

LETTER OPINION
94-L-199

August 11, 1994

Mr. Doug Mattson
Ward County State's Attorney
Ward County Courthouse
Minot, ND 58701

Dear Mr. Mattson:

Thank you for the recent letter your office submitted regarding the levying of taxes for school district capital debt on newly annexed territory. In the situation involved, a school district had been enlarged due to the annexation of part of a neighboring school district. The question is whether the newly annexed property was subject to tax levies for preexisting capital debt of the annexing school district.

Whether the newly annexed territory is subject to a tax levy for a preexisting capital debt of the annexing school district cannot be answered in a yes or no fashion. Under North Dakota's statutory scheme for school annexations, such matters are left to the factfinding and approvals made by the relevant county committee and state board pursuant to N.D.C.C. ch. 15-27.2. N.D.C.C. ? 15-27.2-04 provides that before detaching territory from one school district or annexing territory to another the county committee must hold a hearing on the proposed annexation. The county committee referred to in that section is the county committee for the reorganization of school districts. N.D.C.C. ? 15-27.1-01(3). Annexation is defined to mean "an alteration of the boundaries of school districts through the attachment of territory from one existing school district to another existing operating school district." N.D.C.C. ? 15-27.1-01(1).

At the annexation hearing the county committee is required to consider testimony and evidence with respect to a number of statutory factors including:

- a. The value and amount of all school

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property and all bonded and other indebtedness of each school district affected by a change in boundaries.

b. The amount of all outstanding indebtedness of each district and that which would constitute an equitable adjustment of all property, assets, debts, and liabilities among the districts involved.

c. The taxable valuation of existing districts and the differences in such valuation which would accrue under the proposed annexation.

. . . .

(Emphasis supplied.) N.D.C.C. ? 15-27.2-04(3).

The county committee then is required to make specific findings with reference to the enumerated factors upon which evidence was presented at the hearing. N.D.C.C. ? 15-27.2-04(4). All proposed annexations must be given final approval by the state board of public education after it conducts a hearing on the enumerated factors and after it makes specific findings with reference to the factors upon which testimony or evidence was taken. N.D.C.C. ? 15-27.2-04(5).

If the annexation is approved by the state board, the county committee may "cause a tax to be levied against each district affected in accordance with section 15-47-21 which will equalize the several interests fairly." N.D.C.C. ? 15-27.2-04(6).

N.D.C.C. ? 15-47-21 provides, in part, as follows:

Tax levies for equalization between school districts limited -- Remittance tax. When the amount to be levied on each of several districts or parts of districts affected by a change in school district boundaries has been determined, a list of the several amounts must be made, and the respective amounts must be set forth opposite the name of the district to which it is chargeable. The entire levy must be

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stated substantially in the form provided for certifying school taxes, must be addressed to the county auditor, and must be signed by a majority of the members of the county committee or committees. Opposite the several descriptions of property on the tax list must be entered the names of the school districts within which the property is situated. The levy is a valid levy on the taxable property of each district.

Thus, under North Dakota's statutory scheme, the county committee and state board are to make findings and approvals with respect to the factors enumerated in N.D.C.C. ? 15-27.2-04(3) including: the value and amount of school property and all bonded and other indebtedness of each district; the amount of outstanding indebtedness of each district, and that which would constitute an equitable adjustment of the property, assets, debts, and liabilities among the districts involved; and a review of the taxable valuation of existing districts and the difference in such valuation which would accrue under the proposed annexation. N.D.C.C. ? 15-27.2-04(3). After final approval, the county committee has the power to levy taxes to equalize the interests fairly. N.D.C.C. ? 15-27.2-04(6)(a). Consequently, if the results of the hearing and determinations by the county committee and the state board are that it is necessary and appropriate to effectuate an equitable adjustment of debts and liabilities and to properly "equalize the several interests fairly," the county committee ultimately could require the levying of a tax for the preexisting debt of the annexing school district to be charged against the newly annexed territory. Id.

Likewise, if the territory to be annexed had been subject to a levy by its old district for bonded or other indebtedness, tax levies made by the old district for debt service would not follow the annexed territory, except as required by the board doing the equalization. State v. Rasmusson, 300 N.W. 25 (N.D. 1941). However, it should also be noted that "if the governing body of the issuing municipality no longer exists, the county auditor shall levy a direct tax against the taxable property in the original issuing municipality to pay said deficiency and the interest thereon." N.D.C.C. ? 21-03-15. Consequently, if a school district no longer existed because it had been dissolved or completely absorbed into another school

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district, the taxable property in the original issuing school district would be subject to the levy of a direct tax to pay the deficiency and the interest for any general obligation debt issued pursuant to N.D.C.C. ch. 21-03. Id.

Based on the foregoing, and in response to your inquiry, it is my opinion that whether taxes for bonded indebtedness incurred prior to a school district annexation could be applied to newly annexed territory would depend on the findings and determination made by the county committee and the state board following the hearings prescribed by law, and any equalization of taxes made by the county committee and certified to the county auditor pursuant to such processes. My opinion would be the same whether the annexed territory became part of the adjoining district through the annexation process or through the dissolution process.¹

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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¹Dissolution of school districts occurs through the operation of N.D.C.C. ch. 15-27.4. N.D.C.C. ? 15-47-21, which provides for tax levies for equalization between school districts and parts of districts, is expressly applicable to dissolutions under N.D.C.C. ch. 15-27.4. Id. Likewise, a dissolution requires a hearing and consideration of the various factors listed in N.D.C.C. ? 15-27.2-04(3) including the indebtedness of the affected districts, the amount of outstanding indebtedness, and the equitable adjustment of property, assets, debts, and liabilities among the districts involved, etc. N.D.C.C. ? 15-27.4-02. Therefore, it would still be up to the county committees to effect a proper equalization and certify the amount of taxes to be levied.