

**OPINION
71-465**

October 8, 1971 (OPINION)

Mr. Joseph C. McIntee

State's Attorney

McHenry County

RE: Townships - Levy for Debt - Unorganized Townships

This is in response to your letter of September 20, 1971, wherein you make request of this office for an opinion regarding the provisions of Section 57-15-30.1 of the North Dakota Century Code, as amended. You submit the following facts and question in your letter:

"The Board of County Commissioners of McHenry County, North Dakota, have requested through my office, an opinion from you relative to the above captioned section, which is entitled: TAX LEVY FOR TOWNSHIP DEBT - DUTY OF COUNTY AUDITOR - DUTY OF COUNTY TREASURER.

"With reference to the above entitled statute, I give you the following set of facts: During the past several years, two unorganized townships in McHenry County have incurred debts in connection with building roads in their townships. Since the County Board is the governing body of the unorganized townships, they caused to be constructed certain roads. The cost of such road building was in excess of \$6,000.00, of which no part has been paid to the County. The two unorganized townships in question are presently levying 14 mills, which is the maximum that they can levy by law.

"Very recently, there was published in the Minot Daily News and in the August 27, 1971, issue thereof, a news item from your office which in substance stated that where a township is indebted to the County and fails to pay an authorized tax increase to pay its debt, the County may spread such a levy in addition to any authorized levies. The news items went on to explain that if such indebtedness was 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, that the County Commissioners could levy a total of 32 mills, which total would include the 18 mills levied by the township, 5 mill special road levy and 9 mills excess levy.

"My question now is whether or not such road levy and such excess levy can be placed against the unorganized townships, that is to say, in addition to the 14 mill limitation, could there be added the 5 mill road levy and the 9 mill excess levy for a total maximum levy of 28 mills."

Initially, we assume that the opinion to which your letter of inquiry refers is that opinion issued August 23, 1971, addressed to Mr. Linn Sherman, State's Attorney, Kidder County, Steele, North Dakota. We

are enclosing a Xerox copy of same for your interest.

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 initial 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."

With regard to unorganized townships, such as the subject of your inquiry, we would note the provisions of Section 57-15-22 of the North Dakota Century Code, as amended, which provides as follows:

"TAX LEVY LIMITATIONS IN UNORGANIZED TOWNSHIPS. Tax levies in unorganized townships shall be limited as follows: The total tax levied by the board of county commissioners in any unorganized township for the construction, maintenance and improvement of any roads and bridges shall not exceed fourteen mills on the dollar of the net taxable assessed valuation of the township, but this shall not prohibit the levy of general county road and bridge taxes in such unorganized township."

In this connection, we would note that there does not appear to be any provision of the authorization of excess levies in unorganized townships. In the case of unorganized townships, as you have noted in your letter, the board of county commissioners is the governing body of an unorganized township. In that connection we would draw the line between the application of the statute providing for the tax levy for the township debt in the case of an organized township with its board of supervisors as a governing body and the case of an unorganized township where the board of county commissioners constitute the governing body. In that light we would quote from our August 23, 1971, opinion, wherein we stated:

"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."

In other words, it becomes apparent that the purpose of that statute is to insure that the township will levy sufficient tax to pay the indebtedness to the county. In the case of an unorganized township, however, where the board of county commissioners is the governing body of such township, it would seem that they are then limited to the levy as prescribed by Section 57-15-22, i.e., fourteen mills, regardless of indebtedness of the township to the county. The statute merely grants the board of county commissioners the authority to spread a levy which the governing body of a township may fail to do. In the case of an unorganized township, the county commissioners incurred the debt by their determination and action, there existing no other governing body of such township and to fail to make such levy and in essence, to provide otherwise would be tantamount to authorization for the board of county commissioners to supersede their own authority by passing a resolution to authorize an additional levy to that which is permitted by Section 57-15-22.

For the foregoing reasons we are compelled to the conclusion that Section 57-15-30.1 applies only in the instance of organized townships in accordance with and in the manner presented in the opinion of this office dated August 23, 1971, and does not apply in the instances of unorganized townships, such being limited by the provisions of Section 57-15-22 of the North Dakota Century Code, as amended, to fourteen mills on the dollar, in addition to additional levy of general county road and bridge taxes, if such be the case.

It is therefore our opinion that the county auditor, upon resolution of the board of county commissioners, may not levy a tax on the property of an unorganized township pursuant to the provisions of Section 57-15-30.1 of the North Dakota Century Code, as amended, for the purpose of paying the indebtedness of that unorganized township to the county.

We trust that the foregoing will adequately state our opinion on the subject of your inquiry.

HELGI JOHANNESON

Attorney General