

**OPINION**  
**62-76**

August 1, 1962 (OPINION)

COUNTIES

RE: Mill Levies - Used for Purpose Voted For

Your letter request for an opinion, dated July twenty-sixth, 1962, has been received by this office. Your plan, to reimburse your county fund with moneys from the five mill levy voted upon for farm to market roads, is permissible.

Our Supreme Court in the case of Huber v. Miller, 101 N.W.2d. 136, in construing 57-15-06.3 held that the proceeds from the levy voted upon by the electors of a county is a trust fund and as a trust fund "the levy which they had approved was to be used only in carrying out the program which had been approved, since the law specifically provided '\* \* \* the proceeds of such tax shall be used only \* \* \* for such program which shall be the official county road program'."

Thus it appears that this levy shall not be used for any other purpose than that voted upon by the electors of the county.

Where, however, as in this case, general funds were used to pay for engineering costs on federal aid secondary projects, and the funds were not derived from the five mill levy, voted upon by the county electors, any funds in the five mill levy trust fund may be used to reimburse the county for the expenditure from the general fund. This reimbursement from the special levy to the county general fund to pay for engineering costs for federal aid secondary projects is within the purview of the statute, and is not a transfer from the farm to market fund to the county fund but is a reimbursement for actual expenses sustained during the construction of the farm to market roads - a legitimate object under the statute.

The above being a legitimate purpose, the following would be a purpose not contemplated by the statute. If a county after completing its federal aid secondary projects, as approved by the county electors, has an excess after construction and there are no reimbursements to be made, the fund may not be used for any other purpose than maintenance for the roads constructed and the excess may not be diverted to any other county road fund or general fund for the purposes of constructing or improving or paying engineering costs for any roads not approved.

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