

N.D.A.G. Letter to Oban (Jan. 8, 1988)

January 8, 1988

The Honorable Bill Oban
Representative, District 32
616 East Meadow Lane
Bismarck, ND 58501

Dear Representative Oban:

Thank you for your letter of October 23, 1987. I apologize for the delay in responding to you.

Your letter asks for an Attorney General's opinion on two questions which have arisen in the Bismarck Public School District as the result of a petition filed to submit to the qualified electors of the district the question of discontinuing the building fund levy. Your letter indicates that the Bismarck Public School District has complied with the provisions of N.D.C.C. § 21-03-07, issued bonds, and pledged seven mills of the presently available ten mill building fund levy to the payment of the interest and principal of such bonds. Specifically, the questions presented are as follows:

1. May the district continue to levy the presently authorized 10 mill building fund levy until such time as the matter of discontinuance is voted upon and approved by 60% of the voters voting upon the question pursuant to the demand for submission of the question of discontinuance pursuant to the presently filed petitions?
2. Even if 60% of the voters voting on the issue vote to discontinue the building fund levy, is the district required by the provisions of NDCC 21-03-15 to continue to levy at least the 7 mills pledged to the retirement of the bonds until the principal and interest of the bonds has been paid pursuant to the irrevocable levy requirements of Chapter 21-03?

In response to your first question, N.D.C.C. § 57-15-16(1) provides in pertinent part:

57-15-16. Tax Levy for building fund in school districts.

1. . . . Upon the completion of all payments to the state school construction fund, such levy may be discontinued at the discretion of the governing body of the school district, or upon petition of twenty percent of the qualified electors who voted in the last school election, the question of discontinuance of the levy shall be submitted to the qualified electors of the school district at any regular or special

election and, upon a favorable vote of sixty percent of the qualified electors voting, such levy shall be discontinued.

N.D.C.C. § 57-15-16(1).

The language of the statute, which provides "upon a favorable vote . . . such levy shall be discontinued," indicates that the school district may continue to levy the presently authorized ten mill building fund levy until the matter of discontinuance is voted upon and approved by sixty percent of the electors. See N.D.C.C. § 57-15-16(1) (emphasis supplied).

N.D.C.C. § 51-15-16 contains no language indicating that the building fund levy is to be suspended pending the resolution of an election on the matter of discontinuance of the levy. When the legislature has intended that a levy or statute be suspended between the time a petition to refer the matter is filed and the election, the legislature has clearly so stated. See, e.g., N.D. Const. art. III, § 5; N.D.C.C. § 40-12-08. With respect to referendum petitions, the North Dakota Constitution expressly provides for suspension of legislative measures upon the submission of referendum petitions to the Secretary of State. See N.D. Const. art. III, § 5. The Legislature has also expressly provided for the suspension of municipal ordinances in certain instances upon the filing of referral petitions. See N.D.C.C. § 40-12-08.

Among the factors to consider in interpreting a statute are the actual language used and the words or expressions which are omitted. Clapp v. Cass County, 236 N.W.2d 850, 854 (N.D. 1975). Based upon the actual language used in section 57-15-16 and the fact that there is no express provision suspending the levy during the interim between when the petition is submitted and the election is held, it is my opinion that the Bismarck Public School District may continue to levy the presently authorized ten mill building fund levy until the matter of discontinuance is voted upon and approved by at least sixty percent of the electors voting upon the question.

Your second question is whether the Bismarck Public School District is required by the provisions of N.D.C.C. § 21-03-15 to continue to levy at least the seven mills pledged to the retirement of the bonds until the principal and interest of the bonds have been paid.

N.D.C.C. § 21-03-07(7) authorizes a public school district to dedicate the tax levies authorized by N.D.C.C. § 57-15-16, the school building fund tax levy, and to issue general obligation bonds to be paid by these dedicated levies for the purpose of providing funds for the purchase, construction, reconstruction, or repair of public school buildings. N.D.C.C. § 21-03-07(7). N.D.C.C. § 21-03-15 provides that a municipality, before delivery of bonds issued under the authority of chapter 21-03, must levy an annual tax which, together with other authorized sources of revenue, shall be sufficient to pay the interest and principal due on the bonds and that "[t]he municipality shall be and continue without power to repeal such levy or levies or to obstruct the collection of any such tax until such payments have been made or provided for. . . ." N.D.C.C. § 21-03-15. N.D.C.C. § 21-03-15 also provides that "[a]ny other tax or source of revenue authorized by the legislative assembly for such purposes and imposed or pledged by the municipality for

those purposes shall likewise be irrevocable and subject to the same conditions and limitations as any taxes levied on property for the same purposes." Id.

Your letter indicates that the Bismarck Public School District has pledged seven mills of the presently available ten mill levy to the repayment of the bonds. For purposes of this opinion, I have assumed you mean that Bismarck Public School District has specifically dedicated seven mills of the ten mill building fund levy to repayment of the bonds, as opposed to merely using the revenue from the building fund to make payments on the bonds. If seven mills of the tax levy authorized by N.D.C.C. § 57-15-16 have been dedicated to the repayment of bonds issued pursuant to N.D.C.C. § 21-03-07(7), then the provisions of N.D.C.C. § 21-03-15 require the Bismarck Public School District to continue to levy the seven mills dedicated to the retirement of the bonds. Therefore, it is my opinion that North Dakota law requires the Bismarck Public School District to continue to levy at least the seven mills already dedicated to the retirement of the bonds until the retirement of the bonds has been accomplished. The electors of the Bismarck Public School District cannot vote to discontinue the seven mills dedicated to the retirement of the bonds until the principal and interest on the bonds have been paid.

I hope this opinion is helpful. Please contact me if you have any further questions on this matter.

Sincerely,

Nicholas J. Spaeth

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