

OPINION
65-186

June 24, 1965 (OPINION)

Mr. Walter Christensen

State Treasurer

RE: Motor Vehicles - Number Plate Fee - Distribution

This is in reply to your letter of June 8, 1965, in which you set forth the following facts and question:

"In view of the change in section 39-04-12, due to the passage of Senate Bill 140 of the North Dakota Century Code, which places all collections and existing balances of the revolving fund in the Motor Vehicle Registration Fund, as of July 1.

"Would the existence of such funds be distributed to the municipalities according to section 39-04-39, subsection B-(2)?"

Section 39-04-12 of the 1963 Supplement to the North Dakota Century Code provides in part, with respect to the additional fee of fifty cents per year to be charged for each registration of a vehicle: "For the purpose of procuring number plates which are treated for increased visibility as hereinbefore provided, an additional fee of fifty cents per year for each registration of a vehicle shall be added to the registration fee, which additional fee shall be deposited by the registrar with the state treasurer. The funds so deposited shall be known as the 'license plate revolving fund' and disbursements therefrom shall be made by warrants drawn by the registrar on vouchers duly approved by the department of accounts and purchases."

Senate Bill 140 amends this provision of section 39-04-12 as follows:

"For the purpose of procuring number plates which are treated for increased visibility as hereinbefore provided, an additional fee of fifty cents per year for each registration of a vehicle shall be added to the registration fee, which additional fee shall be deposited by the registrar in the motor vehicle registration fund in the state treasury."

Section 2 of Senate Bill 140 provides:

"TRANSFER OF FUNDS. All existing balances in the license plate revolving fund on June 30, 1965, shall be transferred by the state treasurer to the motor vehicle registration fund."

Senate Bill 140 is effective July 1, 1965.

Section 39-04-39 of the North Dakota Century Code, as amended, provides:

"DISTRIBUTION OF REGISTRATION FEES COLLECTED. Any moneys in the registration fund accruing from license fees and from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the legislative assembly's appropriation for such purposes, shall be transferred and credited by the state treasurer, as follows:

1. First, nine percent of all fees collected pursuant to subsection 2(a) of section 39-04-19, and fourteen and one-half percent of all fees collected pursuant to subsection 2(b) of section 39-04-19, shall be transferred quarterly to the state highway department for construction and reconstruction of roads on the secondary state highway system, and the balance of such fees shall be transferred in accordance with subsections 2 and 3 of this section;
2. Fifty percent shall be transferred quarterly to the state highway department; and
3. From and after July 1, 1961, the remaining balance shall be distributed as follows:
 - a. An amount equal to the sum credited and transferred to the counties from such fees for the fiscal year ending June 30, 1960, shall be distributed quarterly to the counties of this state in proportion to the number of motor vehicle registrations credited to each county. Each county shall be credited with the certificates of title of all motor vehicles registered by residents of such county; and
 - b. On or before the first day of August of each year all moneys in excess of the amount referred to in subsection 3(a) of this section shall be distributed as follows:
 - 1) Thirty-five percent of such excess to the counties of this state in the same proportions as set forth in subsection 3(a) of this section; and
 - 2) The balance of such excess is hereby appropriated and shall be distributed by the state treasurer and allocated to counties of this state on the basis of the per capita population of all the incorporated cities and villages situated within such county as determined by the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 of the North Dakota Century Code in case of a city or village incorporated subsequent to such census and shall be deposited in a special municipal highway fund of such county, which fund is hereby created, provided however, upon application by any city or village situated within such county, the county treasurer shall disburse to such city or village its proportionate share of

such excess as based upon its population as determined by such census, to be used by such city or village solely for the construction, reconstruction, repair and maintenance of the public highways and streets situated therein. Any city or village which shall fail to make application for its share of such special municipal highway fund prior to June 30th of any year shall forfeit its share to the county for expenditure in accordance with law."

This section requires the state treasurer to transfer and credit the moneys in the registration fund accruing from "license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the legislative assembly's appropriation for such purposes," in accordance with the statute. The duty upon the state treasurer is mandatory. Subsection 1 of the section requires a distribution of nine percent of the fees collected pursuant to subsection 2(a) of section 39-04-19 and fourteen and one-half percent of all fees collected pursuant to subsection 2(b) of section 39-04-19 to the state highway department for construction and reconstruction of roads on the secondary state highway system. Since this fee was collected under the provisions of section 39-04-12, the distribution provisions found in section 39-04-39(1) obviously would not be applicable.

Subsection 2 of section 39-04-39 requires fifty percent of the registration fund to be transferred quarterly to the state highway department. This provision would be applicable to the entire registration fund and would include those funds transferred into the registration fund from the license plate revolving fund on July 1, 1965, since this money would be money accruing from "license fees or from other like sources."

Subsection 3(a) of section 39-04-39 requires a distribution to the counties in an amount equal to the sum credited and transferred to the counties for the fiscal year ending June 30, 1960. Subsection 3(b)(1) requires all moneys in excess of the amount referred to in subsection 3(a) to be distributed prior to August 1st of each year as follows: Thirty-five percent to the counties in the same proportions as established in subsection 3(a) and the balance to the counties for distribution to the incorporated cities and villages within each count on the per capita population of such incorporated cities and villages as determined by the last official regular or special federal census. This provision would be applicable to the entire balance of the registration fund and would include those funds transferred into the registration fund from the license plate revolving fund on July 1, 1965.

Since the moneys in the license plate revolving fund are to be transferred to the registration fund on July 1, 1965, they will become a part of the registration fund. The distribution of the moneys in the registration fund, as provided in section 39-04-39, as amended, is mandatory.

It is therefore our opinion that the motor vehicle registration fund, including the same moneys deposited therein from the license plate

revolving fund on July 1, 1965, pursuant to Senate Bill 140, must be distributed in accordance with the provisions of section 39-04-39 of the North Dakota Century Code, as amended. This includes the distribution to the state highway department under subsection 2 thereof as well as the distribution to counties and municipalities under the provisions of subsection 3(b)(1) (2) thereof.

HELGI JOHANNESON

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