

AIRPORT AUTHORITY MILL LEVY CERTIFICATION

A bill has been drafted by the Legislative Council for the interim Taxation Committee dated March 2014 that if enacted will take away the right of appointed Airport Authorities to certify their budgets to their appointing authorities for collection within their 4 mill levy limitation pursuant to NDCC 2-06-14. The bill would require an Airport Authority to submit its budget to its appointing body for review and gives the appointing body the power to reduce the budget.

The bill, if enacted in its current form will have, in my opinion, the unintended consequence of putting in jeopardy outstanding revenue bonds issued by an Airport Authority to which all revenues of the Airport Authority including the revenues generated from their mill levy have been pledged as authorized by NDCC 2-06-10. It will also prevent the secure pledging of such tax revenue to future borrowings.

Municipal bond buyers are reluctant to purchase revenue bonds to which the revenue stream pledged to the payment of the debt service on the bonds is not certain. The fact that the appointing governing body would be given the authority to reduce the Airport Authorities budget to amounts less than that which can be raised by the four mill statutory limitation, in my opinion, would render their now certifiable budget unacceptable as a source of debt service payment by the buyers in the municipal bond market. It has been my personal experience as a practicing bond lawyer for 30 years that a secure source of pledged revenue is essential to the sale of municipal bonds.

To create a problem for Airport Authorities in using their limited mill levy to secure borrowings in the legislature's quest to control the expansion of or reduction of tax levies on an entity that is already limited by statute to 4 mills would seem to be unnecessary. Especially, since it has the potential of limiting an Airport Authority's ability to leverage its meager tax revenues.

This memorandum was drafted by Maurice E. Cook, at the request of and acting as a member of the North Dakota Aeronautics Commission. He no longer is engaged in the practice law and this memorandum is issued only to inform Airport authorities of possible complications the bill may create in the issuance of their revenue bonds and may not be relied upon as a legal opinion. The observations of Commissioner Cook and should be discussed with the Authority's bond counsel and financial consultants.