

OPINION
65-250

October 27, 1965 (OPINION)

Mr. J. O. Thorson

State's Attorney

Sheridan County

RE: Schools - Building Fund - Custodian

This is in reply to your letter of October 22, 1965, in which you ask if the county treasurer is required to disburse the building fund tax to the school districts having a population of one thousand or more as well as the sinking funds of such district.

As you note in your letter, section 21-03-40 of the North Dakota Century Code was amended by the 1965 Legislative Assembly to provide that in the case of any municipality having a population of more than one thousand, the treasurer thereof should be the custodian of each of its sinking funds. Prior to this time the municipalities (including school districts) which had a population of more than four thousand were custodians of their own sinking funds.

Section 57-15-17 (1) of the North Dakota Century Code, as amended, governs a school district building fund. This section provides in part:

All revenue accruing from appropriations or tax levies for a school building fund together with such amounts as may be realized for building purposes from all other sources, shall be placed in a separate fund known as a school building fund, and shall be deposited, held or invested in the same manner as the sinking funds of such school district * * * *." (Emphasis supplied)

This section further provides that the proceeds of the fund should be paid out by the custodian thereof only upon order of the school board, signed by the president and clerk of said school district.

This provision thus requires the building fund to be held in the same manner as the sinking fund. Furthermore the Legislature recognized that the same official would not have custody of all the building funds since they used the term "custodian" thereof.

It is therefore our opinion that in school districts having a population of one thousand or more the school district treasurer, rather than the county treasurer, will be custodian of the school district building fund.

HELGI JOHANNESON

Attorney General