

**OPINION
79-34**

October 22, 1979 (OPINION)

Mr. Robert A. Keogh

Slope County State's Attorney

Slope County Courthouse

Amidon, North Dakota 58620

Dear Mr. Keogh:

We have your letter of September 21, 1979, in which you request an opinion as to whether or not the three mill county loan levy that is authorized by N.D.C.C. chapter 57-47 can be spread for 1979 property tax purposes without having been included in the county budget that was adopted by the Slope County commissioners last summer for the fiscal year 1979-1980. You advise that the board of county commissioners is considering making an application for a loan pursuant to chapter 57-47.

You state in your letter that: "The amount of the loan, or the amount to be generated by the three mill levy, was not included in the budget for 1979-80. . ." and you suggest "that the amount to be generated by the three mill levy would not have to be included in the past budget, primarily for the reason that the expenses for which the loan would be used have already in fact been budgeted for, even though it is estimated that the income will be less than the budget expenses."

N.D.C.C. chapter 57-47 authorizes a county to borrow from the Bank of North Dakota whenever the board of county commissioners determines that all taxes authorized to be levied in any one year for general or special county purposes are insufficient to carry on the primary governmental functions or to pay the mandatory obligations imposed by law upon a county - see sections 57-47-01 and 57-47-02.

Sections 57-47-01 and 57-47-04 require the board of county commissioners to levy a countywide tax, not exceeding three mills, for repayment of the loan, which levy must be made upon completion of the loan from the Bank of North Dakota and approval of it by the Industrial Commission. Section 57-47-05 requires a "county loan fund" to be established as a special fund for crediting to it all moneys collected from this tax levy, which fund must be used for the purpose of repaying the principal and interest due on the loan.

N.D.C.C. section 57-15-05 provides that the board of county commissioners shall levy the necessary county taxes on, or within ten days after, the fourth Tuesday of July of each year, which taxes "shall be limited to the amount necessary to be raised for the purpose of meeting the appropriations included in the county budget for the current fiscal year. . ." The last sentence of section 57-15-05 provides that:

The county budget shall show the complete expenditure program of the county for the current fiscal year, and the sources of revenue from which it is to be financed. (Underlining added)

Consistent with this underlined portion of section 57-15-05 are the following provisions of the county budget law in N.D.C.C. chapter 11-23:

11-23-02. AUDITOR TO PREPARE BUDGET OF COUNTY EXPENDITURES. - The county auditor shall prepare annually estimates of county receipts and expenditures for the ensuing year in the form prescribed by the state tax commissioner and state auditor. Such annual budget shall set forth specifically:

* * *

3. The amount required. . .for each and every purpose authorized by law for which it is desired to raise money for the ensuing year including all contemplated undertakings proposed for the ensuing year.

* * *

9. The amount required for all interest and sinking fund purposes for the incoming or ensuing year.

0. The amount required to retire all other indebtedness lawfully incurred and to pay interest thereon.

* * *

Section 11-23-04 of the county budget law provides that after the hearing on the estimates of proposed expenditures and tax levies in the proposed budget the board of county commissioners shall adopt such estimate as is finally determined by it and it further provides that: "All taxes shall be levied in specific amounts and shall not exceed the amount specified in the published estimates."

Section 11-23-05 of the county budget law provides in the last sentence that the board of county commissioners, "on or before the fourth Tuesday in July of each year, shall determine the amount of taxes that shall be levied for county purposes and shall levy all such taxes in specific amounts."

We believe the above provisions of sections 11-23-02, 11-23-04, 11-23-05, and 57-15-05 when considered together clearly require the amount of any county tax levy made pursuant to N.D.C.C. chapter 57-47 to be included in the county budget before it can be spread as a tax levy against the taxable property in the county. Therefore, on the basis of those provisions, the levy must first be included in the county budget before it can be spread unless a specific provision providing otherwise can be found. We have been unable to find any such provision. On the contrary, the last sentence of section 57-47-04 provides with respect to this county tax levy for repaying a loan from the Bank of North Dakota that:

The tax shall be levied and collected at the same time and in

the same manner as other general or special taxes for county purposes are levied and collected.

Because it is the only conclusion that we believe can be justified under these these statutes, it is our opinion that the tax levy authorized by N.D.C.C. chapter 57-47 cannot be spread this year as a tax against the taxable property in your county because the amount of such a levy for that specific purpose was not included in the county budget that was approved this past July or August by the board of county commissioners and no amount was actually levied at that time by the board of county commissioners for that specific purpose.

The tax levy authorized by chapter 57-47 can, of course, be spread as a tax levy in the fall of 1980 if an application for a loan from the Bank of North Dakota is approved by the Industrial Commission in time for the necessary amounts to be included by the county auditor in the county budget estimates next year as provided in section 11-23-02 and if the board of county commissioners then includes an amount for it in the budget estimates it adopts and makes a levy for it, as provided in sections 11-23-04 and 11-23-05.

Sincerely,

ALLEN I. OLSON

Attorney General