

Date Issued: March 19, 1981 (AGO 81-27)

Requested by: Larry E. Stern,
Cass County Assistant State's Attorney

- QUESTION PRESENTED -

Whether a county may levy a tax on taxable property in a township for the purpose of supporting an airport or airport authority if that township already has an airport levy.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a county may levy a tax on taxable property in a township for the purpose of supporting an airport or airport authority even if that township already has an airport levy.

- ANALYSIS -

Section 2-06-15, N.D.C.C., presently states:

In counties supporting airports or airport authorities, a levy in addition to all other levies permitted by law, not to exceed four mills on the net taxable valuation of property in such county, may be made for such purposes, but such levy shall not apply to any city or park district that already has an airport levy.

This section, as originally enacted in 1959, also provided that such a levy did not apply to property in any village that already had an airport levy. At the time of its enactment, there were only three other political subdivisions which were authorized to levy taxes for airport purposes: cities, park districts, and villages. See sections 57-15-36 and 57-15-37, N.D.C.C. (1960). These three political subdivisions were authorized to levy taxes for airport purposes only if such a tax had not already been levied by another political subdivision on the property in that same taxing district.

When section 2-06-15, N.D.C.C., was enacted, it specifically listed the political subdivisions which were given authority to levy such a tax, and stated that if any one of them was already levying a tax for airport purposes, then the county could not levy the tax in that taxing district. The broader language of sections 57-15-36 and 57-15-37, N.D.C.C., referring to political subdivisions and taxing districts, was not used. Since that time, the authority granted to villages to levy taxes for airport purposes has been amended out of sections 57-15-37 and 2-06-15, N.D.C.C.

The intent of the Legislature was clear; no more than one political subdivision could levy a tax for airport purposes in any one taxing district. In 1979, townships were given authority to levy taxes for airport purposes and they, too, were not allowed to levy the tax on any property that was already subject to an airport tax levy by another taxing district. Section 57-15-37.1, N.D.C.C. However, the North Dakota Legislature did not amend section

2-06-15, N.D.C.C., to include townships. While it appears that the Legislature might not have intended to allow counties to levy airport taxes on property in townships that already had such a tax, the law, as presently enacted, does give the county that right.

- 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: Nancy K. Hoff
Assistant Attorney General