

**OPINION
71-39**

November 12, 1971 (OPINION)

The Honorable Bernice Asbridge

State Treasurer

RE: Cities - Distribution of Tax Funds - Dissolution

This is in reply to your letter of November 9, 1971, concerning the distribution of the Highway Tax Fund and the Cigarette Tax. You state the following facts and questions:

"According to the North Dakota Century Code, the State Treasurer is directed to distribute the Highway Tax Fund (Section 54-27-19) monthly, and the Cigarette Tax (Section 57-36-31) semiannually on a per capita basis to incorporated cities.

"As of November 1, 1971, the city of Werner, North Dakota, was dissolved as an incorporated city.

"This office is in the process of allocating the October collections of the Highway Tax Distribution Fund to the counties and incorporated cities.

"I desire your legal opinion as to what procedure to follow to allocate the various statutory funds - as it relates to nonexisting governments at the time the distributions are made by his office. In the event your opinion includes the nonexisting governments in the distributions immediately following their action to dissolve, to whom shall this office make such payments."

Neither section 54-27-19 nor section 57-36-31 of the North Dakota Century Code are explicit as to what is to be done with the share of money a city would have received had it not been dissolved. However, we do note that both provisions provide for a distribution "to the incorporated cities." If a city is not incorporated, i.e., it has been dissolved at the time of the distribution by your office we must assume no distribution for that city may be made. In the case of the highway tax distribution moneys this would mean the distribution would be made to the county and cities within the county without regard to the dissolved city, i.e., it would be distributed as if the city had never existed. The same would be true of the cigarette tax moneys. In essence we believe the city must be incorporated at the time of the distribution in order for any distribution to be made which would involve such city.

While section 40-53.1-08 of the North Dakota Century Code, as amended, relative to the dissolution of cities, indicates that after all other liabilities of the city dissolved have been paid any remaining funds go to the general fund of the county, we believe this applies only to moneys due and owing the city at the time of dissolution. In this instance the tax moneys to be distributed are

not due and owing until the time of distribution and, since the city was dissolved as of that time, there would be no payment made to any entity in behalf of the dissolved city.

I trust this will adequately express our opinion on the matter presented.

HELGI JOHANNESON

Attorney General