

N.D.A.G. Letter to Sanstead (July 25, 1991)

July 25, 1991

Dr. Wayne G. Sanstead
Superintendent
Department of Public Instruction
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Dr. Sanstead:

Thank you for your May 21, 1991, letter requesting clarification of the county commission's authority to levy up to four mills in support of a public library, without voter approval. The understanding of the North Dakota State Library is incorrect.

North Dakota Century Code (N.D.C.C.) § 40-38-02 provides that once a county library fund is established pursuant to N.D.C.C. § 40-38-01, the fund is maintained by an annual levy "not exceeding the limitations in subsection 15 of section 57-15-06.7 and subsection 5 of section 57-15-10." Once established, the tax levy for the library fund is the responsibility of the governing body of the county. The ability to increase the levy is restricted by section 40-38-02(4), which requires voter approval to increase the mill levy beyond that which is provided for in subsection 1 of section 40-38-02.

The ability of the county commissioners to increase the levy also depends upon the wording of the ballot at the time the county library fund is established. Thus, if the voters approved a levy of "up to 2 mills," the county commissioners may not levy more than that amount. Letter to Robert W. Kinsey from Nicholas J. Spaeth (November 5, 1985).

Based on the foregoing, it is my opinion that the governing body of a municipality or county may levy up to four mills for the purpose of establishing and maintaining a public library, only with prior voter approval.

I trust this information is helpful to you.

Sincerely,

Nicholas J. Spaeth

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