

**OPINION
70-107**

September 14, 1970(OPINION)

Mr. Vincent A. LaQua
State's Attorney
Wells County

RE: Counties - Mental Health Levy - Elimination

This is in reply to your letter of September 10, 1970, in which you set forth the following facts and questions:

"The voters in the General Election will be voting on a levy not to exceed three-quarters of a mill for Mental Health Service Units.

"If the measure passes and in years to come if there is dissatisfaction with the program:

"1. Can the Board of County Commissioners eliminate the three-quarter mill levy on their own prerogative by resolution?

"2. If they cannot eliminate the levy, can they submit the question to the electors?"

Section 25-15-02 of the North Dakota Century Code provides in part:

"The governing body of any such political subdivisions for the purpose of operating, maintaining, or participating in the operation and maintenance of mental health and retardation service units or providing such services by contract in accordance with this chapter, may by resolution of the governing body thereof submit the question of the authorization of a tax upon all taxable property in the political subdivision of not to exceed three-quarters of one mill to the electorate of the political subdivision at any special or regular election.

If such levy shall be approved by the majority of the electors voting thereon a tax not in excess of that authorized may be levied by the governing body of the political subdivision for the purpose of providing services as authorized in this chapter. Such levy, when authorized, shall be over and above any mill levy limitation provided by law, provided, however, there shall not be more than one election per year on the mill levy." (Emphasis ours)

We also note that the mental health and retardation unit may be established by the board of county commissioners upon petition of eight percent of the voters of any county. See section 25-12-01. Furthermore, section 25-12-02 also provides in part:

"A mental health and retardation service unit comprising only one political subdivision may receive aid from such political subdivision to the extent that its governing body agrees to participate. If a mental health or retardation service unit comprises more than one political subdivision, the unit shall receive aid from the political subdivisions in proportion to the assessed valuation of each political subdivision or in such manner as their governing bodies shall agree." (Emphasis ours)

Section 25-12-04(4) of the North Dakota Century Code provides the board of directors of the mental health and retardation service unit has the power to determine the budgets and submit them to the governing bodies of the political subdivisions concerned for their approval and prepare detailed plans for services and programs of the unit for the forthcoming year. This provision implies the final discretion as to the budget must rest with the board of county commissioners.

These statutory provisions appear to be permissive rather than mandatory, i.e., they authorize the county commissioners to establish a mental health and retardation service unit and, if established, the vote of the electorate authorizes the county commissioners to make the mill levy. The statutes do not, however, appear to require such establishment or mill levy as a matter of law. The word "may" is ordinarily considered to be permissive rather than mandatory. Had the Legislature intended the county commissioners should have no discretion in this regard we assume they would have used the word "shall" instead of the word "may." Thus the petition and election referred to in the above cited sections appear to be for the purpose of authorizing the county commissioner to establish the unit and make the levy. The county commissioners are not required to do so by law. However without the authorization of the petition and election, the county commissioners could not establish the unit or make the levy.

In direct response to your questions:

1. It is our opinion the Board of County Commissioners can eliminate the three-quarters of a mill levy on their own prerogative by resolution. They may also reduce the levy to less than three-quarters of one mill without eliminating the levy completely.
2. In view of our reply to the first question there would appear to be no need to answer the second question. We note, however, there is no provision for submitting the question of discontinuing the levy to the voters. This is a determination to be made by the county commissioners.

HELGI JOHANNESON
Attorney General