

OPINION
70-5

September 11, 1970 (OPINION)

Mr. Glenn Dill
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Ward County Courthouse

RE: Ambulances - Tax Levy - Not Excess Levy

This is in reply to your letter of September 4, 1970, relative to a mill levy for ambulance service. You state the following facts and questions:

"I have been requested by the Board of County Commissioners of Ward County to request an official opinion regarding whether sections 57-15-50 and 57-15-51 of the North Dakota Century Code contain authorizations for a levy for city or county ambulance which are over and above the basic mill levy or whether a levy for the purpose specified for those sections would be a part of the basic county or city levy.

"Sections 57-15-08 and 57-15-10 seem to indicate that ambulance levies are not exceptions to taxed levy limitations. Nor is there a specific statement in ambulance levy statutes that those statutes are excess levy statutes such as is contained in section 57-15-52."

Section 57-15-20 of the North Dakota Century Code, as amended, provides:

LEVY AUTHORIZED FOR COUNTY AMBULANCE SERVICE. Upon petition of ten percent of the number of qualified electors of the county voting in the last election for governor or upon its own motion, the board of county commissioners of each county shall levy annually a tax of not to exceed one-half mill on the net taxable assessed valuation of the county, for the purpose of subsidizing county ambulance services, provided that such tax shall be approved by a majority of the voters of the county at a regular or special countywide election."

Section 57-15-51 of the North Dakota Century Code, as amended, provides:

LEVY AUTHORIZED FOR CITY AMBULANCE SERVICE. Upon petition of ten percent of the number of qualified electors of the city voting in the last election for governor or upon its own motion, the governing body of each city in this state shall levy annually a tax of not to exceed one mill upon its net taxable assessed valuation, for the purpose of subsidizing city ambulance services, provided that such tax shall be approved by a majority of the voters of the city at a regular or special city election. Whenever a tax for county ambulance services is levied by a county, any city levying a tax for, or subsidizing city ambulance services, shall upon written application to the county board of such county be exempted from such county tax levy."

As you have noted, sections 57-15-08 and 57-15-10 of the North Dakota Century Code, as amended, specify the tax levy limitations in cities. Neither of these sections exempt the levy made for city ambulance service from the regular city tax levy limitations. Section 57-15-06 specifies the county tax levy limitation and this section does not exempt the levy made for county ambulance service from the regular county tax levy limitation. Subsection 3(d) of this section specifically provides that the mill levy limitation shall not apply to "taxes levied pursuant to any statute which expressly provides that the taxes authorized to be levied therein shall not be subject to the twenty-mill limitations for general and special county purposes." As noted above, the statute providing for a county levy for ambulance service does not expressly provide the tax is not subject to the twenty-mill limitation for general and special county purposes. While a similar provision is not found with respect to cities, it would appear such a provision is not necessary since section 57-15-10 sets forth the exceptions to the tax levy limitations in cities and ambulance service is not among the exceptions. Section

57-15-08 specifies the tax levy limitation in cities shall not exceed the amounts specified therein. The obvious purpose in enacting sections 57-15-50 and 57-15-51 was to permit the county and city to provide or to assist in providing ambulance service to the residents thereof. Without such statutes there would appear to be no authority for the city or county to make a levy for the purpose of contracting for ambulance services for the residents of such city or county. We cannot conclude that the Legislature intended the levy for ambulance service to be in addition to the regular levy for county and city operation since there is no indication of such intent in the statutes.

In view of these facts it is our opinion the levies specified in sections 57-15-50 and 57-15-1 of the North Dakota Century Code, as amended, providing a mill levy for ambulance service in counties and cities, respectively, are a part of the basic county or city mill levy and are not over and above the basic mill levy for the city or county.

HELGI JOHANNESON
Attorney General