

OFFICIAL OPINION NO. 79-15, Constitutional Tax Limitation Amendment (Chapter 2, Laws of 1977)

May 18, 1979

The Honorable Lars Herseth
State Representative
Houghton, South Dakota 57449

Official Opinion No. 79-15

Constitutional Tax Limitation Amendment (Chapter 2, Laws of 1977)

Dear Representative Herseth:

You have requested my official opinion on the following three questions:

QUESTIONS:

1. May the taxable percentage in a county be increased within the limitations provided for in § 10-6-33 without the consent of the people or two-thirds vote of the Legislature required for tax increases by Section 2 of Chapter 2 of the 1977 Session Laws?
2. May the mill levies in a county, school district, city or town be increased within the limitations provided for in § 10-12-21, § 10-12-31, § 10-12-32 and § 10-12-33 without the consent of the people or two-thirds vote of the Legislature required for tax increases by Section 2 of Chapter 2 of the 1977 Session Laws?
3. Are increases in fees, excise taxes, or ad valorem taxes not specifically stated in Section 2 of the 1977 Session Laws limited by the constitutional amendment?

Chapter 2 of the Session Laws of 1977 was submitted to the electorate in the 1978 general election and was adopted by them, thus amending the state constitution. This article reads as follows:

The rate of taxation imposed by the State of South Dakota on personal or corporate incomes or on sales or services, or the allowable levies or the percentage basis for determining valuation as fixed by law for purposes of taxation on real or personal property,

shall not be increased unless by consent of the people by exercise of their right on initiative or by two-thirds vote of all the members elect of each branch of the Legislature.

The official statement of the Attorney General with respect to this amendment was as follows:

This proposed amendment would:

1. Prohibit the increase of the tax rate on sales, service, income or property taxes, or the increase of allowable levies or percentages for determining values for taxes on real or personal property, unless either of the following occurs.
 - a. The Legislature approves the increase by a two-thirds vote of all the members-elect of each branch of the Legislature, or
 - b. The increase is proposed by an initiated measure and the Legislature approves it by a majority vote of the members-elect (unless a two-thirds majority vote is required by virtue of other constitutional provisions such as Article XII, § 2 of the South Dakota Constitution).
2. Would not apply to the creation of new taxes, or the expansion of the scope of present taxes to cover new areas, but would merely limit the method by which an increase in the rate of taxes or increase in allowable levies or percentages for determining values for taxes could be raised.

The effect of this amendment is to constitutionally limit and make more difficult changes regarding existing taxes resulting in increased tax rates or values.

The amendment addresses several forms of taxation or taxing procedures or limitations and requires that they shall not be increased unless by consent of the people by exercise of their right of initiative or by two-thirds vote of all the members-elect of each branch of the Legislature. These are as follows:

1. The rate of personal or corporate incomes taxes, sales and service tax (SDCL 10-43, 10-45).
2. The allowable levies for the purpose of taxation on real or personal property. SDCL 10-12 contains most of the levy limitation statutes.

3. The percentage basis for determining valuation as fixed by law (SDCL 10-6-33, not to exceed 60%).

There seems to be not much question that the above income and sales taxation and the general levy limitations clearly come under the new constitutional provisions. Difficulty arises in the interpretation of the phrase, "the percentage basis for determining valuation as fixed by law." This must relate either to [SDCL 10-6-33](#) or 10-11-25. Under the latter, county boards of equalization determine the percentage of full and true value to be used as taxable value, against which to apply mill levies. This authority of the county board of equalization was enacted in 1977 by the same session of the Legislature which proposed the constitutional amendment in question here (Chapter 86, Laws of 1977).

Whatever process with respect to percentage changes is restricted by the constitutional amendment, it is the one which is also subject to the right of initiative by the people.

While the people may initiate or refer state matters, SDCL 2-1, municipal matters, 9-20 and county matters, 7-18A, the only legislative body to which this right of initiative applies and which also deals in percentage changes in tax rates or assessments is the State Legislature.

It is my opinion that the whole tenor of the amendment in question is directed to and against the Legislature and not the political subdivisions of this state. In other words, the Legislature may by a two-thirds vote increase mill levy limitations or by a two-thirds vote may raise the level of assessments from 60 to a higher percent, or the people, by initiative, may take that action.

The fixing of the rate of percentage for taxation of property does not rest with the board of county commissioners but under § 10-11-25 it is a duty and power vested in the county board of equalization. The initiative act, § 7-18A, only relates to resolutions of a board of county commissioners and would not cover, therefore, any action of the county board of equalization either through a referendum process or as an initiative act to raise the level of taxation within a county. The language of the amendment so far as the method of increasing tax rates or levies is just not applicable to the procedure introduced by House Bill 508 (Chapter 86, Laws of 1977). While it is meaningless with respect to county equalization board actions, it is operative so far as the State Legislature is concerned.

Therefore, with respect to your questions, it is my opinion:

IN RE QUESTION NO. 1:

That the taxable percentage in the county may be increased within the 60% limitation merely by action of the county board of equalization as set forth in § 10-11-25.

IN RE QUESTION NO. 2:

That mill levies within the legislatively established limitation may be increased by the county auditor. It should be noted that levies are not raised by the board of county commissioners but rather budgets are expressed in dollars. It then becomes merely an administrative function to convert dollars into levies, and this is done by the county auditor pursuant to § 10-17-2.

IN RE QUESTION NO. 3:

That the only limitation on the increase in taxes has to do with personal or corporate income tax or state sales or service taxes. It does not relate to other fees or other excise taxes such as motor fuel taxes, nor would it relate to new or broadened taxes which were not in existence at the time the Legislature proposed and the electorate approved the tax limitation amendment. The people, in other words, were voting to limit the rate of taxation on the form of sales, services or income taxes then in effect, and for me to hold that new forms of taxation or a broadened type of tax comes within this restriction would, in my opinion, be expanding the fair language, meaning and intent of Chapter 2, Laws of 1977.

Respectfully submitted,

Mark V. Meierhenry
Attorney General

MVM:JD:Irt