

**OPINION
67-268**

April 17, 1967 (OPINION)

Mr. Walter R. Hjelle

Highway Commissioner

RE: Taxation - Highway Tax Distribution fund - Time of Distribution

We acknowledge your letter requesting an opinion from this office as to the authority of the State Treasurer to make monthly rather than quarterly distribution of funds under the provisions of House Bill No. 580.

Section 7 of House Bill No. 580 reads in part as follows: "Any moneys in the highway tax distribution fund shall be transferred on a calendar quarter basis by the state treasurer, * * *." It further provides that "Sixty-three percent of such moneys shall be transferred quarterly to the state highway department and placed in a state highway department fund. * * *", and "Thirty-seven percent of such moneys shall be transferred quarterly to the counties of this state.* * *." (Emphasis supplied.)

In order for this office to approve monthly distribution, which you have shown to be extremely beneficial, it would be necessary to construe the word "shall" as directory and not mandatory.

Ordinarily statutory provisions fixing the time for performance of an act are held to be directory only, unless there are negative words restraining the doing of the act at any other time or a penalty is imposed for noncompliance. Such provisions are ordinarily taken to be mandatory where consequences attached to the failure to comply or vested rights are involved. (See 82 C.J.S Section 379-380 and 67 C.J.S., Section 113-114b.) Thus the word "may" sometimes has to be construed as mandatory and the word "shall" construed as directory or permissive.

The purpose and objective of an act can influence the meaning of a word. In this instance it appears that the word "shall" was used to clearly provide that the distribution be made at least every calendar quarter. Consequently, distribution to the Highway Department could be made more frequently than quarterly. However, we must realize other factors are involved as pertaining to the distribution to the counties. The distribution to the counties involves an intricate formula, the data for which we have reason to believe would not be available except on a quarterly or yearly basis. At least it appears that the data could not be compelled to be made available more frequently than on a quarterly basis. The distribution to the Highway Department does not involve this intricate data or formula.

It is therefore our opinion that the State Treasurer may make distribution of said funds to the Highway Department more frequently than once a quarter and may make such distribution on a monthly basis.

It is our further opinion because of the intricate data and formula involved that distribution to the counties would have to be made on a calendar quarter basis.

We also feel obligated, because of the conclusion reached herein, to advise that proper accounting procedures be established to avoid an erroneous application of the percentage to be distributed to the Highway Department.

HELGI JOHANNESON

Attorney General