

**LETTER OPINION**  
**96-L-167**

October 1, 1996

Mr. Dennis E. Johnson  
McKenzie County State's Attorney  
PO Box 1288  
Watford City, ND 58854-1288

Dear Mr. Johnson:

Thank you for your letter requesting an opinion to clarify the meaning of the 1995 Legislature's amendments to N.D.C.C. §§ 57-02.1-05 and 57-02.1-06. Specifically, you ask whether the phrase "other than the county" in N.D.C.C. § 57-02.1-06 means that "only the county general fund is not to receive payment or does it mean all county funds are not to receive payment?"

The statutes in question provide:

1. Upon receipt of the decision of the state board of equalization, the director of the game and fish department shall compute the payments due to the counties in which property subject to valuation is located by extending the mill levies which apply to other taxable property in the taxing districts in which the property is located. The mill levies must be extended against the property subject to valuation in the same manner as used for other taxable property in the taxing districts. If the property subject to valuation is leased or held by lease or license from the United States, the director of the game and fish department shall deduct from the payment due to the county any amount paid to that county by the United States or any agency or instrumentality of the United States in lieu of real estate taxes on that property, up to a maximum of seventy-five cents per acre [hectare]. The payments due to each county are the figure determined as herein provided. No county may receive less in these payments for any parcel or tract of land for any year than the county received in payments made pursuant to this chapter for 1974.
2. After computing the payments due to each county, the director of the game and fish department shall remit to the counties the amounts due from the department,

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on or before March first of the succeeding year for which the assessments and valuations were made.

N.D.C.C. § 57-02.1-05 (underlined language 1995 amendment).

The revenue to which the county level of government is entitled must be determined according to the proportion the county mill levy on other real property bears to the total mill levies on real property of each taxing district wherein the property subject to valuation is located. The revenue remaining after apportionment to the county level must be apportioned and distributed among the various taxing districts in which the property for which payments are made is located by the county auditor upon a pro rata basis to be determined according to the proportion the assessed value of the property subject to valuation in each taxing district bears to the total assessed value of all such property subject to valuation within the county. However, if the property subject to valuation is leased or held by lease or license from the United States, the payment made by the director of the game and fish department must be apportioned and distributed among the various taxing districts, other than the county, in which the property for which payments are made is located, by the county auditor upon a pro rata basis to be determined according to the proportion the assessed value of the property subject to valuation in each taxing district bears to the total assessed value of all such property subject to valuation within the county. The amount of revenue allocated to each taxing district in which the property subject to valuation is located must be divided among the various funds of the district according to the proportion that the mill levy for any fund bears to the total of all mill levies spread against other property in the taxing district that is assessed and taxed on an ad valorem basis.

N.D.C.C. § 57-02.1-06 (underlined language 1995 amendments).

The purpose of the 1995 amendments to N.D.C.C. §§ 57-02.1-05 and 57-02.1-06 was to stop the double payments in lieu of taxes (PILTs) which were occurring when the North Dakota Game and Fish Department (Department) paid a PILT to a county (in an amount equal to the fully assessed property taxes) on all land owned and leased by the Department (including land the Department leases from the United

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States Army Corps of Engineers, the Bureau of Reclamation, and other federal agencies) and the federal government paid a PILT to the county on the same property. 31 U.S.C.A. § 6902(a) requires that the federal PILT payment go to the "unit of general local government in which entitlement land is located," which in North Dakota is the county. See 1995 Report of the North Dakota Legislative Council, Natural Resources Committee, p. 216; Hearing on S2074 Before the Senate Comm. on Natural Resources, 54th N.D. Leg. (January 12, 1995) (Statement of K. L. Cool).

On the property for which both the Department and a federal agency pay a PILT, N.D.C.C. § 57-02.1-05 now requires the Department to "deduct from the payment due to the county any amount paid to that county by the United States or any agency or instrumentality of the United States in lieu of real estate taxes on that property, up to a maximum of seventy-five cents per acre [hectare]." N.D.C.C. § 57-02.1-06 was amended so that the remaining PILT the Department pays on the land the Department leases from the United States Army Corps of Engineers, the Bureau of Reclamation, and other federal agencies, goes to "the various taxing districts, other than the county, in which the property for which payments are made is located." The purpose of this amendment, in words of Senator Freborg, was to ensure "that the schools and political subdivisions would receive a portion" of the total combined PILT paid by both the federal agency and the Department on lands leased by the Department from federal agencies. Hearing on S2074 Before the Senate Comm. on Natural Resources, 54th N.D. Leg. (January 19, 1995) (Statement of Senator Freborg).

N.D.C.C. § 57-02-01(9) defines "taxing district" as "a county, city, township, school district, water conservation and flood control district, Garrison Diversion Conservancy District, county park district, joint county park district, irrigation district, park district, rural fire protection district, or any other subdivision of the state empowered to levy taxes."

Because N.D.C.C. § 57-02.1-06 requires that the state PILT received from the Department on land leased from federal agencies "must be apportioned and distributed among the various taxing districts, other than the county," the county may not receive any of the state PILT paid by the Department on land leased from federal agencies. That money is distributed among the remaining taxing districts of the county.

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The county receives all of the federal PILT paid by the United States Army Corps of Engineers, the Bureau of Reclamation, and other federal agencies on property the Department leases from those agencies. 31 U.S.C.A. § 6902(a). This payment is scheduled to increase incrementally on an annual basis from 75 cents for each entitlement acre in 1994 to "93 cents during fiscal year 1995, \$1.11 during fiscal year 1996, \$1.29 during fiscal year 1997, \$1.47 during fiscal year 1998, and \$1.65 during fiscal year 1999 and thereafter, for each acre of entitlement land." 31 U.S.C.A. § 6903(b)(1)(A). Further, 31 U.S.C.A. § 6902(a) states the county discretion to "use the payment for any governmental purpose."

It is therefore my opinion that no fund of the taxing district known as a county may receive any of the PILT received from the Department on land leased from federal agencies. That money "must be apportioned and distributed among the various taxing districts, other than the county." This prohibition applies to all funds levied for county government.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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