

N.D.A.G. Letter to Lipp (May 21, 1987)

May 21, 1987

Mr. Walter M. Lipp
Sheridan County State's Attorney
P.O. Box 683
McClusky, ND 58463

Dear Mr. Lipp:

Thank you for your letter of March 16, 1987, regarding in lieu of tax payments that are received by Sheridan County from the Bureau of Reclamation. I apologize for the delay in responding to you.

Specifically, you wish to know whether townships located within Sheridan County are entitled to any of the money that the county receives under the Payment in Lieu of Taxes Act, 31 U.S.C. §6901, et. seq.

A similar question was presented in 1981 N.D. Op. Att'y Gen. 28. In that opinion, it was concluded "that a county commission does not have the authority or power under the statutes of North Dakota to allocate and expend a portion of the funds it receives as 'in lieu of tax' payments from the Bureau of Land Management in favor of local school districts." *Id.* The basis for this conclusion was that there is no statutory authority to make such a distribution and counties "possess only that power and authority which has been granted to them by statute." *Id.* at 29.

Since the issuance of this opinion of the Attorney General, the United States Supreme Court has decided a case regarding the distribution of funds under the Payment in Lieu of Taxes Act. Lawrence County v. Lead-Deadwood Sch. Dist., 469 U.S. 256 (1985). In this case, a school district sought to compel a county to distribute funds received under the Payment in Lieu of Taxes Act in accordance with a South Dakota statute requiring local governments to distribute federal payments in lieu of taxes in the same way they distributed general tax revenues. The Supreme Court held that the state statute was invalid under the Supremacy Clause of the United States Constitution.

The Payment in Lieu of Taxes Act compensates local governments for the loss of tax revenues resulting from the tax immune status of federal lands located in their jurisdictions and for the cost of providing services associated with these lands. In holding that the South Dakota statute constituted an improper interference with this federal program, the Supreme Court stated that "[t]he condition in this instance is that the counties should not be denied the discretion to spend §6902 funds for any governmental purposes. . . ." *Id.* at 269.

It is clear that under Lawrence County, Sheridan County is free to spend these "in lieu" payments in any manner which would foster the congressional intent of ensuring that these funds be made available to meet the demands created by the presence of federal lands within its jurisdiction.

It remains Sheridan County's prerogative to determine whether some of these funds should be further distributed to townships located within the county.

If you wish to discuss this matter further, please do not hesitate to contact me.

Sincerely,

Nicholas J. Spaeth

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