

**LETTER OPINION  
2003-L-41**

September 26, 2003

Honorable Phillip Mueller  
State Representative  
1632 101st Avenue SE  
Wimbledon, ND 58492-9309

Honorable Jon Nelson  
State Representative  
4680 71st Street NE  
Wolford, ND 58385-9536

Dear Representatives Mueller and Nelson:

Thank you for your letter asking about several matters relating to the amendment of N.D.C.C. §15.1-27-05 in Senate Bill No. 2421, which was passed during the special session of the 2003 Legislature. Senate Bill No. 2421 is almost identical to Senate Bill No. 2154, which was passed during the regular 2003 legislative session, and then vetoed by Governor John Hoeven. The language amending N.D.C.C. § 15.1-27-05 was in Senate Bill No. 2154, and later included in Senate Bill No. 2421.

Section 15.1-27-05, N.D.C.C., specifies some of the computations the Department of Public Instruction (hereafter, "Department") must make to determine the amount of state payments due school districts. Section 15.1-27-05, N.D.C.C., directs the Department to add together various state payments<sup>1</sup> and from that total subtract certain amounts. Senate Bill No. 2421, which amends N.D.C.C. § 15.1-27-05, provides that after June 30, 2004, the Department shall subtract or deduct an additional amount under certain circumstances as follows:

If the mills levied by the [school] district for general fund purposes, plus the mills levied for high school transportation and high school tuition purposes are fewer than one hundred forty, [the Department shall subtract] the number of mills by which the district's levies are below one hundred forty multiplied by the taxable valuation of property in the district.

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<sup>1</sup> These payments are tuition apportionment payments, per-student payments, special education aid, and teacher compensation payments. N.D.C.C. § 15.1-27-05.

2003 N.D. Sess. Laws ch. 667, § 10, codified at N.D.C.C. § 15.1-27-05(1)(c) (emphasis added).

You ask when the deduction required by subdivision c of subsection 1 of N.D.C.C. § 15.1-27-05 goes into effect. Senate Bill No. 2421 clearly states this provision is “[e]ffective after June 30, 2004”; thus, it is my opinion that this deduction goes into effect on July 1, 2004.

The Department indicated that in doing the computations under N.D.C.C. § 15.1-27-05(1)(c) after June 30, 2004, it will use the school district’s mill levy determined by October 10, 2003. You ask whether this is proper.

The response to this question depends upon the filing requirements in state law. By October 10 of a year, school districts must have their budgets and tax levies finally determined for that current fiscal year. N.D.C.C. §§ 57-15-13, 57-15-31.1. The taxes levied must then be certified to the county auditor. N.D.C.C. § 57-15-32. On or before December 15, each school district must file with the Department the taxable valuation and mill levy certifications. N.D.C.C. § 15.1-27-02(2). Thus, by December 15, 2003, school districts must file with the Department the mill levies determined October 10, 2003, and certified to the county auditor. These taxable valuation and mill levy certifications are used, among other things, to determine state aid under N.D.C.C. ch. 15.1-27. Before November 1, 2004, the Department must make the computations required by N.D.C.C. ch. 15.1-27 in order to determine the state aid due school districts for the 2004-05 school year. N.D.C.C. § 15.1-27-01(3), (4). When the Department does these computations on or before November 1, 2004, the most recent mill levy certifications filed with the Department will be those determined October 10, 2003, and filed with the Department on or before December 15, 2003. The Department has traditionally used the information filed with the Department on the preceding December 15 when computing deductions under N.D.C.C. § 15.1-27-05 for a particular school year. See N.D.A.G. 2000-L-23; cf. Zenith School Dist. v. Peterson, 81 N.W.2d 764, 768 (N.D. 1957) (“The fact that [state aid] payments each year were to be computed upon the records of the previous year is of no significance. The payments were for the year in which they were made, but because complete records were not available for that year at the time the payments were made, they were, as a matter of convenience, computed on the previous year’s records.”).

Given the timing in the statutes requiring the October 10 certifications to be filed with the Department on or before December 15, and the Department’s requirement to determine state aid by November 1, it is my opinion that the mill levies the Department should use to determine the deduction under N.D.C.C. § 15.1-27-05(1)(c) for state aid for the 2004-05 school year are the October 10, 2003, mill levies filed with the Department on or before December 15, 2003.

An argument may be made that even though school districts are not required to file their mill levies determined by the October 10, 2004, deadline with the Department until December 15, 2004, the Department should still use the October 10, 2004, mill levies to compute state aid under N.D.C.C. ch. 15.1-27, by November 1, 2004, for the 2004-05 school year. A review of the legislative history is helpful.

The idea of applying a deduction if a school district is levying less than a certain number of mills was discussed by the Senate Education Conference Committee between April 15 and April 22, 2003, when considering Senate Bill No. 2154. The conference committee considered whether the provision should be effective after June 30, 2004, or after June 30, 2005. The conference committee solicited feedback from representatives of the Department. Hearing on S.B. 2154 Before the Senate Education Conference Comm., 2003 N.D. Leg. (Apr. 21).

The Department provided to the conference committee, on April 21, 2003, a document which states: "For purposes of determining deductions from state aid under 15.1-27-05, mill levy and taxable valuation data from the most recently completed school year is used." This document includes a table which indicates that for the 2004-05 school year the state aid deduction under N.D.C.C. § 15.1-27-05(1)(c) would be determined by using the mill levy of the school district for the preceding school year. The document also states: "Data for state aid calculations is one year behind data for local levy purposes." Hearing on S.B. 2154 Before the Senate Education Conference Comm., 2003 N.D. Leg. (Apr. 21) (Testimony of Jerry Coleman).

The conference committee determined that the language should be effective after June 30, 2004. This legislative history indicates that the conference committee was aware that when state aid computations would be done for the 2004-05 school year, the Department would use the October 10, 2003, mill levies reported by the school districts on or before December 15, 2003.

Currently there are school districts that levy less than 140 mills for general fund, high school transportation, and high school tuition purposes. Section 57-15-14, N.D.C.C., generally limits the increase in a school district's budget to 18% above the previous year, up to a general fund levy of 185 mills. You ask whether the 18% increase limit in N.D.C.C. § 57-15-14 conflicts with the provision in N.D.C.C. § 15.1-27-05(1)(c) effective after June 30, 2004, that requires a deduction related to the number of mills a school district levies below 140 mills. It is my opinion that these sections of the law are not in conflict.<sup>2</sup> The amendment in N.D.C.C. § 15.1-27-05(1)(c) will not require a school district to levy a

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<sup>2</sup> In interpreting statutes, the goal is to harmonize statutes and avoid conflict. Ebach v. Ralston, 469 N.W.2d 801, 804 (N.D. 1991). In enacting a statute, it is presumed the Legislature knows the law and is aware of previously enacted statutes. Olson v. N.D. Dept. of Transp. Director, 523 N.W.2d 258, 260 (N.D. 1994).

minimum of 140 mills for general fund, high school transportation, and high school tuition purposes. The amendment simply provides that if the levy for those purposes is less than 140 mills, then the deduction applies. A school district that increases its budget by 18% and still has not reached a 140 mill levy will simply be unable to levy 140 mills unless there is some other means under state law to increase their levy, for example, pursuant to N.D.C.C. § 57-15-01.1 or N.D.C.C. § 57-15-14.

You indicate there are some school districts which have formed a new school district through the school district reorganization process under N.D.C.C. ch. 15.1-12. You state their reorganization plans specify a set number of mills for their first year of operation and that the reorganization plan must be voted on and approved by the electors of each of the districts involved in the reorganization. See N.D.C.C. §§ 15.1-12-10, 15.1-12-11. You ask, if the reorganization plan is voted on and approved and it sets the 2003-04 levy for general fund, high school transportation, and high school tuition purposes under 140 mills, can the new school board vote to increase the levy to 140 mills. As I indicated previously, the amendment in N.D.C.C. § 15.1-27-05(1)(c) will not require a school district to levy a minimum of 140 mills for general fund, high school transportation, and high school tuition purposes. The amendment simply provides that if the levy for those purposes is less than 140 mills, then the deduction applies. The addition of the deduction related to the number of mills levied under 140 mills in N.D.C.C. § 15.1-27-05(1)(c) does not authorize a change in the reorganization plan. The reorganization plan must be complied with as written, or an attempt can be made to get a majority of the qualified electors to agree to a change in the reorganization plan. See N.D.C.C. § 15.1-12-21.

Sincerely,

Wayne Stenehjem  
Attorney General

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