

OPINION
69-377

October 16, 1969 (OPINION)

Mr. Alph J. Overby

State's Attorney

Griggs County

RE: Taxation - County Emergency Fund - Use for Repair and Replacement
of Bridges

This is in reply to your letter of October 9, 1969, wherein you inquire as to the propriety of a county tax levy for the purpose of establishing an emergency fund. You state the following facts:

During the Spring Flood several of the bridges located on the Sheyenne River were severely damaged and one was damaged to the extent that it could not be repaired. The County Commissioners and the County Road Superintendent met with the State Officials in regard to the emergency fund designated by the Federal Government and it was decided that this bridge should be replaced by a new structure. The time involved to get the proper engineers drawings, advertise and consider bids, and construct the bridge has been more than 60 days, and during the first 6 days following the disaster, it was uncertain what amount would be available from the disaster fund for the replacement of the structure. Therefore we have not placed a resolution in the County Records designating emergency funds for this project. At the present time, it appears that the disaster funds will fall approximately \$18,000.00 short of meeting the needs of repairing damage done by the spring floods and the County Commissioners have inquired whether or not the emergency fund monies can be transferred into the disaster funds to complete the payment due on the new bridge."

Section 57-15-28 of the North Dakota Century Code, as amended, provides in part as follows:

57-15-28. EMERGENCY FUND - COUNTY. The governing body of any county may levy a tax for emergency purposes which shall not exceed the amount produced by the levy of one mill on the dollar of the net taxable valuation of the county. Such emergency fund and the sums therein shall not be considered in determining the budget or the amount to be levied for each fiscal year for normal tax purposes, but shall be shown in such budget as an 'emergency fund', and shall not be deducted from the budget as otherwise provided by law. Each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, shall be covered into such emergency fund, and shall be used only for emergency purposes caused the the destruction or impairment of any county property necessary for the conduct of the affairs of the

county, emergencies caused by nature or by the entry by a court of competent jurisdiction of a judgment for damages against the county. The emergency fund shall not be used for any road construction or maintenance, except for repair of roads damaged by nature within sixty days preceding such determination to expend emergency funds, or for the purchase of road equipment.
* * *."

You state there has not been a determination as yet to expend emergency funds. Since damage to roads by spring flooding would have occurred more than sixty days previous to the determination to expend funds, such emergency funds could not be used for the repair or maintenance of roads within the county. However, the statute does not place a similar limitation on expenditures for the repair or replacement of bridges damaged or destroyed by such spring floods. The bridges in question would apparently be proper subjects of expenditures since they were necessary for the conduct of the affairs of the county and were damaged or destroyed by nature.

It should be noted that Section 24-05-01 of the North Dakota Century Code is applicable in this situation. This section provides that twenty per cent of the proceeds of the county road tax collected on account of real or personal property situated within any city in a county having a population of two thousand or more shall be turned over to the treasurer of the city. Allocation of emergency funds in the same manner is provided by the following excerpt of Section 24-05-01, which states:

* * * The provisions of this section in regard to allocation shall apply to the proceeds of any tax originally levied for other purposes if appropriated or transferred to the county road fund or for expenditure for road and bridge purposes."

Since the proceeds of the emergency fund are to be expended for bridge purposes, allocation to cities within the county as provided by Section 24-05-01 would be necessary.

It is, therefore, our opinion that the repair or replacement of bridges damaged or destroyed by floods is a proper application of emergency funds levied as provided by Section 57-15-28, and that such funds can be applied to the repair and replacement of bridges damaged or destroyed more than sixty days preceding such determination to expend emergency funds, provided that cities receive proper allocations of such funds as provided by Section 24-05-01 of the North Dakota Century Code.

HELGI JOHANNESON

Attorney General