

Date Issued: June 18, 1981 (AGO 81-63)

Requested by: Lloyd F. Zander
Commissioner of Veterans' Affairs

- QUESTION PRESENTED -

Whether moneys raised by the county mill levy authorized by section 57-15-06.4 of the North Dakota Century Code for the veterans' service officers' salary, traveling, and office expenses can be used by the board of county commissioners for other unrelated purposes.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that, except as authorized in the limited circumstances prescribed by section 11-23-07, N.D.C.C., moneys raised by the county mill levy authorized by section 57-15-06.4, N.D.C.C., cannot be used by the board of county commissioners for purposes unrelated to those for which the levy was made.

- ANALYSIS -

Section 57-15-06.4, N.D.C.C., provides as follows:

57-15-06.4. LEVY AUTHORIZED FOR COUNTY VETERANS' SERVICE OFFICERS' SALARY, TRAVELING AND OFFICE EXPENSES. The county commissioners of each county may levy annually a tax of not to exceed three-fourths mill on the dollar of the net assessed taxable valuation of the county, to provide a fund, for the payment of the salary, traveling, and office expenses of the county veterans' service officer authorized to be appointed by section 37-14-18. Such levy shall not be limited by the provisions of section 57-15-06.

The three-fourths mill levy was increased to one and one-fourth mills by the 1981 Legislative Assembly.

Section 57-15-06.4, N.D.C.C., authorizes the tax to be levied "to provide a fund" for payment of the "salary, traveling, and office expenses of the county veterans' service officer." The rule regarding use of special county funds is stated in 20 C.J.S. 1109-1111, Counties Section 231, as follows:

Where special county funds are authorized, and are in fact raised for a particular purpose, they must be applied thereto and cannot be diverted to any other purpose, or transferred to any other fund, . . . unless a valid statute authorizes or requires a transfer to be made . . .

Cited to this statement in C.J.S. is Boettcher v. McDowall, 174 N.W. 759 (N.D. 1919).

The county budget law in chapter 11-23, N.D.C.C., includes sections 11-23-06 and 11-23-07, N.D.C.C., which provide as follows:

11-23-06. EXPENDITURE CANNOT BE MADE IN EXCESS OF APPROPRIATION. No county expenditure shall be made or liability incurred, nor shall a bill be paid for any purpose, in excess of the appropriation therefor, except as provided in sections 11-23-07 and 11-23-08.

11-23-07. TRANSFER OF MONEY FROM OTHER FUNDS. If the appropriation for any purpose is not sufficient to meet the expenditures required by law, the county auditor, on the order of the board of county commissioners, may make a transfer to the required fund from any other fund, except from sinking and interest funds set aside to pay the principal or interest on outstanding bond issues, or from funds set aside to retire any other outstanding indebtedness, or from funds received from the state for road, bridge, and highway purposes. The board shall place on its records a statement of all such transfers with the reasons therefor in detail, and shall report fully and specifically thereon in the published statements of its proceedings.

Section 11-23-07, N.D.C.C., does provide authority for the board of county commissioners to transfer moneys from any county fund, other than those expressly excepted, to another county fund. This provision, however, creates a limited authority due to section 11-23-06, N.D.C.C., and the provision in section 11-23-07, N.D.C.C., which states that such transfer can be made to another fund only if the appropriation that is to be financed out of that fund is insufficient to meet the "expenditures required by law." The words "expenditures required by law" for a particular purpose do not include expenditures for a purpose that is merely authorized by law to be made but not required by law to be made. Therefore, a transfer from the veterans' service officers' fund established by section 57-15-06.4, N.D.C.C., can be made under section 11-23-07, N.D.C.C., to another county fund only if the expenditures from that fund are actually required by law to be made rather than only authorized by law to be made.

- 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 or the applicable provisions of law are amended or repealed.

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