

**OPINION
68-425**

July 11, 1968 (OPINION)

Honorable Walter Christensen
State Treasurer

RE: Taxation - Highway Tax Distribution - Time of Payment

This is in response to your letter in which you set forth the following and ask for an opinion thereon:

North Dakota Century Code, Section 54-27-19 establishes a Highway Tax Distribution fund, out of which the State Treasurer is to make allocations to the State Highway Department and to counties in North Dakota.

Our specific question with regard to this law is: Will the normal distribution which will be made during the month of July (consisting of funds which were collected during the month of June) be the final distribution which would be included in the fiscal year ending June 30, 1968? Or should a special distribution of funds, due prior to July first, but collected since that time, be made and should this be included in the distribution for the fiscal year ending June 30, 1968?

If the latter is the case, must a distribution of these funds be made in August and again in September or may these funds be distributed in one final distribution which would probably take place some time in September?"

On June 27, 1968, we wrote a letter to Mr. S. A. Benson, State's Attorney of Bottineau County, Bottineau, North Dakota, which pertained to the distribution of the funds in question. We concluded that the Act contemplates that the revenue developed and received for a given period be allocated to said period. This conclusion is prompted by the provision in the Act which freezes the certain amount which is to be distributed to the county and only after the counties have received an amount equal to an amount they received during the fiscal year ending June 30, 1969, will the cities be entitled to a distribution or allocation of such funds. Thereafter the amounts received over and above are distributed twenty-seven per cent to cities and seventy-three percent to counties.

We also note that the basic provisions of Section 54-27-19, as amended by Chapter 304 of the 1967 Session Laws, require that the State Treasurer distribute such funds quarterly to the counties. We envision no problem with the ordinary quarterly distribution but we do recognize a problem as pertaining to the distribution of the funds developed during the last quarter of the fiscal year because of the formula under which the counties further distribute and allocate the funds to the cities and county.

While the distribution by the county to the county and cities is an obligation of the county, it is necessary and essential that the

State Treasurer in making the distribution to the various counties clearly identifies the quarter during which the revenue was produced as distinguished from the actual time of distribution so that the counties will be adequately informed as to the period such distribution shall be allocated for further distribution.

As we understand the problem, the funds derived during the months of April, May and June but not deposited or placed in the hands of the State Treasurer for further distribution until either July or August gives rise to the problem. In this respect, it becomes very essential to satisfy the formula requirements that the funds be distributed to the counties in such a manner that the counties will unmistakably know to which period these funds belong.

We also realize that this will be a reoccurring problem unless the legislature changes the percentage formula. This is an area in which serious thought should be given in devising a formula which would eliminate the reoccurring problems. As of now, we do not know how great the amount will be which can be classified as "slack" in clearing the records. If such "slack" funds are significant the same should be distributed so that they would clearly come within the period during which they were collected. By the term "slack funds" we mean revenue which was developed during the months of April, May and June, but because of bookkeeping procedures and other procedures are not transferred or deposited with the State Treasurer in July but are deposited at a subsequent date. The "slack funds" in most instances would relate back to the month of June only.

It is therefore our opinion that the distribution should be made as early as possible after July first. It is our further opinion that if the "slack funds" are sizeable and if the distribution for the months of April, May and June would be delayed any further than August, it would be more equitable to make a distribution in July or August and another distribution in September, if all of the revenue was not included in the earlier distribution. In arriving at this conclusion we are aware that this will cause additional administrative work, but we know of no other method which will satisfy the distribution under the formula as now in existence. It might be that some statistical data now being available, the legislature might wish to revise the formula to eliminate the "frozen" amount and then permit a distribution as the funds are received for every quarter.

HELGI JOHANNESON

Attorney General