

**OPINION
71-428**

May 11, 1971 (OPINION)

Mr. Bruce R. Howe

State's Attorney

Stark County

RE: Taxation - Personal Property Replacement - Reduction of School L

This is in reply to your letter of May 4, 1971, relative to the personal property payback. You state the following facts and questions:

"I have been requested by the Stark County Superintendent of Schools to obtain your opinion with regard to the personal property payback on sinking and interest funds and how this will affect the general fund of a school district.

"In other words, is the amount of payback to be deducted from the general fund levy by the county auditor?

"If there are districts who are to deduct and other districts not required to do so, which districts do not have to deduct this amount from the general fund?

"Further, is there any specific wording that can be used in the school district budgets to eliminate the deduction of the general fund levy by the amount of the payback?"

Your questions have reference to House Bill 1521 enacted by the 1971 Legislative Assembly and effective on July 1, 1971. This bill provides:

"COUNTY AUDITORS TO REDUCE CERTAIN LEVIES. If any political subdivision which has an existing bonded indebtedness for which a tax levy must be made does not reduce its levy for current operating purposes as provided in section 57-58-01, the county auditor of the county in which the political subdivision is located shall, after receiving the budget for such political subdivision, reduce the levy for current operating purposes by the amount which such political subdivision's tax levy on taxable property for the retirement of bonded indebtedness is increased because of the exemption of personal property from taxation."

Section 57-58-01, as amended by House Bill 1177, an emergency measure effective March 30, 1971, provides in part:

"It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter, shall reduce its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for

retirement of the bonded indebtedness is increased because of the exemption of personal property by subsection 25 of section 57-02-08."

The reason for such provision is, of course, that section 57-58-01, in prescribing the formula for personal property payback, provides:

"Any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, shall be credited to the general fund of the political subdivision."

Since the levy for payment of bonded indebtedness must be made, by statute, on property, the repeal of the personal property tax automatically caused an increase in the levy on real property and any other taxable property in order to obtain the funds necessary for the sinking and interest fund for that year. Thus the sinking and interest fund had no deficit because of the personal property tax repeal. In order to alleviate the burden on real property (which carried a greater levy for the sinking fund in order to compensate for the repeal of personal property tax), the Legislature provided the replacement money should be placed in the general fund of the political subdivision and the levy for the general fund reduced accordingly.

Section 57-58-01, when enacted in 1969, provided for the political subdivision to reduce the levy for the general fund in the manner prescribed above. However no authority was given to the county auditor to reduce the levy if the political subdivision did not do so. We understand that some political subdivisions did not, in fact, do so. House Bill 1521 now provides that if the political subdivision fails to reduce the levy as required by statute, the county auditor is to do so.

Insofar as a school district which has an unlimited levy is concerned, we believe the school district must show on the budget submitted to the county auditor that the school district has reduced its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property by subsection 25 of Section 57-02-08. If the school district has done so, the county auditor must levy a sufficient amount of mills to raise the amount certified by the school district. If the school district has not reduced its budget by the amount of the replacement money, the county auditor must deduct such amount from the amount certified and make a levy sufficient to raise the remainder.

However, we cannot arrive at the same conclusion with respect to a school district which has a fixed maximum levy. We believe the intent of House Bill 1521 was, as noted above, to relieve the tax burden on taxable property which was created by the shifting of the tax levy for bonded indebtedness from personal property to the remaining taxable property. Therefore we believe the maximum levy permitted in the school district must be reduced by the amount of the replacement tax if the school district is levying the maximum amount permitted by law. Thus if the maximum permitted levy in the school

district is 34 mills and the increase on the taxable property for retirement of bonded indebtedness is increased by four mills for that year because of the exemption of personal property, the amount to be levied should be reduced by four mills. If the school district does not reduce the amount certified by the amount which would be raised by four mills, the county auditor must do so.

If a school district has a maximum permitted mill levy of 34 mills and certified less than the 34 mills and the increase on taxable property for retirement of bonded indebtedness is increased by four mills for that year because of the exemption of personal property, the amount to be levied should be reduced by four mills. If the school district does not reduce the amount certified by the amount which would be raised by four mills, the county auditor must do so.

This does not mean the school district, in the first example, would receive less than the 34 mills in total, since the amount which the general fund of the school district would receive would be increased by a sum equal to four mills by virtue of the deposit of this amount in the general fund of the district from the replacement tax which is allocated to bonded indebtedness. Thus, assuming that all computations are correct, the school district would receive the same amount of money as if the 34 mills had been levied. Since the school district cannot, in any event, levy more than 34 mills, the school district has not lost any funds. It has not gained any funds but the exemption of personal property from taxation and the replacement of such sums by state appropriation was not intended as a windfall to the political subdivisions. The enactment of House Bill 1521 makes this evident.

With this background we shall consider the questions presented.

In regard to your first question, i.e., is the amount of payback to be deducted from the general fund levy by the county auditor, the answer is yes, unless the political subdivision has done so already.

With respect to your second question, each district which has bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter is required to reduce its levy for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property from taxation. If the district fails to do so, the county auditor must make the reduction as provided in House Bill 1521. If a district does not have bonded indebtedness, there is, of course, no payback for same, no deposit into the general fund of the district for same, and no reduction in the general fund levy is required.

With respect to your third question, i.e., is there any specific wording that can be used in the school district budget to eliminate the deduction of the general fund levy by the amount of the payback, there is no such wording. The reduction of the levy is required by law and House Bill 1521 merely provides that if the political subdivision does not do so, the county auditor must do so.

I trust this will adequately set forth our position on the matter presented.

HELGI JOHANNESON

Attorney General