

OPINION
66-67

April 14, 1966 (OPINION)

Mr. Larry M. Hatch

State's Attorney

Emmons County

RE: Counties - Allocation of Motor Vehicle and Gas

Tax - Authority of County Commissioners

This is in response to your letter in which you include some correspondence between a county commissioner and yourself in which the allocation of motor vehicle registration funds and gasoline taxes are discussed.

To summarize, the question presented is whether or not the county commissioners have the authority to allocate and divide among the five districts of the county the funds it receives as its share from the state of motor vehicle fees and gasoline taxes. The funds under discussion are primarily derived from section 39-04-39 and section 57-52-11 of the North Dakota Century Code.

Section 39-04-39, as amended, provides for the distribution of a percentage of said funds to the counties on a population basis. The funds so received by the counties are to be deposited in a special municipal highway fund. Such funds may be further distributed to cities or villages on a population basis, provided application is made by such cities or villages on or before June thirtieth of each year. Failure to make application within the prescribed time constitutes a forfeiture of the funds by such cities or villages. This is the only distribution authorized as pertaining to the motor vehicle registration fees.

Section 57-52-11 provides for the distribution of a percentage of said funds to the counties in the manner and purpose set forth in section 57-54-15, which provides that the distribution be on the basis of motor vehicles registered in the county, but in no event shall a county receive more than it received from it in the fiscal year ending June 30, 1960. It also provides that the excess funds, after the initial distribution, again be distributed on a percentage basis to the counties on a population basis.

The funds referred to by virtue of Article 56 of the North Dakota Constitution are dedicated funds and may be used only for the purposes set forth in said article.

The county commissioners under the provisions of chapter 11-11 constitute the governing body of the county and is the fiscal superintending body of the county. The county commissioners must act as a board, which means that they must act collectively and are not authorized to act individually on county matters. The county commissioners may exercise individual judgment but this is only in

arriving at conclusions during a duly constituted meeting. Any action taken by individual commissioners which is not the result of action of the board is vulnerable to attack. (See Rolette State Bank v. Rolette County, 56 N.D. 571, 218 N.W. 637; State ex rel. Kopriva v. Larson, 48 N.D. 1144, 189 N.W. 626.)

The statutes under which the funds are derived provide for the distribution of the funds. No provision is made for the distribution of such funds to commissioner districts, either on an assessed valuation basis or area basis. These funds are for road purposes only.

Chapter 24-05 of the North Dakota Century Code and allied provisions set out the general guides and standards to be followed on the construction of roads within the counties. Such guides and standards are designed to provide a road network which will be helpful to all residents of the county and at the same time provide a network which can be integrated into county road systems of other counties. The responsibility of constructing, repairing and maintaining county roads is vested in the board of county commissioners and not with the commissioner of a separate district.

The statutes related to this subject matter all contemplate that the board of county commissioners act as a body and not individually. It is the responsibility of the board to determine, as provided for in chapter 24-05, which roads and when same shall be repaired or constructed. As such, the board may budget the expenditures on the various roads within the county in accordance with the criteria set forth in chapter 24-05. The board of county commissioners, as any other governmental body or agency, has only such authority as granted to them by the legislature. In our opinion no authority exists for the distribution or allocation of the funds received through the fuel tax or motor vehicle registration fees on the basis of area or assessed valuation.

HELGI JOHANNESON

Attorney General