

**N.D.A.G. Letter to Syverson (Feb. 16, 1990)**

February 16, 1990

Mr. Gayle Syverson  
Deputy Auditor  
Office of the State Auditor  
State Capitol  
600 East Boulevard Avenue  
Bismarck, ND 58505

Dear Mr. Syverson:

Thank you for your May 26, 1989, letter requesting my opinion concerning the applicability of N.D.C.C. § 57-15-27 to district health units, townships, and other municipalities and the filing requirement for townships budgets. I regret the delay in providing a response.

"The Legislature is empowered to write the rules that govern the levy of taxes, the collection thereof, and the purposes for which the resulting revenues may be expended." Dornacker v. Olson, 248 N.W.2d 844, 850 (N.D. 1976). This empowerment includes prescribing levy limitations. Great Northern Ry. Co. v. Duncan, 176 N.W. 992 (N.D. 1919).

The Legislature has authorized a budget item known as an "interim fund" under N.D.C.C. § 57-15-27 as follows:

57-15-27. Interim fund. The governing body of any county, city, school district, park district, or other municipality authorized to levy taxes, may include in its budget an item to be known as the "interim fund" which shall be carried over to the next ensuing fiscal year to meet the cash requirements of all funds or purposes to which the credit of the municipality may be legally extended, for that portion of such fiscal year prior to the receipt of taxes therein. In no case shall such interim fund be in excess of the amount reasonably required to finance the municipality for the first nine months of the next ensuing fiscal year. Such interim fund shall not be in excess of three-fourths of the current annual appropriation for all purposes other than debt retirement purposes and appropriations financed from bond sources.

(Emphasis supplied.)

Earlier this office concluded that a city's budget is subject to the interim fund levy limitation under N.D.C.C. § 57-15-27. 1979 N.D. Op. Att'y Gen. 96. That opinion reasons "that the certificate of levy and budget of the taxing district must necessarily show the information necessary for the county auditor to examine in order for him to determine if the taxing

district's levy for its interim fund will cause the amount of that fund to exceed the three-fourths limitation." Id. at 99.

You ask whether the interim fund limitation of N.D.C.C. § 57-15-27 applies to district health units, townships, and other municipalities authorized to levy taxes. The following definition is found under N.D.C.C. § 57-02-01(9):

57-02-01. Definitions. As used in this title, unless the context or subject matter otherwise requires:

9. "Municipality" or "taxing district" means a county, city, township, school district, water conservation and flood control district, Garrison Division Conservancy District, county park district, joint county park district, irrigation district, park district, rural fire protection district, or any other subdivision of the state empowered to levy taxes.

This definition provides a township is a municipality. In addition, for the reasons set forth previously in 1979 N. D. Op. Att'y Gen. 96, the budget of any municipality authorized to levy taxes is subject to the interim fund levy limitation requirements under N.D.C.C. § 57-15-27.

N.D.C.C. § 57-02-01(9) includes water conservation districts in the definition of municipality. Like a water conservation district (now a water resource district), a district health unit cannot directly levy a tax. The tax must be levied by the board of county commissioners. See 1985 Op. Att'y Gen. 49. Nonetheless, both equally fit the definition of "municipality" under N.D.C.C. § 57-02-01(9). Because N.D.C.C. § 57-15-27 applies to a "municipality" as defined by N.D.C.C. § 57-02-01(9), it is my opinion that the budget of a township or a district health unit budget are subject to the interim fund levy limitation under N.D.C.C. § 57-15-27.

A district health unit may be organized by a single county through its board of county commissioners or by two or more contiguous counties through their respective boards of county commissioners. N.D.C.C. § 23-14-03. You ask whether the interim fund limitation in N.D.C.C. § 57-15-27 applies to the multi-county budget because the practice in many counties has been for the auditors to include only the prorated portion for their respective county in their county budget.

The budget for a district health unit is prepared under N.D.C.C. § 23-14-11(1) as follows:

23-14-11. Health fund - How provided. All salaries, mileage, compensation, and expenses provided for herein shall be paid as the salaries, mileage, compensation, and expenses of other county officers now are paid, out of a health district fund as follows:

1. The district board of health, as provided in this chapter, shall prepare a budget for the next fiscal year at the time at which and in the manner in which a county budget is adopted and shall submit that budget to the board of county commissioners for approval. The amount budgeted and approved shall be prorated, in health districts composed of more than one county, among the various counties in the health district according to the assessed valuation of the respective counties comprising the health district, and shall, within ten days after approval by the board of county commissioners, be certified by the district health board to the respective county auditors of such counties, and shall be included in the levies of such counties. The amount called for in the budget shall not exceed the amount which can be raised by a levy of two and one-half mills on the taxable valuation, subject to public hearing in each county comprising the district at least fifteen days prior to action taken by the joint boards of county commissioners. Action taken by the joint boards of county commissioners shall be based on the record including comments received at the public hearing. Such levy shall not be subject to the limitation on the county tax levy for general and special county purposes, and the amount derived therefrom shall be placed in a special health fund. The health fund shall be deposited with and disbursed by the treasurer of the district board of health, and all counties comprising the health district shall remit and make settlements with such treasurer quarterly. Any funds remaining at the end of any fiscal year may be carried over to the next fiscal year.

The county auditor is charged with determining whether tax rates are within the limits authorized by the Legislature. N.D.C.C. § 57-15-02 provides as follows:

57-15-02. Determination of rate. The tax rate of all taxes, except taxes the rate of which is fixed by law, shall be calculated and fixed by the county auditor within the limitations prescribed by statute. If any municipality shall levy a greater amount than the prescribed maximum legal rate of levy will produce, the county auditor shall extend only such amount of tax as the prescribed maximum legal rate of levy will produce. The rate shall be based and computed on the taxable valuation of taxable property in the municipality or district levying the tax. The rate of all taxes shall be calculated by the county auditor in mills, tenths, and hundredths of mills.

The county auditor is subject to penalties if prescribed levy limitations are exceeded. N.D.C.C. § 57-15-35.

When a statute is enacted, it is presumed that "[a] result feasible of execution is intended." N.D.C.C. § 1-02-38(4). In the case of a district health unit which includes more than one county, each respective county auditor would be unable to determine whether an interim fund exceeded its statutory limitation under N.D.C.C. § 57-15-27 unless the entire amount budgeted is certified to each county auditor, rather than the amount prorated to a particular county under N.D.C.C. § 23-14-11(1). Thus, the entire district health unit budget must be reported to each county auditor even if the budget has been prorated under N.D.C.C. § 23-14-11(1).

Your final question is whether the township supervisors must file a budget with the county auditor.

A board of township supervisors is required "[to] submit a budget for the township at its annual meeting." N.D.C.C. § 58-06-01(20). The levy for a township budget is determined under N.D.C.C. § 57-15-31 and is subject to all of the applicable limitations under N.D.C.C. ch. 57-15.

Because it is the duty of the county auditor to determine whether the tax rate of all taxes, including those levied by a township, are within statutory limitations, a township budget must be filed with the county auditor. N.D.C.C. §§ 57-15-02 and 57-15-35. Therefore, it is my opinion that a township budget must be filed with the county auditor.

Sincerely,

Nicholas J. Spaeth

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