

OPINION
66-283

March 10, 1966 (OPINION)

Mr. Richard B. Thomas

State's Attorney

Ward County

RE: Schools - Special Education Levy - Deposit

This is in reply to your letter of March 4, 1966, relative to the special education fund as governed by Chapter 15-59.1 of the North Dakota Century Code, as amended.

You state Ward county has established such a fund and is making a levy for same. A portion of the receipts of the levy have been invested in certificates of deposit with local financial institutions. The revenue from this surplus has been reinvested in the county special education program. However a question has arisen as to whether or not the revenue produced from the investment should be returned to the county general fund or credited to the county special education fund. It is your opinion that revenue derived from certificates of deposit should be credited to the county special education program rather than the county general fund.

Section 15-59.1-02 of the North Dakota Century Code, as amended, governs, among other things, the additional mill levy for the county special education program. This section provides in part:

* * * If such program and budget are approved by the board of county commissioners, the county commissioners may budget funds from the county general fund or upon approval by a majority of the voters voting on the proposal at an election called by the county commissioners, may levy a tax not to exceed three mills upon all taxable property in the county for the purpose of carrying out such program. Such mill levy shall be over and above any mill levy limitation provided by law and shall be collected and paid in the same manner as are other county property taxes. The county treasurer shall credit the proceeds of the tax levy, together with any other funds received from the state or other sources for special education purposes, to a special education fund. * * *."

If the special education fund is being financed out of the county general fund then, of course, any moneys derived from investments of the funds would inure to the county general fund. However, if the program is being financed by a special mill levy as provided in Chapter 15-59.1, then the interest derived from the investment of any of the proceeds of such levy would inure to the county special education fund since the levy was made for such purpose.

According to your letter, the electors of Ward County have approved a

three mill levy. Therefore the levy is a special levy for county special education and is not a part of the general fund levy. In view of the fact the interest accrues from investment of funds of a special levy made for a specific purpose, it is our opinion the interest should be credited to the county special education fund.

HELGI JOHANNESON

Attorney General