

**OPINION
69-373**

August 7, 1969 (OPINION)

Mr. Calvin A. Calton

State's Attorney

Divide County

RE: Taxation - Bonding Capacity of Political Subdivision - Effect of
 Personal Property Tax Repeal

This is in response to your letter in which you state that Divide County School District No. 1 of Crosby, North Dakota, will very likely be holding an election on a bonding issue. Because of the change in the law removing the personal property tax in the near future, questions arise as to the bonding capacity of the district. You then ask for an opinion on the following questions:

1. By what formula will the person property tax affect the bonding capacity of the district, if such election is held between July 1 and December 31, 1969?
2. By what formula will the personal property tax affect the bonding capacity of the district, if the election is held after January 1, 1970?"

The borrowing of money and the issuance of general obligation bonds constitutes a debt. There is some authority which states that a bond is not an indebtedness but is only an evidence of an indebtedness. But, this authority arose out of situations where refunding bonds were issued. This authority cannot be controlling in the matter presently at hand.

The bond issues constituting a debt are limited to the constitutional debt limitations as set forth in the North Dakota Constitution. Section 183 of the North Dakota Constitution, as is pertinent here, provides as follows:

SECTION 183. The debt of any county, township, city, town, school district or any other political subdivision, shall never exceed five per centum upon the assessed value of the taxable property therein; provided that any incorporated city may, by a two-thirds vote, increase such indebtedness three per centum on such assessed value beyond said five per centum limit, and a school district, by a majority vote may increase such indebtedness five per cent on such assessed value beyond said five per centum limit; provided also that any county or city by a majority vote may issue bonds upon any revenue producing utility owned by such county or city, or for the purchasing or acquiring the same or building or establishment thereof, in amounts not exceeding the physical value of such utility, industry or enterprise.

In estimating the indebtedness which a city, county, township, school district or any other political subdivision may incur, the entire amount, exclusive of the bonds upon said revenue producing utilities, whether contracted prior or subsequent to the adoption of this constitution, shall be included; provided further that any incorporated city may become indebted in any amount not exceeding four per centum of such assessed value without regard to the existing indebtedness of such city for the purpose of constructing or purchasing waterworks for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purposes whatever. All bonds and obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, town, school district, or any other political subdivision shall be void."

It is significant to note that the debt is limited to five per cent of the assessed value of the taxable property. The North Dakota Supreme Court in *Jones v. Brightwood Independent School District*, 63 N.D. 275, Page 288, 247 N.W. 884, said: "It is the assessed valuation taken at the time the debts are incurred which is the criterion upon which the debt limitation is computed."

As to debt limitations, the same thought is expressed in Chapter 21-03 of the North Dakota Century Code as is found in Section 183 of the North Dakota Constitution.

Subsection 4 of Section 21-03-01 defines "value of taxable property or the assessed valuation" to mean "the full and true one hundred per cent value of all taxable property in such municipality as finally equalized by the state board of equalization." Thus, for our purposes the statutory definition is controlling.

It is also significant to note that the North Dakota Supreme Court in *Schouweiler v. Allen*, 17 N.D. 510, 117 N.W. 866, in effect, said that "when the issuance of bonds is authorized for school purposes by the voters of the district the school board is bound to issue the same."

On the basis of this, it would appear that it would be of no avail and would serve no useful purpose to discuss many of the legal refinements relating to the legal effect and consequences of a bond issue, and particularly the question at what precise moment an obligation or debt is incurred. The election is apparently the controlling time factor as to whom debt limitations based upon the total assessed valuation of taxable property are determined. The election is controlling because thereafter it is merely a ministerial function to comply with the results of the election. Depending upon the results of the election, the officers either issue the bonds or they do not.

For all practical purposes, the indebtedness to be incurred by the election and issuance of bonds is limited to the provisions of Section 183 of the North Dakota Constitution and Chapter 21-03 of the North Dakota Century Code, as pertaining to the assessed valuation existing at the time of the election.

Subsection 25 of Section 57-02-08, as amended by Chapter 228 of the

1969 Session Laws, provides as follows:

- "25. All personal property not required by section 179 of the constitution of North Dakota to be assessed by the state board of equalization shall become exempt from assessment and taxation in the year 1970 and such property shall not be assessed or taxed for that year or for any year thereafter; provided that this provision shall not apply to any property that is either subjected to a tax which is imposed in lieu of ad valorem taxes or to any particular kind or class of personal property, including mobile homes or house trailers, that is subjected to a tax imposed pursuant to any other provision of law except as specifically provided in this subsection. In addition, this subsection shall not exempt from taxation the personal property of any corporation organized pursuant to the North Dakota Nonprofit Corporation Act, which is not exempt from personal property taxation under any other statute nor shall it exempt from assessment and taxation fixtures, buildings, and improvements upon land which are now assessed as real estate."

It is thus observed that all of the personal property mentioned in the above subsection shall be exempt and shall not be subject to taxation beginning in the year 1970. Consequently, as a result of this subsection, the assessed valuation of taxable property within the district will be reduced in direct proportion to the exemptions found in Subsection 25. Subsection 25 becomes effective and operative on January 1, 1970.

The assessed valuation of taxable property for the purposes of the question at hand is to be reduced by eliminating the personal property which was exempt from taxation by Subsection 25.

In direct response to Question No. 11, it is our opinion that any bond issue, if the election is held prior to January 1, 1970, may use the assessed valuation of taxable property as same existed prior to the exemption of personal property by Subsection 15 of Section 57-02-08.

As to Question No. 2, it is our opinion that any bond issue, the election of which is held on January 1, 1970, or thereafter, will be governed by the debt limit as applied to the assessed valuation of taxable property by reducing same in direct proportion to the exemptions granted by Subsection 25 of Section 57-02-08, as amended.

You will note that the debt limit is still limited to the per cent of assessed valuation of taxable property. However, the assessed valuation of taxable property is substantially reduced as of January 1, 1970. The total bonded indebtedness as permitted by Section 183 of the North Dakota Constitution and Chapter 21-03 of the North Dakota Century Code arising out of general obligation bonds will correspondingly be reduced.

HELGI JOHANNESON

Attorney General