

**OPINION
67-188**

March 17, 1967 (OPINION)

Mr. John T. Traynor

Attorney

Public School Dist. No. 1

Devils Lake, North Dakota

RE: Schools - Excess Levies - Continuance

This is in reply to your letter of March 14, 1967, in which you set forth the following facts and questions:

We represent Devils Lake Public School District No. 1 and the board requested that we ask you for an opinion concerning the application of Senate Bill No. 344 passed by the recent session of the North Dakota Legislature. This bill amended section 57-16-04, providing that prior to the termination of the excess levy such levy may be extended for a term not to exceed the original term of the increase upon the unanimous approval of the governing board of the school district.

The Devils Lake School District passed an excess levy at an election held on June 5, 1962, which authorized an excess levy for 1962, 1963, 1964, 1965, 1966.

The question that the board has is, if they unanimously approve the extension of this levy at some meeting of the board prior to June 5, 1967, will they bring themselves within the terms of Senate Bill No. 344.

We do not know whether Senate Bill No. 344 was an emergency measure or not. If it was not an emergency measure, would the unanimous approval of the governing board of the school district after July 1, 1967 bring the district in conformity with new legislation so that no election would be required to extend the term of the excess levy."

Senate Bill No. 344 was approved by the Governor on March 14, 1967. It did not carry an emergency measure and therefore does not become effective until July 1, 1967. It is apparent that the school district can take no action of any legal effect until the provisions of the bill become effective.

Section 57-16-04, as amended by Senate Bill No. 344 of the 1967 Legislative Assembly provides:

INCREASE MAY BE FOR FIVE YEARS - EXTENSION - DISCONTINUANCE.
The governing board of the school district may submit the question of authorizing an excess levy for the current year and not to exceed four succeeding years. The notice of election shall give the year or years for which authorization is sought

for an excess levy as well as the percentage of excess which is to be voted upon. Prior to the termination of the excess levy, such levy may be extended for a term not to exceed the original term of the increase upon the unanimous approval by the governing board of the school district, and further extensions may be made for the same number of years prior to each termination date upon the unanimous approval of the governing board of the school district. The question of discontinuing such excess levy in any school district shall be submitted to the electorate at the next regular election upon the filing with the school board of a petition containing the signatures of not less than ten percent of the electors of the district as determined by the number voting in such school district at the most recent regular school district election. The election shall be held in the same manner and subject to the same conditions as provided in section 15-53-14 for elections for approval of school district reorganizations plans."

The amendment to section 57-16-04 consisted of the addition of the underlined language.

In the instance of the Devils Lake School District, the excess levy expired at the time the taxes for the fifth year, i.e., 1966, were levied. These taxes were levied in 1966 and became due in 1967. Therefore even if Senate Bill No. 344 carried an emergency measure, the district could not have extended the excess levy upon unanimous approval of the school board since the levy would have expired prior to that date. We do not believe it is the date upon which the excess levy was approved which governs this matter but rather the year in which the excess levy would terminate which determines whether the provisions of Senate Bill No. 344 may be applied. As we have noted, the excess levy for the Devils Lake School District expired in 1966 the last year in which the excess levy could be made under the provisions of section 57-16-04 as they existed prior to the amendment by Senate Bill No. 344.

It is therefore our opinion that the Devils Lake School Board may not extend the excess levy for an additional five years under the provisions of Senate Bill No. 344 but, if such excess levy is to be continued, the question of continuing same must be submitted to the electorate of the school district for approval in the same manner as if Senate Bill #344 had not been enacted.

HELGI JOHANNESON

Attorney General