

OPINION
54-19

June 24, 1954 (OPINION)

COUNTIES

RE: County Road Levy - Distribution to Cities and Villages

You have invited our attention to a declaratory judgment secured by the city of Bismarck in an action brought in the district court, fourth judicial district, before the Honorable Geo. Thom, Jr. The judgment construes chapter 179 of the 1953 Session Laws of North Dakota and provides, in substance, as follows:

That pursuant to the provisions of chapter 179 of the 1953 Session Laws of North Dakota, as said chapter amended and reenacted section 24-0501 North Dakota Revised Code 1943 and pursuant to the tax levied, collected, and being collected by the Defendant under said statute, the Plaintiff is entitled to the possession, ownership and use for the purpose of improvement of the streets and highways within the City, of twenty percent (20%) of the proceeds of the levy as collected on account of real or personal property situated within said city; and is entitled to the possession, ownership and like use of the same percentage of all further funds collected by the Defendant pursuant to said levy or future levies to made under said statute;

It is further ORDERED, ADJUDGED AND DECREED that in the event the Defendant County of Burleigh has transferred since July 1, 1953, or does hereafter transfer the proceeds, in whole or in part, of any tax levied for other purposes, to the "County road fund"; or does hereafter, or has since July 1, 1953, appropriate any tax proceeds levied for other purposes, for expenditure for road and bridge purposes, then, and in that event, the Plaintiff is and will be entitled to the possession, ownership and use for the purposes of improvement of the streets and highways within the City, of twenty percent (20%) of such tax proceeds so transferred or so appropriated to the extent of the proceeds collected on account of real or personal property situated within the boundary of the City.

It is further ORDERED, ADJUDGED AND DECREED that the Treasurer of the County owes a duty to pay over the funds aforesaid, to the Treasurer of the City upon application of said City Treasurer when made in the manner provided in section 11-1306 North Dakota Revised Code 1943.

It is further ORDERED, ADJUDGED AND DECREED that the County Treasurer owes a duty, under the statute here construed, to keep the proceeds of the tax levied under the statute, and the proceeds or tax funds transferred, or appropriated from other funds, for highway and bridge purposes, in a distinct fund to be known as the "County Road Fund"; and that regardless of whether such funds or proceeds have been put into a fund known as the "Road and Bridge Fund" and regardless of what name or designation may have been given to the fund, nevertheless, the Plaintiff, and other municipalities similarly situated, is and are entitled to the possession, ownership and use to

the same extent and manner as hereinbefore specifically set forth.

It is further ORDERED, ADJUDGED AND DECREED that the Court will give to the Plaintiff further and specific relief with regard to the possession of said tax funds if such further relief becomes necessary and if application is made therefor pursuant to the provisions of section 32-2308 North Dakota Revised Code 1943; and that this Judgement is declaratory of the status and rights of the Plaintiff, City of Bismarck, and all other municipalities similarly situated, under the statute construed.

You have asked if this office concurs in the district court's interpretation of the statute.

It is our opinion that the court's construction of this statute is correct.

LESLIE R. BURGUM

Attorney General