

**OPINION**  
**51-13**

August 3, 1951           (OPINION)

CITIES

RE: Band Levy

In your letter of August first you ask whether you are required to follow the band levy limitation fixed by section 40-3703 N.C.R.C. 1943 or whether a city may now levy three mills for support of a band by reason of the amendment of section 57-1508 as found in the 1949 Supplement. In other words, does the amendment authorize the city to now levy three mills regardless of the provisions of chapter 40-37.

A municipal levy for support of a band must be authorized by an election called and held as provided by chapter 40-37 N.D.R.C. 1943. The petition for such levy must contain a request for the submission of this specific question, to wit:

"Shall a tax of not exceeding - - - mills (specify the rate) be levied each year for the purpose of furnishing a band fund."

The mill rate is therefore necessarily fixed by the result of the election. By a favorable vote at such election the city is authorized to make, annually thereafter, the levy at the mill rate specified by the question submitted to the electors at the election called pursuant to the petition provided for by section 40-3702. The fact that section 57-1508 has been amended to fix a new limit of levy for band support of three (3) mills does not authorize the city to levy a tax in excess of that specified in the question submitted to the voters, when the levy was first authorized. Section 57-1508 is a tax levy limitation not an authorization. Therefore, it is our opinion that you are not authorized to extend a levy for a city having had an election as authorized by chapter 40-37 in excess of that specified in the question submitted to the voters at the election called under authority of chapter 40-37.

Further, it is our opinion that, if the city wishes to levy in excess of the limit fixed by the election, such excess to the limit of three mills now fixed by section 57-1508 as amended must be submitted to the electors. We see no reason why this may not be submitted at a special election regularly called.

ELMO T. CHRISTIANSON

Attorney General