

Office of the Attorney General  
State of North Dakota

Opinion No. 84-32

Date Issued: August 22, 1984

Requested by: Lyle R. Bopp  
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--QUESTION PRESENTED--

Whether a school district may continue to levy a direct, annual, irrevocable tax established to pay principal and interest on the school district's bonds as provided for in Section 21-03-15 of the North Dakota Century Code if there are sufficient monies already in the sinking fund established to pay off the bonds, from previous year's levies to pay the principal and interest on such bonds.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the school district may not continue to levy a direct, annual, irrevocable tax established to pay principal and interest on the school districts' bonds as provided for in Section 21-03-15, N.D.C.C., if there are sufficient monies already in the sinking fund established to pay off the bonds, from previous year's levies to pay the principal and interest on such bonds.

--ANALYSIS--

Chapter 21-03, N.D.C.C., provides that a school district may issue bonds to provide financing for the purposes specified by Section 21-03-06, N.D.C.C. In order to pay the principal and interest on such bonds, Section 21-03-15, N.D.C.C., provides, in part, as follows:

21-03-15. DIRECT, ANNUAL, IRREPEALABLE TAX.--The governing body of every municipality issuing bonds under the authority of this chapter, before the delivery thereof, shall levy by recorded resolution or ordinance a direct, annual tax which, together with any other monies provided by, or sources of revenue authorized by, the legislative assembly, shall be sufficient in amount to pay, and for the express purpose of paying, the interest on such bonds as it falls due, and also to pay and discharge the principal thereof at maturity. The 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, . . . (Emphasis supplied)

The authority, indeed the obligation, of the school district to levy a direct annual tax is for the specific purpose of paying the interest on the school districts' bonds as it becomes due and to pay the principal on the school districts' bonds at their maturity. There is no authority to continue a levy once the payment of the principal and interest on the bonds has been provided for by an earlier levy or levies.

Furthermore, the time at which the interest is to be paid and the matured principal discharged is provided in Section 21-03-42, N.D.C.C., which provides, in part, as follows:

21-03-42. SINKING FUND-SOURCES AND USES. . . . As such bonds mature, the county treasurer, upon warrant drawn upon him by the county auditor, shall apply such sinking fund in retirement thereof, and also in payment of the interest thereon when it becomes payable. The county auditor shall draw such warrants so as to pay the interest and retire the bonds at as early a date as possible. (Emphasis supplied)

It is clear that once there are sufficient monies in the sinking fund to pay the principal and interest on the bonds of the school district the county auditor is to make the required payments. As a result of the payment of all remaining principal and interest on the school districts' bonds, there are no longer outstanding bonds which have been issued under the authority of Chapter 21-03, N.D.C.C. Therefore, with no bonds outstanding the school district has no authority to levy a 'direct, annual tax' as those words are used in Section 21-03-15, N.D.C.C.

--EFFECT--

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

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