

**OPINION
65-32**

August 2, 1965 (OPINION)

Mr. M. F. Peterson, Superintendent

Public Instruction

RE: Bonds - Sinking and Interest Funds - Custodian

This is in reply to a letter dated July 29, 1965, written by Mr. H. J. Snortland, Director of Finance and Statistics of the Department of Public Instruction. Mr. Snortland requests the opinion of this office relative to Section 21-03-40 of the North Dakota Century Code, as amended by the 1965 Legislature. Mr. Snortland's letter reads in part as follows:

"Senate Bill 133 amended Section 21-03-40 of the North Dakota Century Code and reduced the population requirement from 4,000 down to 1,000 persons. The population requirement is to determine who shall have custody of the school districts Sinking and Interest Fund. With the new amendment, the county treasurer is custodian in districts having a population of less than 1,000. The question which is being asked of this office is 'is it mandatory that the school district treasurer become custodian of the Sinking and Interest Fund if the population of the school district is more than 1,000'."

Section 21-03-40 of the North Dakota Century Code, as amended, provides:

"SINKING FUNDS - CUSTODIAN. The county treasurer shall be custodian of each sinking fund for the payment of bonds issued by each taxing district within the county except in case of any city, school district, or park district having a population of more than one thousand. In the case of any municipality having a population of more than one thousand, the treasurer thereof shall be custodian of each of its sinking funds."
(Emphasis supplied.)

In construing a statute the term "shall" is ordinarily considered to be mandatory except where the contrary appears from the content of the statute. We see no basis for applying an exception to the use of the word "shall" in Section 21-03-40, as amended. It is therefore our opinion it is mandatory that the school district treasurer become custodian of the Sinking and Interest Fund if the population of the school district is more than 1,000.

HELGI JOHANNESON

Attorney General