissolution there is no longer a township governing body to assess levies and take control of funds which would result from those levies.

No statutes authorize a county commission to continue to levy, in a dissolved civil township, the same number of mills levied by the civil township's governing body before the civil township was dissolved. However, a county commission is authorized by law to levy taxes for certain purposes in dissolved or unorganized townships.¹ A county commission may levy a tax in an unorganized or dissolved township, without a petition or vote of the electors, to pay off a dissolved township's debts (see N.D.C.C. § 58-02-30), and for road and bridge purposes (see N.D.C.C. §§ 57-15-21, 57-15-22, and 57-15-22.1).² Also, a county commission may levy a tax in an unorganized or dissolved township, after petition by a majority of the electors, for fire protection (see N.D.C.C. § 18-06-11). Finally, a county commission may levy a tax in an unorganized or dissolved township, after petition and vote of the electors, for a public recreation

¹ A county commission, when doing the following in relation to unorganized townships, has no apparent authority to levy a tax: (1) destroying and exterminating gophers and prairie dogs (see N.D.C.C. § 4-16-10); (2) putting unorganized townships into "assessor districts" for purposes of making general property assessments, and paying the district assessors (see N.D.C.C. § 57-02-33); and (3) establishing and regulating pounds (see N.D.C.C. § 58-13-07. Compare 1966 N.D. Op. Att'y Gen. 478 (January 19 letter to Vavra) (weather modification levies and expenditures on the area of a township cannot be made unless such township is an organized township).

² Also, regarding roads in unorganized townships, see N.D.C.C. § 11-27-09.1 (the allocation for unorganized townships of federal payments to counties for game and fish lands shall be deposited in the township's special road and bridge fund); N.D.C.C. § 54-27-19.1 (moneys from the state township highway aid fund retained by a county for the benefit of unorganized townships must be deposited in the county road and bridge fund); and N.D.C.C. §§ 24-06-14 through 24-06-16 (in unorganized territory, the county shall appoint and pay a district overseer of highways).

system (see N.D.C.C. §§ 40-55-01(1),(2), 40-55-08, and 40-55-09), and a legal contingency fund (see N.D.C.C. § 57-15-22.2).

You ask specifically about the authority of a county to levy a tax in a dissolved or unorganized township for road and bridge purposes. The relevant state laws provide:

57-15-21. Tax levies in unorganized townships. The board of county commissioners has the same jurisdiction in an unorganized township as the board of township supervisors has in an organized township. Such board may levy taxes in an unorganized township for road and bridge purposes and shall make such levy on the fourth Tuesday in July in each year, or within ten days thereafter. Such levy has no relation to nor effect upon the county taxes for any purpose levied by the board of county commissioners.

57-15-22. Tax levy limitations in unorganized townships. The total tax levied by the board of county commissioners in any unorganized township for the construction, maintenance, and improvement of any roads and bridges may not exceed eighteen mills on the dollar of the taxable valuation of the township, but this does not prohibit the levy of general county road and bridge taxes in such unorganized township.

57-15-22.1. Board of county commissioners may transfer unexpended balance in road and bridge fund in unorganized townships. The board of county commissioners, by resolution, may transfer any unexpended balance of the revenues produced under section 57-15-22 in any unorganized township to a special road and bridge fund to the credit of such unorganized township. Such special road and bridge fund may not be taken into consideration in determining the budget for the amount to be levied for road and bridge purposes in an unorganized township for the current fiscal year.

(Emphasis added.) Thus, the county commission may levy up to eighteen mills in an unorganized township for the construction, maintenance, and improvement of any roads and bridges in the township. N.D.C.C. § 57-15-22. "[T]he fund from this levy must be used only in the unorganized township from which the tax money is

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derived."³ 1953 N.D. Op. Att'y Gen. 52, 53 (June 17). However, a levy applied to an unorganized township by a county commission pursuant to N.D.C.C. § 57-15-22 does not prohibit the levy of general county road and bridge taxes in that unorganized township. N.D.C.C. § 57-15-22.

Under N.D.C.C. § 57-15-01.1, a taxing district may increase its levy by specific percentages. 1996 N.D. Op. Att'y Gen. L-219 (November 21 letter to Traynor). A county commission may comply with the procedures in N.D.C.C. § 57-15-01.1 to increase beyond the tax levy limitations otherwise provided by law, the dollar amount levied in a dissolved civil township.

In conclusion, it is my opinion that a county commission may not continue to levy, in a dissolved civil township, the same number of mills levied by the civil township's governing body before it was dissolved, but the county commission may levy certain taxes in the dissolved civil township, including a road tax pursuant to N.D.C.C. § 57-15-22, and may increase the dollar amount levied, after the dissolution, as authorized by N.D.C.C. § 57-15-01.1.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

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ATTORNEY GENERAL

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³ "However, if road machinery of the county is used to construct or maintain roads in such unorganized township, it should pay its proportionate share of the cost of the machinery, and the commissioners would be authorized to use such proportionate share from this fund for a contribution toward the cost of road machinery purchased and used in the township." 1953 N.D. Op. Att'y Gen. 52 (June 17).

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