

Office of the Attorney General
State of North Dakota

Opinion No. 84-33

Date Issued: October 4, 1984

Requested by: Ronald J. Weikum
Elgin City Attorney

--QUESTION PRESENTED--

Whether a city may pay for salary and equipment costs attributable to street maintenance and repairs from its share of highway funds allocated to the city under Section 54-27-19 of the North Dakota Century Code

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a city may pay for salary and equipment costs attributable to the maintenance and repair of its streets from the city's share of highway funds allocated to the city under the provisions of Section 54-27-19, N.D.C.C..

--ANALYSIS--

The limitation imposed upon the cities in the expenditure of funds received under Section 54-27-19, N.D.C.C., is expressed in the last paragraph of that section, where it states:

54-27-19. HIGHWAY TAX DISTRIBUTION FUND--STATE TREASURER TO MAKE ALLOCATION TO STATE, COUNTIES, AND CITIES. . . . The moneys allocated to the incorporated cities shall be distributed to them monthly by the state treasurer and shall be deposited by the cities in a separate fund and shall only be used in accordance with section 11 of article X of the Constitution of North Dakota; provided, that any incorporated city may use such fund for the construction, reconstruction, repair, and maintenance of public highways within or outside such city pursuant to an agreement entered into between the city and any other political subdivision as authorized by section 54-40-08.

Article X, Section 11, of the North Dakota Constitution provides:

SECTION 11. Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft,

after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

A previous opinion of this office to A. W. Wentz, Highway Commissioner, issued October 28, 1957, held that an expenditure of revenues dedicated under Article X, Section 11, of the North Dakota Constitution could be made for the payment of certain employment taxes. The opinion stated, in part, at page 3:

. . . It is highly inconceivable that the provisions outlined in Article 56 [Article X, Section 11, N.D. Const.] 'used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligation incurred in the construction, reconstruction, repair and maintenance of public highways' do not include the employment necessary to carry out these provisions. It must be recognized as a fact that in order to carry out these provisions employment of services is necessary. . . .

In an opinion of this office to Tom Slorby, Ward County State's Attorney (N.D. Atty. Gen. Op. 84-18), issued March 30, 1984, it was held that a county could utilize highway funds derived under Section 54-27-19, N.D.C.C., for the purchase of highway equipment. By the same rationale expressed in that opinion, a city may use funds from the same source to pay for the operating expense of city-owned vehicles incurred engaged in the repair and maintenance of city streets.

The portion of salary expense to be paid from monies received under Section 54-27-19, N.D.C.C., should be based on the ratio between total hours worked and the hours expended on street repair and maintenance. The same principle would apply to vehicle expense.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Myron Bothun
Assistant Attorney General