

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 81-102

Date Issued: October 6, 1981

Requested by: Charles D. Orvik
Pierce County State's Attorney

--QUESTIONS PRESENTED--

I.

Whether the one-fourth of one mill county property tax levy for improvement of highways that is provided for in Section 24-05-01 of the North Dakota Century Code is part of any county road and bridge tax levy made by a county pursuant to Subsection 3 of Section 57-15-06, N.D.C.C., for the county road fund.

II.

Whether the special road fund referred to in Subsection 3 of Section 57-15-06, N.D.C.C., is the fund that is established for purposes of administering the tax levied pursuant to Section 57-15-06.3, N.D.C.C., relating to a property tax levy for farm to market and federal aid roads.

--ATTORNEY GENERAL'S OPINION--

I.

It is the Attorney General's opinion that the one-fourth of one mill property tax levy for improvement of highways that is provided for in Section 24-05-01, N.D.C.C., is part of any county road and bridge tax levy made by a county pursuant to Subsection 3 of Section 57-15-06, N.D.C.C., for the county road fund.

II.

It is the Attorney General's further opinion that the special road fund referred to in Subsection 3 of Section 57-15-06, N.D.C.C., is not the fund that is established for purposes of administering the tax levied pursuant to Section 57-15-06.3, N.D.C.C., relating to a property tax levy for farm to market and federal aid roads.

--ANALYSIS--

I.

Section 24-05-01, N.D.C.C., and Subsection 3 of Section 57-15-06, N.D.C.C., were both amended by 1973 N.D. Sess. Laws, Ch. 223. Both before and after those amendments, Section 24-05-01, N.D.C.C., included the provision that in each county of two thousand or more population 'there shall be levied and collected a property tax of not less than one-fourth of one mill, nor more than the maximum rate permitted by law, on each dollar of the assessed valuation of all taxable property in the county for the improvement of highways.'

The amendment to Section 24-05-01, N.D.C.C., by 1973 N.D. Sess. Laws, Ch. 223, § 1, added to that section the second and third sentences of the section relating to increasing the one-fourth of one mill levy to not more than two mills by an election of the voters and it provided that the increased levy 'shall be in addition to, and shall not be restricted by, the levy limitations of section 57-15-06.'

1973 N.D. Sess. Laws, Ch. 223, § 2, amended Section 57-15-06(3), N.D.C.C., by expressly providing that the then twenty-mill limitation on the county tax levy 'shall not apply:

- g. To taxes levied for road and bridge purposes pursuant to the election provisions of section 24-05-01.'

Both before and immediately after this 1973 amendment, Section 57-15-06(3), N.D.C.C., provided that the county 'twenty-mill limitation shall apply to all tax levies which the county is authorized to levy for general and special county purposes, including taxes levied for road and bridge purposes,' and that the 'limitation shall not apply:

- d. To taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein shall not be subject to the twenty-mill limitations for general and special county purposes.'

These amendments by 1973 N.D. Sess. Laws, Ch. 223, clearly show, first, that the one-fourth of one mill tax levy required by Section 24-05-01, N.D.C.C., to be levied by the county for highway improvements is a levy that is subject to the twenty-three mill county tax limitation now provided for in Section 57-15-06, N.D.C.C., and second, that the levy is part of any county road and bridge tax levy made by a county pursuant to Section 57-15-06(3), N.D.C.C., and the general power of a board of county commissioners to construct and repair bridges and highways as provided in Section

11-11-14(5), N.D.C.C. Any levy of not more than five mills approved at an election of the voters as provided in Section 24-05-01, N.D.C.C., is not, however, subject to the twenty-three mill levy limitations prescribed by Section 57-15-06, N.D.C.C.

II.

Section 57-15-06.3, N.D.C.C., as amended in 1981 provides for a tax levy of 'not to exceed fifteen mills upon the net taxable assessed valuation' of all property in the county for a county road program of farm to market and federal aid roads on the county road system but only after approval of the program by the state highway department and the federal highway administration and approval by a majority of the voters in the county voting on the program. The section further provides that the 'levy shall not be subject to the county mill levy limitations.'

While the county road program of farm to market and federal aid roads provided for in Section 57-15-06.3, N.D.C.C., is 'on the county road system' as provided in Subsection 1 of that section, that road program is not necessarily the entire county road system. As provided in Subsections 1 and 4 of that section, the taxes levied under it can only be expended on that portion of the county road system that is within the county road program of farm to market and federal aid roads. (See *City of Grand Forks v. Grand Forks County*, 139 N.W.2d 242, 246-249 (N.D. 1965).) Therefore, in order to properly account for the tax revenues from the levy provided in Section 57-15-06.13, N.D.C.C., those revenues must be placed in a separate fund and expended only for the purposes of that section, that is, farm to market and federal aid roads.

In contrast to the provisions of Section 57-15-06.3, N.D.C.C., discussed in the two preceding paragraphs, Section 57-15-06(3), N.D.C.C., provides that the county road and bridge levy made under that subsection and the one-fourth mill levy required by Section 24-05-01, N.D.C.C., shall be within the county twenty-three mill levy limitation; approval for those mill levies by the voters at an election is not required, except that a sixty percent majority approval of the voters is required to increase the one-fourth mill under Section 24-05-01, N.D.C.C., to not exceeding five mills, in which case the levy is not then subject to the twenty-three mill levy limitation. It seems clear that the county's portion of the tax revenues collected from the taxes levied under Section 24-05-01 and Section 57-15-06(3), N.D.C.C., must be placed in the county road fund referred to in Section 57-15-06(3), N.D.C.C., and that any unexpended balance of that fund may be transferred at the end of the fiscal year to a special road fund as provided in that subsection.

Based on the foregoing it is clear that the special road fund referred to in Section 57-15-06(3), N.D.C.C., is a fund that is separate and distinct from the fund that must be established for purposes of administering the tax levied pursuant to Section 57-15-06.3, N.D.C.C.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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