

Official Opinion No. 81-10, Imposition of a Mill Levy by a Regional Railroad Authority

March 13, 1981

Mr. James R. Myers
Director
Division of Railroads
Transportation Building
Pierre, South Dakota 57501

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Imposition of a Mill Levy by a Regional Railroad Authority

Dear Director Myers:

You have requested an official opinion from this office in regard to the following factual situation:

FACTS:

Regional Railroad Authorities created pursuant to Chapter 49-17A are authorized pursuant to SDCL 49-17A-22 to certify a maximum four mill tax on their members to support the operating expenses of the authority. With the exception of the limitation placed on the apportionment of the levy certified by a regional railroad authority pursuant to 49-17A-21.1, a levy certified by regional railroad authority would be levied on and against all assessed property located within each member political subdivision.

Situations now exist where a political subdivision, such as a city, is entirely located within another political subdivision, such as a county, and both are members of different regional railroad authorities. Under existing law, it appears that each of the regional railroad authorities may levy up to a maximum four mill tax on each member political subdivision. Where more than one regional railroad authority exists and different political subdivisions are included either as signatory members of the authority or by reason of its situs, questions as to the imposition of a tax levy under 49- 17A-22 have become apparent and require interpretation.

Based on the above facts, you have asked the following questions:

QUESTIONS:

1. Is assessed property of a political subdivision of the State, such as a city, which is a member of a regional railroad authority created pursuant to Chapter 49-17A, and which additionally is wholly located within the territory of another political subdivision of the State, such as a county, which is a member of a separate regional railroad authority, subject to a tax levied by the county pursuant to a certification from its regional railroad authority?
2. Irrespective of the number of regional railroad authorities in which a political subdivision, such as a city, is included, is the assessed property of the city subject to a maximum four mill tax levy for each individual regional railroad authority or is the four mill tax rate a cumulative maximum rate for all of the regional railroad authorities, collectively?
3. Under what circumstances, if any, can the tax liability, imposed on a political subdivision under SDCL 49-17A-22, be limited if the subdivision is a member of or affected by one or more regional railroad authorities?

IN RE QUESTION NO. 1:

A county may levy an assessment for any of the general purposes set forth in SDCL 10-12-21 as well as for a regional railroad authority pursuant to SDCL 49-17A-21 through 24, inclusive. For the reason that a county is an assessment district and will make its tax levies on all assessed property within its boundaries, as defined in SDCL 10-4-1, a county tax levy would be applied to the assessed property of any other political subdivision located within its boundaries. Therefore, the answer to your question is yes, a county levy made pursuant to a certification from its regional railroad authority would apply to and be levied on and against all the assessed property of any city within its boundaries.

IN RE QUESTION NO. 2:

Section 19 of the 1978 Session Laws (SDCL 49-17A-21) creates the power of a regional railroad authority to tax its members 'for railroad purposes' at a rate 'not to exceed the maximum levy permitted by the laws of this state for such purposes.' (Emphasis added.) The emphasis and apparent intent of Section 22 is to establish the purpose for which the tax can be collected and used by a regional railroad authority.

Section 20 of the 1978 Session Laws (SDCL 49-17A-22) provides that a tax ' . . . not to exceed four mills on the taxable valuation of property in such subdivisions, may be used for such purposes.' This is the first reference in state law which authorized collection of a tax 'for railroad purposes.' Section 19 further provides that the maximum four mill tax is ' . . . in addition to all other levies authorized by law . . .' Thus, through Sections 19 and 20, the Legislature clearly authorized the collection of a maximum four mill tax on the assessed valuation of any political subdivision if the tax is used to support 'railroad purposes.'

Chapter 49-17A, in its entirety, was approved by the 1978 Legislature to create a vehicle, the regional railroad authority, through which political subdivisions of the state could address the loss of rail service over lines abandoned by common carriers by financing alternative rail service. It is my opinion that in 1978, the existence or need for multiple regional railroad authorities, within or affecting the same political subdivisions, was not perceived as a possibility.

Therefore, the answer to your question is that the maximum four mill tax levy (SDCL 49-17A-22) should be applied to all regional railroad authorities of which a political subdivision is either a member or in which it is included simply by reason of its situs within the boundaries of another political subdivision. The maximum four mill levy is 'for railroad purposes'; is not determined by the number of regional railroad authorities involved; and is therefore cumulative for all regional railroad authorities levying a tax against the assessed valuation of a political subdivision.

IN RE QUESTION NO. 3:

Your question requires a three-part answer. It is my opinion that:

a) Any political subdivision contemplating membership in or creation of a regional railroad authority may condition its participation on a specified limit of liability under Section 22 by designating its tax exposure in the articles of incorporation creating the regional railroad authority in which it intends to participate. If limited exposure to a mill levy certified by the regional railroad authority is a condition precedent to its participation, any other member of the authority may refuse to accept as a member, the political subdivision seeking limited exposure.

b) Exposure to a tax levy under Section 22 may also be limited by the board of directors of a regional railroad authority after the authority is operational. SDCL 49-17A-21.1

specifically provides that the board of directors of an authority may establish and designate 'zones of benefit or geographical portions of member subdivisions which, in the judgment of the authority, will be or have been benefited by the project.' Under the terms of Section 21.1 any proration would take place after the authority is operational and only if it is necessary to levy a tax to cover an operating shortfall suffered by the regional railroad authority.

c) Tax liability for railroad purposes under Section 22 is ultimately limited to four mills regardless of the number of regional railroad authorities which certify tax levies on or against the assessed valuation of a political subdivision. The problem of apportioning a maximum four mill tax for railroad purposes among regional railroad authorities is a legislative matter which has yet to be addressed.

Respectfully submitted,

Mark V. Meierhenry
Attorney General