

Office of the Attorney General  
State of North Dakota

Opinion No. 81-138

Date issued: December 24, 1981

Requested by: Dr. Joe Crawford  
Superintendent of Public Instruction

--QUESTION PRESENTED--

Whether the governing board of a public school district, city, or county may amend the annual budget and property tax levy that it had previously approved if it makes the amendment prior to October tenth.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that the governing board of a school district, city, or county has a limited authority to amend the annual budget both before and after October tenth but that it does not have authority to amend the property tax levy either before or after October tenth.

--ANALYSIS--

The North Dakota Supreme Court, in numerous cases, has held that the governing board of a public school district, city, county, or other political subdivision has no authority that is not either expressly or impliedly conferred by statute or essential to effectuate the purposes of the political subdivision. In defining such authority, the rule of strict construction applies and any doubt as to their existence or extent must be resolved against it. See, for example, *Lang v. Cavalier*, 228 N.W. 819, 822 (N.D. 1930); *Batty v. Board of Education*, 269 N.W. 49, 50 (N.D. 1936); and *Dornacker v. Olson*, 248 N.W.2d 844, 849-850 (N.D. 1976). Also see Attorney General's Opinion No. 81-128 issued on November 30, 1981.

Section 57-15-31.1 of the North Dakota Century Code provides as follows:

57-15-31.1. DEADLINE DATE FOR AMENDING BUDGETS AND CERTIFYING TAXES. No taxing district shall certify any taxes or amend its current budget and no county auditor shall accept a certification of taxes or amended budget after the tenth day of October of each year if such certification or amendment results in a change in the amount of tax levied. The current budget, except for property taxes, may be amended during the year for any revenues and appropriations not anticipated at the time the budget was prepared.

The first sentence of this section neither expressly nor by necessary implication authorizes any taxing district to amend its current budget or to certify taxes. It simply recognizes that if the taxing district has authority to do so under some other provision of law, it must do so on or before October tenth and certify such action to the county auditor by that date.

The last sentence of Section 57-15-31.1, N.D.C.C., was added to the section by the 1981 Legislature. The language of that sentence and the notes of the Committees of the 1981 Legislature which heard the bill that added the sentence show that it was intended to change the first sentence by authorizing a taxing district to amend the budget during the year but that the amendment could not result in a change of the amount of property tax previously levied. The last sentence therefore provides authority for a taxing district to amend its budget during the year but neither that sentence nor the first sentence of the section authorizes a taxing district to amend the amount of property tax levy previously made.

If the governing board of a public school district, city, county or other political subdivision that is a taxing district has authority to amend the property tax levy that it has made, the authority must be found in some statute other than Section 57-15-31.1, N.D.C.C..

We have examined the tax levy provision for public school districts in Title 15 of the North Dakota Century Code, for cities in Title 40, for Counties in Title 11, and for public school districts, cities, counties and other taxing districts in Title 57, N.D.C.C. Section 57-15-13, N.D.C.C., provides that school district taxes shall be levied on or before the last day of July of each year. Section 57-15-07, N.D.C.C., provides that city taxes shall be levied on the fourth Wednesday of July of each year, or within ten days thereafter. Section 57-15-05, N.D.C.C., provides that county taxes shall be levied on the fourth Tuesday in July of each year or within ten days thereafter.

Section 57-15-32, N.D.C.C., provides that the taxes levied or voted by any city, township, school district, park district or other municipality authorized to levy taxes shall be certified by the officer acting as clerk of the governing body of the municipality to the county auditor immediately following the action of the governing body, or within ten days thereafter. By definition in Section 57-02-01(6), N.D.C.C., the term 'municipality' includes any political subdivision, including a county, empowered to levy taxes.

We have not found any provision of law which authorizes the governing board of a public school district, city, or county to amend its tax levy and the certification of the tax levy to the county auditor after the levy has been made and certified as provided in the statutes noted above. Nor have we found any statutory provision from which any such authority must necessarily be implied.

We therefore must conclude that the governing board of a public school district, city, or county does not have authority to amend its property tax levy and its certification of the

tax levy to the county auditor either before or after October tenth. This does not mean that the amount of the levy and the certification of it to the county auditor cannot be changed by a vote of the electors at an election held for that purpose if authorized by law, but in such a case that certification of the tax levy would have to be made to the county auditor by October tenth in order to comply with Section 57-15-31.1, N.D.C.C., set forth above.

We note further that Chapter 11-23, N.D.C.C, provides for a public hearing on the proposed annual budget for a county before it is adopted, as does Chapter 40-40, N.D.C.C., for the annual budget of a city. We do not, however, find any similar provision in Title 15, N.D.C.C., or elsewhere in the Century Code for a public hearing on the budget of a school district prior to its adoption. The provision, or lack of a provision, requiring a public hearing on the annual budget of a taxing district cannot, in our opinion, change the conclusion reached in the preceding paragraph.

--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.

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