

**OPINION
71-463**

August 23, 1971 (OPINION)

Mr. Linn Sherman

State's Attorney

Kidder County

RE: Townships - Levy for Debt - Amount

This is in response to your letter in which you state the following:

Under the terms of Section 57-15-30.1 of the 1971 pocket supplement to the Century Code, when a township is indebted to the county, and the debt is more than one year past due, the county commissioners may require the county auditor to levy a tax upon the property within the township sufficient to pay such indebtedness, to be used for that purpose, but in no case shall the total amount of the levy cause the levy for such township to exceed the maximum levy limitation, including excess levy limitations, as provided by law.

When a township is so indebted to the county, and has not voted the 5 mill levy for road purposes as authorized by Section 57-15-19.4, nor an excess levy under the provisions of Section 57-17-06, what is the maximum levy that may be made on the property in this township, including the amount levied for the payment of the county indebtedness? Is it limited to 18 mills, or is it limited to 32 mills, being 18 mills plus 9 mills plus 5 mills, assuming such a levy would be necessary to pay the indebtedness, or would some other limit apply?"

Section 57-15-30.1 was created by Chapter 545 of the 1971 Session Laws: It provides as follows:

TAX LEVY FOR TOWNSHIP DEBT - DUTY OF COUNTY AUDITOR - DUTY OF COUNTY TREASURER. Whenever any township is indebted to the county in which such township is located, and such debt is more than one year past due, the county auditor, upon resolution of the board of county commissioners, shall levy a tax on the property within the township in an amount sufficient to pay the indebtedness, but in no case shall the amount of the levy cause the total levy for such township to exceed the maximum levy limitations, including excess levy limitations, provided by law. The county treasurer shall place the taxes collected to the credit of the county in payment or partial payment of the township's indebtedness."

The language of this section clearly indicates that the Legislature intended to confer power upon the board of county commissioners to levy taxes within the township if it is indebted to the county, but apparently is not doing anything to reduce the indebtedness.

The language "but in no case shall the amount of the levy cause the

total levy for such township to exceed the maximum levy limitations including excess levy limitations," clearly indicates that the Legislature intended that the levy which may be imposed by the board of county commissioners could be as high as the maximum levies may be made according to law and including in such maximum all excess levies which are authorized by law.

In exploring the various possibilities, we are convinced that the Legislature meant to include all special type levies as well as excess levies. We are further inclined to believe that if the indebtedness arises out of a certain program for which a special levy is authorized but is not made, the county commissioners may include such special levy to collect the debt.

As an example of the different types of levies, Section 57-15-20 authorizes a general mill levy of 18 mills. Section 57-15-19.4 authorizes a special 5 mill levy for roads. There are, of course, other special mill levies. Section 57-17-06 authorizes an excess levy of 50 percent. Thus, 50 percent of an 18 mill levy would be 9 mills.

The apparent underlying purpose of Section 57-15-30.1 was to authorize the county to make a levy if the township is indebted to the county but does not spread a levy as authorized for such purpose. If the township is indebted to the county, for example, for road purposes, but the township has not levied the 5 mill special levy, at that point the county could levy the 5 mill levy and in addition thereto an excess levy as authorized by Section 57-17-06.

This section also contemplates that the township must levy a tax in accordance with its authority if the township is indebted to the county and failure to do so, the county may levy the taxes.

It is therefore our opinion that if a township is indebted to the county for a certain purpose for which the township is also authorized to spread a special levy but failed to do so, the county commissioners may spread such levy and in addition thereto spreading excess levies as authorized by law.

It is our further opinion that if a township is indebted to the county and there is no special levy authorized, the county commissioners may only spread an excess levy as authorized under Section 57-17-06. By way of example, if the indebtedness is the result of road construction by the county, and the township was levying only 18 mills but was authorized to levy 5 mills for road purposes, the county commissioners could levy a total aggregate of 32 mills (18 mill levy by the township, 5 mill special road levy, 9 mills excess levy).

HELGI JOHANNESON

Attorney General