

**OPINION
70-119**

January 16, 1970(OPINION)

Mr. Russell Staiger
Planning Administrator
North Dakota State Planning Agency

RE: Counties - Planning and Zoning Activities - Mill Levy

This is in response to your request for an opinion as to whether or not the provisions of Chapter 386 of the 1969 Session Laws, and specifically the levy in the amount of one mill authorized therein, is available to the County Planning Commission.

Chapter 386 is now codified as Chapter 40-57.2 of the North Dakota Century Code. Section 40-57.2-03 thereof sets forth the legislative intent as follows:

"DECLARATION OF LEGISLATIVE INTENT. It is hereby declared to be the intent of the legislative assembly to promote the growth and development of small industry, and to assist in the creation and expansion of local skills and talents in North Dakota."

It should be noted that Chapter 40-57.2 is designed to stimulate and promote industries and commercial development, whereas Chapter 11-33, of which Section 11-33-18 is a part thereof, provides merely for the making of plans for the orderly growth development. The latter concerns itself primarily with zoning and matters immediately related thereto.

As you mention in your letter, Section 11-33-18, amongst other things, provides that the Board of County Commissioners is further empowered to appropriate out of general funds of the County, such money as may be necessary for the purposes of this chapter. This, in effect, authorizes the County Commissioners to budget those funds needed to carry out the provisions of Chapter 11-33.

The levy authorized under Section 40-57.2-04 is for the specific purpose of promoting and developing small industries. While there might be a similarity and a compatible objective, we cannot as a matter of law say both provisions of law are substantially similar so that the funds raised for one purpose may be expended for another. In addition to this, Section 175 of the North Dakota Constitution provides that: " * * * No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of same, to which only it shall be applied."

Based on the foregoing, it is our opinion that the funds raised under the provisions of Section 40-57.2-04 may be used only for the purposes set forth in Chapter 40-57.2, and may not be used to supplement the county planning and zoning activities carried out under the provisions of Chapter 11-33 of the North Dakota Century Code.

HELGI JOHANNESON
Attorney General