

**OPINION  
72-177**

February 23, 1972           (OPINION)

Mr. Walter Hjelle  
State Highway Commissioner

RE: Highways - Revenues - Use

This is in response to your letter in which you state that North Dakota State University recently completed and published an "Attitude and Perception Study of Rural North Dakota." Excerpts from such publication are attached to your letter. You then state that this prompts you to further explore the possibility of finding a solution to this problem, and for this reason you request an opinion based on the following:

Section 24-02-37 requires that all funds appropriated or transferred to the State Highway Department be commingled in a single State highway fund in the Office of the State Treasurer. This is made up primarily of the funds dedicated for highway purposes by Article 56. In addition, however, it includes revenues itemized in Section 24-02-41, all of which are not in the nature of revenue from gasoline and other motor fuel excise and license taxation or motor vehicle registration and license taxes.

The total of these revenues that are not specifically dedicated by Article 56 is relatively minor but does exceed the sum required to provide the state fund matching required to carry out the cooperative demonstration-research project.

Assuming that records substantiate that adequate revenue, which is not specifically dedicated by Article 56, is received into the State Highway Fund, and assuming a proposed undertaking of the project as described in my August 26, 1971, letter, would you kindly give me a further Opinion as to my authority to participate in or undertake such demonstration and research project."

Section 24-02-37 creates the State Highway Fund. Section 24-02-41 specifies which revenues are to be deposited in such fund. In this respect we recognize that the funds mentioned in Section 24-02-41 are not the same type of funds as those mentioned in Article 56 of the North Dakota Constitution and the mere fact that these funds are commingled does not place them under the same restrictions.

In our examination of the various provisions of Chapter 24-02, North Dakota Century Code, indicates that these provisions were enacted to facilitate the administration and control of the revenues placed into the State Highway Fund.

The revenues derived from the sources indicated in Section 24-02-41 are not per se the same as the revenues dedicated under Article 56 of the North Dakota Constitution. Some of these funds are generated by the expenditure of dedicated funds. In keeping with the provisions

of Article 56 an accurate accounting would be required to disclose the net profit of such generated funds by first deducting the expenditure from the dedicated funds which help produce the generated funds. Only the "net profit" would not be covered by Article 56.

We would also note that under the foregoing conditions the funds mentioned in Section 24-02-41 are not the same as the funds mentioned in Article 56, but this is not dispositive of the question.

Section 24-02-37 not only creates the fund but also states the purposes for which moneys in such fund may be expended and the order of priority. It provides as follows:

STATE HIGHWAY FUND - HOW EXPENDED. The state highway fund, created by law and not otherwise appropriated and allocated, shall be applied and used for the purposes herein named and in the following order of priority:

1. The cost of maintaining the state highway system;
2. The cost of construction and reconstruction of highways in the amount necessary to match in whatever proportion may be required, federal aid granted to this state by the United States government for road purposes in North Dakota; and
3. Any appropriation of the highway fund not allocated as provided in subsections 1 and 2 may be expended for the construction of state highways without federal aid or may be expended in the construction, improvement, or maintenance of such state highways.

All funds heretofore appropriated or hereafter appropriated or transferred to the department, whether earmarked or designated for special projects or special purposes or not, shall be placed or transferred into a single state highway fund in the office of the state treasurer and any claims for money expended by the department upon warrants prepared and issued by the department of accounts and purchases and signed by the state highway fund by the state treasurer; provided, however, that the commissioner shall keep and maintain complete and accurate records showing that all expenditures have been made in accordance with legislative appropriations and authorizations."

We do not find that the proposals submitted come within the broad concepts of Section 24-02-37.

It is therefore our opinion that we cannot approve the proposal as submitted under existing statutes.

HELGI JOHANNESON

Attorney General