

Office of the Attorney General
State of North Dakota

Opinion No. 81-122

Date Issued: November 17, 1981

Requested by: State Representative Harley R. Kingsbury

--QUESTION PRESENTED--

Whether the provisions of 1981 North Dakota Session Laws, Chapter 564, Section 3, as amended by 1981 N.D. Sess. Laws, Ch. 565, § 1, have the effect of removing mill levy limitations on property taxes levied by taxing districts in 1981 and 1982.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the provisions of 1981 N.D. Sess. Laws, Ch. 564, § 3, as amended by 1981 Sess. Laws, Ch. 565, § 1, do have the effect of removing mill levy limitations on property taxes levied by taxing districts in 1981 and 1982.

--ANALYSIS--

1981 N.D. Sess. Laws, Ch. 565, was enacted as House Bill No. 1374, and § 1 of that bill amended § 3 of Senate Bill No. 2323 that also was enacted by the 1981 Legislative Assembly. Senate Bill No. 2323 is published as 1981 N.D. Sess. Laws, Ch. 564. Section 3 of Senate Bill No. 2323, as amended by House Bill No. 1374, provides in Subsections 1 and 2 as follows:

1. Each taxing district may levy in 1981 and 1982 the same amount in dollars as that taxing district levied the prior year plus seven percent, subject to the adjustments provided in this section.

2. No taxing district may levy more taxes expressed in dollars in 1981 and 1982 than the amounts provided in this section.

The levy limitations for 1981 and 1982 that are provided in Subsections 1 and 2, as quoted immediately above, are limitations that are calculated in amounts of dollars that may be levied by a taxing district as distinguished from limitations on the number of mills that were applied in other years to determine the maximum amount of taxes that could be levied by a taxing district for various purposes.

Subsection 3 of Section 3 of Senate Bill No. 2323, as amended, includes provisions in four subdivisions for making, in dollar amounts, the various adjustments to which the last clause of Subsection 1 makes reference. Subsections 4 and 6 are not

necessary to a consideration of the question presented here. Subsection 5, however, provides that:

5. The provisions of this section shall supersede any applicable mill levy limitations otherwise provided by law for 1981 and 1982, but the provision of this section shall not apply to any of the following:
 - a. Any irrevocable tax to pay bonded indebtedness levied pursuant to Section 16 of article X of the Constitution of North Dakota.
 - b. The one-mill levy for the state medical center authorized by section 10 of article X of the Constitution of North Dakota.

It is clear from these subsections--that is, Subsections 1, 2, 3, and 5 of Section 3 of Senate Bill No. 2323, as amended--that the limitation on the amount that a taxing district may levy in 1981 and 1982 is not a limitation that is determined by applying the mill levy limitations that were applicable prior to 1981. Instead, the maximum amount that a taxing district may levy in 1981 or 1982 is determined from the dollar amount levied by the taxing district in the previous year, plus seven percent of that amount, as provided in Subsection 1, and as further adjusted as provided in Subsection 3.

The dollar amount actually levied by the taxing district for 1981 or 1982 or that amount as reduced, if necessary, to the amount as limited by Section 3 of Senate Bill No. 2323, as amended, is then converted to a mill rate by the county auditor as provided in Section 57-15-02 of the North Dakota Century Code, for purposes of computing individual tax bills of taxpayers. Section 57-15-02, N.D.C.C., as amended by 1981 N.D. Sess. Laws, Ch. 567 (House Bill No. 1067), does not by itself provide mill levy limitations and therefore is not inconsistent with the dollar amount of levy limitation provided in Section 3 of Senate Bill No. 2323, as amended.

The amount levied by a taxing district in 1983 and thereafter will be limited by the various mill levy limitations that are suspended from being effective for 1981 and 1982 under the provisions of Section 3 of Senate Bill No. 2323.

--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 question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Kenneth M. Jakes
Assistant Attorney General