

LETTER OPINION
98-L-75

June 8, 1998

Mr. Wayne Hokenson
Manager, Local Government Division
Office of State Auditor
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Hokenson:

Thank you for your letter asking whether it is permissible for a county, through its treasurer, to retain prepaid property taxes (collected in December) and recognize those tax collections only in January and pay them to the political subdivisions entitled to those taxes in February.

As you note in your letter, N.D.C.C. § 11-14-10 states that the treasurer shall make a distribution on or before the tenth working day of each calendar month to the several county funds and taxing subdivisions of all taxes received and of all other funds that are required by law to be distributed.

N.D.C.C. § 11-14-16 states that the county treasurer is to pay over to the treasurer of the state, and to any municipal corporation or organized township, or any body politic, on the order of the county auditor, all moneys received by the treasurer arising from taxes levied and collected belonging to the state, a municipal corporation, an organized township, or school district on or before the tenth working day of each calendar month.

Language in the Code is to be understood in its ordinary sense, unless a contrary intention plainly appears, and the words and phrases used in the Code must be construed according to the context and the rules of grammar and the approved usage of the language. N.D.C.C. §§ 1-02-02 and 1-02-03.

Therefore, the plain language of the two sections of law noted above require that on or before the tenth working day of each calendar month the county treasurer distributes according to those sections "all taxes received" (N.D.C.C. § 11-14-10) and "all moneys received by the treasurer arising from taxes levied and collected" (N.D.C.C. § 11-14-16). The two sections do not provide for employing any accounting technique such as "recognizing the property taxes as

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revenue in January when the taxes become due" such as stated in your letter.

It is therefore my opinion that county treasurers must remit to the political subdivisions entitled thereto on or before the tenth working day of each calendar month all the taxes received or all moneys received by the treasurer arising from taxes levied and collected pursuant to N.D.C.C. §§ 11-14-10 and 11-14-16, without waiting for the prepaid property taxes to become "due." The statutes are based on actual receipt of taxes or actual receipt of money arising from taxes levied and collected.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

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