

LETTER OPINION
94-L-323

November 18, 1994

Honorable Gary J. Nelson
State Senator
P.O. Box 946
Casselton, ND 58012-0946

Dear Senator Nelson:

Thank you for your November 7, 1994, letter asking about tax levy limitations that apply to a school district whose territory has been augmented by the annexation or attachment of territory from a neighboring school district.

School district annexation is regulated by N.D.C.C. ch. 15-27.2. School district dissolution is regulated by N.D.C.C. ch. 15-27.4. A school district whose territory is augmented by the receipt of territory through annexation or by the attachment of territory through dissolution is still the same school district as before annexation or attachment, but with extra territory. This procedure is distinguished from reorganization of school districts under N.D.C.C. chs. 15-27.3 or 15-27.6, where a new district is formed.

School district general fund tax levy limitations are stated in N.D.C.C. ? 57-15-14. Under that section, a school district may increase its levy by 18% over the previous year up to 180 mills. If a school district relies on N.D.C.C. ? 57-15-14 for levy limit increases, then other adjustments apply as stated within that section.

Since 1981, when significant adjustments were made in North Dakota's property tax levy system, the Legislature has enacted temporary authority for North Dakota taxing districts to increase their levies in dollars by a set percentage. The current authority for that purpose is 1993 N.D. Sess. Laws ch. 548 (hereafter chapter 548). Taxing districts choosing to use chapter 548 may levy, in dollars, the lesser of the amount stated in their certified budget or the

Honorable Gary J. Nelson
November 18, 1994
Page 2

amount allowed by chapter 548.

As noted, a school district receiving additional territory through annexation or attachment is still the same district as before the annexation or attachment, but with added territory. Therefore, the tax levies used by that school district in the tax year following annexation or attachment, from which stated percentage increases may be made, are the levies made by that district for the previous year. Consequently, the school district, augmented by annexation or attachment, has no levy history other than the levies which were previously made by the district. Therefore, if the augmented district uses N.D.C.C. ? 57-15-14 to regulate its tax levy limitations for general fund purposes, then only the levy imposed on its territory before annexation or attachment may be used, together with other adjustments allowed by that section.

If, however, the augmented school district chooses to use the authority of chapter 548, then subsection 3 thereof authorizes the district to increase its base year levy amount by multiplying its base year mill rate times the taxable value of property in its district that was not included in its assessment for the base year but is included for the budget year (i.e., territory annexed or attached), and then add the percentage increase to the resulting dollar levy calculation. If chapter 548 is chosen by the school district, then the adjustments of N.D.C.C. ? 57-15-14 do not apply.

In conclusion, it is my opinion that a school district whose territory is augmented by N.D.C.C. chs. 15-27.2 or 15-27.4 procedures may levy general fund taxes for budget year 1995 in the amount authorized by either N.D.C.C. ? 57-15-14 or chapter 548.

Sincerely,

Honorable Gary J. Nelson
November 18, 1994
Page 3

Heidi Heitkamp
ATTORNEY GENERAL

rel/pg
cc: Michael Montplaisir, Cass County Auditor
Adam Boschee, Superintendent, Kindred School
District