

N.D.A.G. Letter to Ficek (Aug. 17, 1987)

August 17, 1987

Mr. Vince H. Ficek
Dickinson City Attorney
41 First Avenue West
P.O. Box 866
Dickinson, ND 58601-0866

Dear Mr. Ficek:

Thank you for your letter of July 28, 1987, concerning the levy for municipal band. According to your letter, the city of Dickinson has obtained the needed authority to levy for a municipal band in about 1934. Since that time, the levy has been made sporadically. The last instance such a levy occurred was in 1966-1967. Although your letter doesn't specifically state that authorization for the initial levy occurred in compliance with applicable statutes, we are assuming such facts are correct.

You inquire whether any action is needed to revive the band levy where no election for cancellation of this tax levy has occurred.

North Dakota law, as found at N.D.C.C. § 40-37-01, authorizes a municipality to levy a tax annually for the purpose of providing a fund for the maintenance or employment of a band for municipal purposes where the procedures outlined in N.D.C.C. ch. 40-37 have been satisfied. As this statute uses the word "may levy," it is obvious that the levy need not occur each and every year despite authorization to do so.

A further review of the statutes contained in N.D.C.C. ch. 40-37 has failed to reveal any procedure which needs to be followed in reviving a levy which has not been made for some time despite the original authorization for the levy. N.D.C.C. § 40-37-05 provides for the manner in which the municipal band levy may be cancelled. The last sentence of this statute indicates that where a majority of the voters indicate that the power to levy a band tax should be cancelled, "no further levy for a municipal band shall be made until at such time as the question again may be voted upon favorably."

The statute authorizing the municipal band levy indicates that, when authorized by the voters, the municipality "may levy a tax annually." Furthermore, the statutes indicate that no further levy need be made when the voters have agreed to cancel the municipal band levy at an election. Based upon these facts, it is my conclusion that until such time as a municipal band levy has been cancelled pursuant to N.D.C.C. § 40-37-05, such levy may occur annually based upon the original authorization for the levy. Thus, where a municipality has not provided for the levy for a municipal band for many years despite its authorization to do so, such a levy may reoccur at the discretion of the city commissioners so long as the cancellation procedure provided for in N.D.C.C. § 40-37-05 has not been

completed.

Sincerely,

Nicholas J. Spaeth

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