

**OPINION
74-280**

March 11, 1974 (OPINION)

Mr. Walter Christensen
State Treasurer
State Capitol
Bismarck, ND 58501

Dear Mr. Christensen:

This is in response to your letter in which you state the following:

"North Dakota Century Code 54-27-19 regarding the Highway Tax Fund Distribution does not outline a specific method for the State Treasurer to use concerning motor vehicle registrations in making a monthly distribution.

"It has been the policy of the State Treasurer's office in the past to use the monthly motor vehicle registration figures supplied by the Motor Vehicle Registrar to compute the monthly Highway Tax Fund Distribution.

"A question arises concerning the motor vehicle registration figures to be used for distributions for the months of January, February and March of any year. There is no problem with the remainder of the year.

"The Motor Vehicle Registrar's figures are compiled on a computer which operates on a calendar year basis. Passenger car registrations are for a one year period from April 1 to March 31. All passenger car registrations prior to January 1 of the following year are therefore not recorded or credited during the months in question. This means a substantial loss of revenue to those counties where a large number of passenger cars were registered prior to January 1.

"For example, using a method which would include passenger car registrations prior to January 1, 1974, Burleigh County government's share for the January 1974 distribution would have been \$162,414.83 as compared to their actual share which was \$132,363.37 or an increase of \$36,917.39. This amount would have been added to the county government's share of Burleigh County's allocation as the cities within this particular county would have received the same amount regardless of the total allocation to Burleigh County.

"In your opinion, does the State Treasurer have the discretionary power to use a cumulative method, a current monthly method, or could a final year end registration figure be used through the months of January, February and March of a given year until passenger car registrations are available?

Subsection 2 of section 54-27-19 states in part that "37 percent of such moneys shall be allocated to the counties of this state in proportion to the number of motor vehicle registrations credited to

each county. Each county shall be credited with the certificates of title of all motor vehicles registered by residents of such county. *
* * "

This clearly indicates that the allocation to the counties is based on the number of motor vehicles registered and credited to the county. While the collection is made monthly, the number of motor vehicles registered is not limited to those registered in the month of distribution, but rather on all motor vehicles registered and credited to the county. In using motor vehicle registration as a factor in the formula, we must assume that the legislature was aware that motor vehicles once registered are so registered for the remainder of the registration period (12 months). Registration is on a yearly basis. A registration is good for the entire registration period which is 12 months. The language "the number of motor vehicle registrations credited to each county" means the accumulated registrations from month to month for the registration period.

It appears the present difficulty stems from or arises because there are two separate registration periods - one for trucks which is from January to January on a calendar year basis and the other is for passenger vehicles from April 1 to April 1 on a 12 month basis. In addition to this, we are advised that the computer is programmed so as to accumulate the registrations for passenger vehicles from January to January which is not consistent with the registration period of April 1 to April 1. Consequently, the computer data for the month of January would show only those vehicles registered in the month of January and the computer data for February would include only those vehicles registered in February plus the vehicles registered in January. It appears quite obvious that this does not reflect the true status of motor vehicle registrations credited to the county.

We have also been advised by the Motor Vehicle Department that a master file or index is available which will show the number of motor vehicles registered in each county. Any vehicle registered would appear in the master file or the index for a period of four to five years. This master file or index would not be an accurate account of motor vehicles registered and credited to the county because it would invariably show a greater amount than those currently existing.

The act clearly directs that the allocation be on the total number of vehicles registered and credited to the county. However, the Legislative did not, as you indicate in your letter, specifically direct that a certain method be used to determine the number of vehicles registered and credited to any county at any given time.

Section 54-27-19 was amended by House Bill 1050, Chapter 427 of the 1973 Session Laws.

The legislature had under consideration an amendment to House Bill 1050 which would have provided that the registrations as determined on June 30 or December 31, whichever was the most recent, be used in determining the number of motor vehicles registered and credited to the county. The proposed amendments as found on page 825 of the Senate Journal of the 43rd session (1972) would have provided for a semiannual determination of motor vehicles registered and would have

provided that such figure would be used in making the allocation to the county. However, this amendment (page 825) was not adopted. See Senate Journal page 888. The mere fact that the legislature had considered other methods of making the allocation and rejected same does not constitute any legal basis or argument for not accepting any logical method indicated by the language used. The mere fact that the legislature had considered other methods of making the allocation and rejected same does not constitute any legal basis or argument for not accepting any logical method indicated by the language used. The mere rejection by the legislature is not conclusive as to the interpretation of the current act (Section 54-27-19 of the North Dakota Century Code). The North Dakota Supreme Court in this respect in the cast of *St. Vincent's Nursing Home v. Department of Labor*, 169 N.W.2d. 456, said that the action of the legislature in attempting to amend the statute could not be taken as proof of what the legislature intended when it passed the original statute and did not establish that the amendment was necessary to reach the result.

From information obtained from the Motor Vehicles Registration Department, we are of the impression that the computer stores the vehicle registrations from month to month in an accumulative manner. The accumulation, however, ceases on December 31. A new period is started on January 1. This method would be reasonably accurate for purposes of section 54-27-19 if both passenger vehicles and trucks had the same registration period, but this is not the case.

We believe that the legislature had in mind when it directed that allocation be made in proportion to the number of motor vehicle registrations credited to each county that the registrations be on an accumulative basis for the registration period. We believe that any method which will accurately reflect the total accumulative registrations from month to month through the registration period would come with the provisions of section 54-27-19 and would satisfy the requirements set out therein.

Because the computer is set up on a calendar year basis and because the registration for passenger vehicles is on a different registration period than trucks which are on a calendar year basis, it will be necessary to modify the computer printouts for the months of January, February and March so as to accurately reflect the true registrations of motor vehicles for purposes of making the allocation of funds.

The present system, as we are informed, is an accumulation of registrations from month to month. Assuming that this is the method employed, you may use the December total for January by adding to the December total any new registrations for passenger vehicles. This number of vehicles, as so determined, plus the number of trucks registered in January would constitute the number of registrations credited to the county upon which allocation would be made to the county for the month of January. A similar procedure would be employed for the month of February; namely, the total registration of the month of December plus the accumulation of registrations for the months of January and February. The total of such passenger vehicle registrations plus the number of truck registrations for January and February would constitute the total number of motor vehicle registrations for purposes of making the allocation for the month of

February. The same type of procedure may be employed for the month of March.

The totals for the month of April would reflect all registrations for the month of April as well as those registrations for January, February and March. Thus, the accumulative total for the month of April for passenger vehicles plus the accumulative total for the number of truck registrations would constitute the total upon which funds would be allocated to the county.

It is therefore our opinion that the method described above would be permissible and be within the provisions of Section 54-27-19, or that any other comparable method which would reflect the true registrations for passenger vehicles and motor vehicles on an accumulative basis for the respective registration periods could be used. As an alternative, the computer could be reprogrammed to accomplish this.

Sincerely yours,

Allen I. Olson

Attorney General