

**OPINION
68-165**

October 3, 1968 (OPINION)

Mr. Robert Q. Price

State's Attorney

Cavalier County

RE: Elections - Restrictions on Number - Excess Levies

This is in response to your letter in which you state that the mill levy submitted to the electors at the last primary election was five mills. This proposal was rejected. You then ask: "Does the prohibition of Section 16-01-15 extend to all mill levies upon the same question or is it restricted to re-submitting an identical proposal that was previously submitted? For example, does the bar of the statute apply to a proposed mill levy for the same purpose but at a different rate than previously submitted?"

Section 16-01-15, as amended by the 1967 Session Laws, provides as follows:

CERTAIN QUESTIONS NOT TO BE VOTED UPON FOR SIX MONTHS.
Whenever at any election a bond issue, mill levy question, or question or reorganizing a school district, has failed to receive the required number of votes for approval by the electors, the matter shall not again be submitted to a vote until a period of at least six months shall have expired."

It should be specifically noted that the statute refers to, amongst other things, a "mill levy question." It further provides that " * * * the matter shall not again be submitted to a vote until a period of at least six months shall have expired." if the mill levy question failed to receive the required number of votes. The statute does not provide that the same question shall not be submitted but rather that the matter shall not again be submitted.

We are cognizant of the practices which existed prior to the enactment of this statute. Reportedly, the various political subdivisions would submit a question to the electorate and upon its defeat would make minor modifications and re-submit the same question. To prohibit this practice Section 16-01-15 was enacted. From the clear expressions contained in said section we can come to only one conclusion - that a mill levy question embraces all of the possible mill levies and a variation of the mill levy does not make it new matter so as to constitute an exception to the section.

It is, therefore, our opinion that once a mill levy question has been submitted to the electorate and is defeated, the same comes within the proscription of Section 16-01-15. We do recognize a distinction between a mill levy question and whether or not a certain governmental body should be granted authority to levy taxes without limitation. Such question can be considered to be a question different than a specific mill levy.

HELGI JOHANNESON

Attorney General