

**OPINION
69-289**

June 11, 1969 (OPINION)

Mr. Bert L. Wilson, Jr.

State's Attorney

Burke County

RE: Roads - Farm to Market - Mill Levy

This is in response to your letter in which you ask for a clarification of Section 57-15-06.3, as amended, particularly on the following set of facts:

On November 8, 1960, the electors of Burke County approved a tax levy of 5 mills for a farm to market Federal aid road program. On November 5, 1968, the electors of the county approved a 7 mill levy for any additional farm to market Federal aid program. There remains uncompleted one project of the 1960 program. Your specific question is: Which mill levy prevails or how many mills in the aggregate may be spread as a result of the action by the electorate?

The 1960 notice of election contained language in the upper part of the ballot that the program under consideration was an extension and an addition to the program formerly submitted to the electors on June 29, 1954. This language, however, did not appear in the formal part of the ballot. The 1969 notice of election and the ballot did not contain any language indicating that the 1968 program was an extension and an addition to the road program of 1960.

Section 57-15-06.3 authorizes a mill levy not to exceed 10 mills to construct farm to market Federally aided roads. The projects must be sufficiently described so that each elector will have sufficient knowledge to make a judgment thereon and accordingly cast his ballot. The mill levy authorized under this section shall not be subject to the ordinary mill levy limitations found elsewhere in the Code. Any such project must receive the approval of the electorate before it may be implemented. The purpose of Section 57-15-06.3 is to adequately inform the electorate for what road programs the money is being raised and will be expended. It then gives the electorate an opportunity to approve not only the mill levy but also the road program for which the funds will be expended.

Tacking without informing the electorate would not be permitted under this section. The 1960 notice does inform the electorate that the program is an extension of and an addition to the program formerly submitted to the electorate on June 29, 1954. While this information is not contained in the main part of the ballot, but being a part of the ballot as indicated by the notice, it would constitute sufficient notice to the electorate that the mill levy would be in addition to a levy already authorized. However, the same does not hold true with reference to the notice and special election of November 5, 1968. The ballot on the 1968 election merely informed the voters and presented the question whether or not a 7 mill levy was to be made to

finance the road program as outlined in the notice.

The electors could assume that the 1960 project has been completed. They had no knowledge, or at least no official notice was given to them, that the 1960 program was not completed. It would appear from the notice and the ballot itself that the only question before the electorate is whether or not they should authorize a 7 mill levy for the road program outlined in the notice.

We are not concluding that additional mill levies cannot be voted upon by the electorate, but we are of the opinion that the electorate must be adequately informed, not only in the notice, but it should also be in the ballot proper, that the mill levy is in addition to an existing mill levy before such mill levy can be considered an additional mill levy over and above existing approved mill levies.

Under the factual situation given here, it is our opinion that the county may levy 7 mills for road programs, including those outlined on previous ballots. Of the 7 mills, 5 mills may be used to complete the 1960 project and 2 mills may be used to initiate or complete the 1968 project; after the 1960 project has been completed, the entire 7 mill levy may be applied to the 1968 project and continue to be applied until the 1968 project is completed.

Without expressing an opinion, it would appear that the county will adhere to the priorities assigned to the various projects, and that the unfinished projects of the 1960 program will have a higher priority with reference to 5 mills than will the projects contained in the 1968 program.

HELGI JOHANNESON

Attorney General