

OPINION
65-255

May 20, 1965 (OPINION)

Mr. M. F. Peterson

Superintendent

Public Instruction

RE: Schools - Federal Payments - Disposition

This is in reference to a letter directed to this office by Mr. H. J. Snortland, Director of Finance and Statistics, on May 14, 1965, relative to funds received from the federal government as the state's share of bonuses, royalties, and rentals. Mr. Snortland's letter reads as follows:

We have received a letter from Mr. Walter Christensen, State Treasurer, in regard to the funds received from the federal government in the amount of \$83,358.68. In his letter Mr. Christensen says 'This money is the state's share of bonuses, royalties, and rentals under provisions of section 35 of the Mineral Leasing Act of 2/25/20.'

Section 15-40-22 of the North Dakota Century Code as amended by the 1963 session of the Legislature provides that the money received under the provisions of an Act of Congress of February 25, 1920, Chapter 85, 41 Statutes at Large, page 437, entitled 'An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain' - shall be placed in the general fund of the state. With the remittance, however, a sheet was included showing the distribution of various counties within the state.

Mr. Christensen wishes to know whether this money shall be placed in the general fund for state school aid purposes or if a distribution should be made to the counties as listed on the sheet.

We respectfully request your opinion."

As Mr. Snortland has noted in his letter, section 15-40-22 of the North Dakota Century Code, as amended, provides as follows:

RECEIPTS FROM FEDERAL FUNDS. All moneys paid to the state by the secretary of the treasury of the United States under the provisions of an Act of Congress of February 25, 1920, Chapter 85, 41 Statutes at Large, page 437, entitled 'An Act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain' shall be credited to the state general fund and shall be distributed only pursuant to the terms of this chapter. Such moneys shall be deemed the first moneys withdrawn or expended from the general fund for state school aid purposes."

Section 35 of Chapter 85, 41 Statutes at Large, has been amended and provides in part that the moneys received from sales, bonuses, royalties, and rentals of public lands under certain provisions of the 1920 Mineral Leasing Act shall be paid into the Treasury of the United States. "37 1/2 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after December 31 and June 30 of each year to the state or the Territory of Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys to be used by such state, territory, or subdivisions thereof for the construction and maintenance of public roads or for the support of public schools or other public educational institutions as the legislature of the state or territory may direct; * * * *." (See 30 U.S.C.A. section 191, as amended.)

The North Dakota Legislature has provided, as set forth in section 15-40-22 of the North Dakota Century Code, as amended, for the expenditure of these funds. They are to be deposited in the general fund of the state and used for the public schools of the state. Prior to the amendment of section 15-40-22 in 1963, there was a separate equalization fund into which these moneys were deposited. However the 1963 Legislature abolished the equalization fund and now makes appropriations for state school aid directly from the general fund. Thus section 15-40-22 was amended to provide the receipts from the federal government under the Mineral Leasing Act of 1920 should be deposited in the general fund of the state rather than the state equalization fund. The amendment further provides that the moneys so received shall be deemed the first moneys withdrawn or expended from the general fund for state school aid purposes. Thus the money received from the federal government is to be placed in the general fund and is to be used in making state school aid payments to the public schools under the legislative appropriations for such purpose. The money so deposited in the general fund is considered as being the first moneys expended in making the state school aid payments. The money cannot be used for any other purposes under existing state legislation. The Legislature could, of course, amend the statute and use the moneys for any of the purposes provided in section 35 of the 1920 Mineral Leasing Act, as amended. This they have not done.

As to the reasons for the federal government enclosing the distribution to various counties within the state, we can only speculate. However it would appear reasonable that in certain states the moneys are returned to the counties in proportion to the minerals, etc., which were produced in such counties and from which the payments were derived. Thus such a list would be necessary if the distribution were on such a basis in North Dakota. Since this basis is not used for the distribution of the funds in North Dakota, the list is not necessary for the state. We do not believe the federal government, by enclosing such a list, implied that the money must be distributed in accordance with such list since, as the federal law provides, the manner and purpose for which the moneys are to be expended are left to the legislative direction of the various states. The only limitation is that such moneys must be used for the construction and maintenance of public roads or for the support of public schools or other public educational institutions.

It is our opinion that the moneys referred to above must be deposited

in the state general fund and used for state school aid purposes under the provisions of Chapter 15-40 of the North Dakota Century Code, as amended, and that such moneys may not, under state law, be distributed to the counties as listed on the sheet enclosed by the federal government with their remittance.

HELGI JOHANNESON

Attorney General