

Official Opinion No. 83-40, Application of SDCL ch. 9-21A to Rural Service Districts

November 2, 1983

The Honorable Knute Knudson, Jr.
State Representative
State Capitol
Pierre, South Dakota 57501

Official Opinion No. 83-40

Application of SDCL ch. 9-21A to Rural Service Districts

Dear Representative Knudson:

You have requested my official opinion regarding an interpretation of the taxing and assessment practices to be followed in rural service districts created pursuant to SDCL Ch. 9-21A. You have asked the following questions:

QUESTIONS:

1. If the land is an unorganized township, can the benefit ratio and thus the city mill levy ever exceed zero, since there is no township levy? See SDCL 9-21A-6.
2. In order not to violate 9-21A-6, if there is an organized township, may a municipality determine that the benefit ratio shall be the same as the organized township's levy, or would this amount to an unlawful delegation of powers to the township?
3. This question is similar to number two, except if it is an unorganized township that is adjacent, and assuming that the county levies against that land differently from land within the municipality, (i.e., unorganized road and bridge, fire, etc.), may the municipality determine that the benefit ratio shall be equal to those county levies, or would this be an unlawful delegation by the municipality to the county?

IN RE QUESTION NO. 1:

SDCL 9-21A-6 provides:

The ordinance shall determine that the mill levy and assessed value on the agricultural land annexed shall not exceed the average mill levy and average assessed value on unannexed agricultural land in adjoining townships in the county as long as the annexed agricultural land remains rural property as defined by this chapter.

As an initial matter, it is my opinion that there is a serious deficiency in SDCL Ch. 9-21A insofar as the chapter fails to define the words 'benefit ratio.' A great deal of confusion surrounding this subject could be dispelled through enactment of a legislative definition of those words. In the absence of such a definition, I must agree that benefit ratio and the assessed mill levies must be taken to mean the same thing.

In answer to your specific question, it is my opinion that if all the annexed agricultural land is in an unorganized township, the mill levy will exceed zero if any of the townships adjoining the annexing city or the annexed agricultural land are organized and have a mill levy. In that instance, the organized townships' mill levies must be averaged with the unorganized townships zero levy to establish the statutory limit.

If, of course, all of the townships adjoining the annexing city or annexed agricultural land are unorganized, the mill levy established pursuant to SDCL Chapter 9-21A will be zero, except for the situation described in your Question No. 3.

IN RE QUESTION NO. 2:

In view of my answer to Question No. 1 that the mill levy limitation is determined by averaging all the mill levies in the townships adjoining the annexing city and the annexed agricultural land, it is my opinion that it would be only coincidental if the rural service district levy were equivalent to the levy in any one of the townships.

Moreover, since the levy limitation is the average of several township levies established by several governmental entities, there is no unlawful delegation of powers.

IN RE QUESTION NO. 3

If, as your question suggests, the county imposes special levies on unorganized townships (which levies are not imposed on municipal property or organized townships) and if agricultural land from the unorganized township is annexed, the special county levies must be included in the computation mandated by § 9-21A-6.

Respectfully submitted,

Mark V. Meierhenry
Attorney General