

**OPINION
66-151**

August 1, 1966 (OPINION)

Mr. Herman Weiss

City Attorney

Jamestown, ND

RE: Park Districts - Excess Levies -

Procedure

Jamestown Park District Mill Levy Increase

This is in response to your letter in which you state that the Park Commissioners in City of Jamestown are contemplating submitting to the electorate the question of increased tax levies for park purposes as permitted under section 57-15-12(3) of the North Dakota Century Code. You observe that there is no specific procedure set out in this section, whereas in other provisions of the Code the procedure is set out of school districts, counties, and municipalities as to how the increase tax levies are accomplished. You then ask what is the proper procedure to be followed with reference to park districts.

Section 40-49-18 of the North Dakota Century Code provides as follows:

"GENERAL CODE PROVISIONS TO GOVERN PARK DISTRICTS. Except as otherwise provided in this chapter, the board of park commissioners and its officers and the park district shall be governed, in the issuing of warrant and certificates of indebtedness and in the levying of any tax or special assessment, or in carrying out, enforcing, or making effective any of the powers granted in this chapter, by the provisions of the laws of this state applicable to municipalities of the kind in which the park district is established."

Under the above provisions, because it is not otherwise provided, it becomes quite apparent that the activities of a park district on tax levies are to be governed by the general provisions relating to municipalities in which the park district is located.

Chapter 57-17 of the North Dakota Century Code sets forth the procedure to be followed by municipalities in submitting to the electorate the proposals for increased or excess levies.

It is therefore our opinion that a park district in submitting to the electorate the question of increasing levies must follow the procedures set forth in chapter 57-17 of the North Dakota Century Code.

It is further observed that under chapter 57-17 the resolution to raise or increase the levy must be adopted prior to August 1 to make the levy effective in that year.

Under the provisions of section 57-17-02 it also requires that the election be held not later than September 1. If the resolution or election is not held prior to August 1 and September 1, respectively, it is quite probable that the levy would not go into effect until the year 1967, which would make the revenue of the levy unavailable until the year 1968. However, if this is accomplished prior to those dates the levy could be made in the year 1966 and the proceeds would be available in 1967.

It is generally deemed that the election is only for a certain year, or years. Whether or not the present statutory authority permits a permanent increases or excess levy is somewhat questionable, however, if the matter is brought to the attention of the electorate and the electorage approves the increased or excess levy, it would appear to have satisfied all of the substantial requirements of due process. Under such procedure we believe the levy could be extended for more than one year as a permanent levy - at least until appropriate action is taken.

It is observed that section 57-17-04 sets forth the form of the ballot to be used. If the Park Commissioners intend to make the increased or excess levy applicable for more than one year and be on a permanent status, we believe it would be necessary to provide in the ballot that the levy be annually. This could be accomplished by using the format set forth in the above quoted section with minor modifications.

It is our opinion that if the ballot specifically states that the proposed levy or increases is to be on a permanent basis, that it would be a valid levy.

Sincerely,

HELGI JOHANNESON

Attorney General