

**OPINION
67-189**

March 28, 1967 (OPINION)

Mr. Lowell Williams

Superintendent of Schools

Calvin, North Dakota

RE: Schools - Excess Levy Continuance - Retroactive Effect

This is in reply to your letter of recent date relative to the extension of the excess levy for the school district under the provisions of Senate Bill 344 enacted by the 1967 Legislative Assembly.

Ordinarily we prefer that requests for official opinion come through the state's attorney, the legal advisor of school officials. However, because of the statewide interest in this matter and the fact that time is of the essence, we have decided to issue an official opinion at your request.

Senate Bill 344 amended section 57-16-04 of the North Dakota Century Code to provide:

"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 reorganization plans."

The bill becomes effective July 1, 1967. It does not indicate whether it acts prospectively or retroactively, i.e., whether it applies to excess levies approved at an election held after July 1, 1967, or if it also applies to excess levies approved at an election held prior to July 1, 1967. Even if the bill was intended to apply retroactively it would not, of course, apply to excess levies which had already terminated as of the effective date of the bill, July 1, 1967.

Generally speaking, statutes are always presumed to be intended to operate prospectively and should never be construed as having a retrospective effect, unless their terms clearly show a legislative intention that they should so operate. See *Warren v. Olson*, 46 N.D.

203, 180 N.W. 529 (1920). The general rule of construction applicable to repeals and revisions of revenue laws is that they are to have a prospective operation only, unless the intent of the Legislature to the contrary clearly appears. See *Blakemore v. Cooper*, 15 N.D. 5, 106 N.W. 566 (1906). Applying these rules to the provisions of Senate Bill 344, quoted above, we would conclude the authority to extend the excess levy by unanimous approval of the school board would apply only to elections held subsequent to July 1, 1967, the effective date of the bill.

We would further note there may be serious constitutional questions which might arise should the provisions of Senate Bill 344 be construed to apply to elections held prior to July 1, 1967. Thus the electors of a school district, at the time they approved an excess levy, understood the levy could be made for no more than five years and, at the end of such period, the excess levy would automatically terminate or the school board would again place the question of continuing such excess levy before the electors of the district. To permit an extension of the excess levy without another vote of the electors of the district, or requiring the electors of the district to file a petition in order to be permitted to vote on the question of extending the excess levy would, as we have indicated, raise constitutional questions in view of the fact this was not the understanding of the electorate at the time they approved the excess levy.

This same situation would not apply to the extension of excess levies approved subsequent to July 1, 1967, for the electors, in approving such excess levy subsequent to that date, would be presumed to know the levy could be continued by unanimous approval of the school board.

The courts will adopt, if possible, a construction of a statute which avoids grave and doubtful constitutional questions. See *State v. Burleigh County*, 55 N.D. 1, 212 N.W. 217 (1927).

In view of these rules of statutory construction, it is our opinion that Senate Bill 344, enacted by the 1967 Legislative Assembly, applies only to excess levies which were approved at elections held after the effective date of the bill, July 1, 1967. It is our further opinion that excess levies in school districts may be continued by unanimous approval of the school board only in those instances in which the election approving such excess levy is held after July 1, 1967, and that excess levies approved at elections held prior to July 1, 1967, cannot be continued by unanimous approval of the school board, without an election, regardless of whether the levy has terminated or not as of July 1, 1967.

As applied to the situation outlined in your letter, the excess levy in the Border Central Public School District cannot be continued by unanimous approval of the school board at this time. Even if the statute were to be construed to operate retrospectively, it would appear that the levy for the Border Central School District would have already terminated since apparently the last year for which the excess levy could be made under the approval of the voters was 1966. We have indicated by a previous opinion to Mr. John Traynor, Attorney for the Devils Lake School District, dated March 17, 1967, that when

the last levy was made in 1966 the levy has terminated and could not be continued by unanimous approval of the school board, regardless of the retrospective construction which might be given Senate Bill 344. Although that opinion becomes immaterial in view of the conclusions reached in this opinion, we are enclosing a copy of the March 17, 1967, opinion for your consideration.

HELGI JOHANNESON

Attorney General