

**OPINION
79-86**

October 31, 1979 (OPINION)

Mr. Charles D. Orvik

Pierce County State's Attorney

P.O. Box 232

Rugby, North Dakota 58368

Dear Mr. Orvik:

This is in reference to your letter of October 10, 1979, and the copy of your letter of the same date to Evonne Stutrud, Pierce County Auditor that you enclosed, regarding the total mill levy that can be made pursuant to section 57-15-30.1 by a board of county commissioners against the taxable property in a township for payment of a debt owed by the township to the county.

Section 57-15-30.1, N.D.C.C., is as follows:

57-15-30.1. TAX LEVY FOR TOWNSHIP DEBT - DUTY OF COUNTY AUDITOR - DUTY OF COUNTY TREASURER. - Whenever any township is indebted to the county in which such township is located, and such debt is more than one year past due, the county auditor, upon resolution of the board of county commissioners, shall levy a tax on the property within the township in an amount sufficient to pay the indebtedness, but in no case shall the amount of the levy cause the total levy for such township to exceed the maximum levy limitations, including excess levy limitations, provided by law. The county treasurer shall place the taxes collected to the credit of the county in payment or partial payment of the township's indebtedness.

Your request, as we understand it, for an opinion from this office is on the question of how many mills can a board of county commissioners levy under the above quoted section 57-15-30.1 on the taxable property in a township if the debt owed by the township to the county was incurred for one or more purposes for which the township is authorized to levy a tax, such as the following:

1. Township general purposes under its general 18 mill levy authority in section 57-15-20 and its excess levy authority in section 57-15-20.1 and chapter 57-17;
2. One or more of the various special purposes for which a special levy is authorized; for example, section 57-15-19.4 authorizes a special township levy of five mills for farm-to-market road purposes; section 57-15-27.1 authorizes a special township levy of two mills for cemetery purposes; section 4-33-11 authorizes a special township levy of one mill for plant pest control;
3. Debt owed county was incurred for not only township general

purposes but also for one or more special purposes.

This office has previously issued two opinions and two letters relating to section 57-15-30.1 and we understand you have a copy of each of them. The first opinion, dated August 23, 1971, was addressed to Mr. Linn Sherman, Kidder County State's Attorney, Steele, North Dakota, and the second opinion, dated October 8, 1971, was addressed to Mr. Joseph C. McIntee, McHenry County State's Attorney, Towner, North Dakota. The first letter dated September 1, 1971, was sent by Assistant Attorney General Gerald W. Vandewalle to Mr. Harry F. Montague, Benson County Auditor, Minnewaukan, North Dakota, and the second letter dated January 22, 1973, was sent by Assistant Attorney General John E. Adams to Mr. Alph J. Overby, Griggs County State's Attorney, Cooperstown, North Dakota.

The conclusions reached in those opinions and letters can be summarized as follows:

1. If the township debt owed to the county is more than one year past due and was incurred for a township general purpose for which the township is authorized under its general 18 mill levy authority in section 57-15-20 to make a levy, then the levy the board of county commissioners is authorized by section 57-15-30.1 to make is limited to the difference between twenty-seven mills and the total number of mills actually spread for the same year for (1) the general fund levy made by the township under its general fund authority in section 57-15-20 and (2) the number of mills, if any, the township levied under its excess levy authority in section 57-15-20.1 and chapter 57-17.
2. If the township debt owed to the county is more than one year past due and was incurred for a special fund purpose such as farm-to-market roads for which a special township levy is authorized by section 57-15-19.4, then the levy the board of county commissioners is authorized by section 57-15-30.1 to make is limited to the difference between thirty-two mills and the total number of mills actually spread for the same year for the levies made by the township under (1) its special purpose authority in section 57-15-19.4 for farm-to-market roads, (2) under its general fund authority in section 57-15-20 and (3) under its excess levy authority in section 57-15-20.1 and chapter 57-17.
3. If the township debt in subparagraph 2, immediately above, had been incurred for the township's general fund purposes as well as for the special fund purpose for farm-to-market roads, the amount the board of county commissioners could levy under section 57-15-30.1 would be the same as calculated under subparagraph 2.
4. If in subparagraph 2, above, the township debt was incurred for two or more different special fund purposes for which a separate special levy for each by the township is authorized, the maximum mill rates for those purposes would be added to twenty-seven mills (eighteen mills under 57-15-20 and nine mills under section 57-15-20.1 and

chapter 57-17) and from that total would be subtracted the number of mills actually spread for the same year for the levies made by the township for those special fund purposes and for its general fund purposes; this difference would be the maximum number of mills that could be spread that year for the levy by the board of county commissioners under section 57-15-30.1.

5. Section 57-15-30.1 gives the board of county commissioners the power to levy in excess of the township's general eighteen mill levy limit that is provided in section 57-15-20 even though the township voters have not approved an excess levy of up to fifty percent (nine mills) as provided in chapter 57-17. See the letter of January 22, 1973, to Mr. Alph Overby, Griggs County State's Attorney, referred to above.

We believe that the conclusions reached in the prior rulings from this office as summarized above correctly interpret the authority of the board of county commissioners to make the levy provided for in section 57-15-30.1.

Neither the prior rulings from this office nor the above summary of them expressly considered the question discussed in the last paragraph of your letter of October 10, 1979, to Pierce County Auditor Evonne Stutrud. That question is whether the provision for an excess township levy that appears in section 57-15-20.1 is separate and apart from, and in addition to, the provision for the excess levy that is provided for in chapter 57-17 and limited by section 57-17-06 of the chapter to a maximum excess levy "of fifty percent over and above the basic legal limitations prescribed in chapter 57-15."

It is our opinion that section 57-15-20.1 does not authorize the township voters to approve an excess levy that is separate from and in addition to any excess levy that they might approve under chapter 57-17. We believe that section 57-15-20.1 must be construed as an amendment to section 57-17-02 of chapter 57-17 so as to authorize township voters to approve an excess township levy under chapter 57-17 "for not to exceed a total of five years" as provided in section 57-15-20.1 rather than only "for the current year and not to exceed one succeeding year" that is provided in section 57-17-02. The reasons for this conclusion follow.

Section 57-15-20.1 reads as follows:

57-15-20.1. EXCESS LEVIES IN TOWNSHIPS - AUTHORIZATIONS FOR MORE THAN ONE YEAR. - The board of township supervisors may submit the question of authorizing an excess levy for not to exceed a total of five years, provided the notice of election and the ballot upon which the authorization for the excess levy is submitted both contain the specific years for which such authorization is sought. Upon approval by the voters as provided in section 57-17-05, such excess levy may be levied for the years specified in the ballot.

This section was enacted by the 1971 Legislature in exactly the same

language as appears in section 57-15-20.1 except that the Legislature did not enact it as section 57-15-20.1 of the Century Code, but, instead, enacted it as Section 1 of House Bill No. 1353; see Chapter 543, S.L. 1971. The title of House Bill No. 1353 reads as follows:

AN ACT relating to excess mill levies in townships.

We note that this title to the bill as enacted states that it is an Act relating to excess levies in townships, rather than an Act providing for excess levies in townships.

As you have noted, section 57-15-20.1 does not make any express reference to section 57-17-06 which provides that the excess levy shall not exceed "fifty percent over and above the basic legal limitations prescribed in chapter 57-15." Nor does section 57-15-20.1 specify a date by which the election must be held or how the election shall be conducted or what must appear in the notice of election and on the ballot other than the years for which the levy would be authorized; in contrast to this, section 57-17-02 provides that the election shall be held not later than September first and "shall be conducted as other elections of such political subdivision are conducted," section 57-17-03 prescribes what the notice of election shall contain, and section 57-17-04 provides for a ballot form that shows the amount of excess levy in dollars for the year or years for which it would be levied and the total amount in dollars that would be levied for the year or years.

We believe that the matters just discussed indicate that the Legislature very likely did not intend that section 57-15-20.1 should provide authority for an excess township levy that would be wholly separate from and in addition to the excess levy authority provided in chapter 57-17. As to statutes levying taxes, our Supreme Court has applied the rule of statutory construction that: "If the words are doubtful, the doubt must be resolved against the government and in favor of the taxpayer." See *Standard Oil Co. v. State Tax Commissioner*, 71 N.D. 146 at 150, 299 N.W. 447 at 449 (1941). Also see *Great Northern Railway Co. v. Severson*, 78 N.D. 610 at 618, 50 N.W.2d 889 at 892-893 (1951), in which the Court stated the general rule "that where the legislative intention with respect to the meaning of tax statutes is doubtful, the doubt must be resolved against the government and in favor of the taxpayer."

For these reasons it is our opinion, as we have already stated, that section 57-15-20.1 does not authorize the township voters to approve an excess levy that is separate from and in addition to any excess levy that they are expressly authorized by chapter 57-17 to approve. Section 57-15-20.1 only has the effect of providing that an excess township levy which chapter 57-17 authorizes the townships to make with voter approval can be made for not exceeding five years rather than for only the current year and one succeeding year that is specified in section 57-17-02 for a county or a city or a township.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General