

**LETTER OPINION**  
**80-121**

March 18, 1980 (OPINION)

Mr. John E. Jacobson  
Mercer County States Attorney  
Mercer County Courthouse  
Stanton, ND 58571

Dear Mr. Jacobson:

This is in response to your letter dated January 16, 1980, wherein you state the following:

As you may know, Mercer County presently has three active coal mines. Only one of these coal mines has a tipple within fifteen miles of a non-coal-producing county. We therefore request your opinion on the following question:

Does subsection 3 of section 57-62-02 of the North Dakota Century Code require a county with more than one active coal mine to distribute a portion of the severance tax received by that county from all the mines to an adjoining county, school district and city when the adjoining county, school district and city are within fifteen miles of the tipple of only one of the active coal mines; or should the adjoining county, school district and city receive a portion of the severance tax from only the coal mined at the one mine whose tipple is within fifteen miles of that county, school district or city?

From my reading of this section, it appears that the coal mines should be divided into two categories, as listed under subdivisions a and b of under subsection 3 in section 57-62-02. The divisions of the coal mines within the counties are those who have a tipple within fifteen miles of another county in which no coal is mined and those which do not have any tipple of a currently active coal mine within fifteen miles of a non-coal-producing county. I would imagine that this was the intention of the Legislature since if the non-coal-producing county was entitled to a share of the severance tax from all the mines in the county it would lead to a very unfair situation.

In Mercer County, the tipple of the Consolidated Coal Mine near Stanton, North Dakota, would be approximately fifty miles from the non-coal-producing county of Dunn.

Section 57-62-02 of the North Dakota Century Code provides for the allocation of moneys deposited in the coal development fund established by section 57-61-10 of the North Dakota Century Code. Section 57-61-10 provides:

57-61-10. COAL DEVELOPMENT FUND ESTABLISHED. Moneys collected by the state tax commissioner pursuant to the provisions of sections 57-61-01 through 57-61-09 shall be paid to the state

treasurer and shall be credited to a special fund in the state treasury, to be known as the coal development fund. The moneys accumulated in such fund shall be allocated as provided by law and as appropriated by the legislative assembly. (Emphasis added).

The moneys referred to in section 57-61-10 are collected by the state tax commissioner as a result of the severance tax imposed upon coal by section 57-61-01. Section 57-61-01 provides:

57-61-01. SEVERANCE TAX UPON COAL - IMPOSITION - COMPUTATION OF INCREASES - IN LIEU OF SALES AND USE TAXES - PAYMENT TO THE TAX COMMISSIONER. There is hereby imposed upon all coal severed for sale or for industrial purposes by coal mines within the state a tax in an amount to be determined as follows:

1. Eighty-five cents per ton of two thousand pounds >907.18 kilograms!; and
2. For every four point increase in the index of wholesale prices for all commodities prepared by the United States department of labor, bureau of labor statistics, the amount of the severance tax provided in subsection 1 shall be increased one cent per ton of two thousand pounds >907.18 kilograms!. For the purposes of this computation, a fractional point increase shall be disregarded if less than one-half point and treated as one full point if one-half point or more. The state tax commissioner shall determine such increases based upon increases in the wholesale price index from the level of such index as of June 1979 to the level of such index as of December 1979 and of June and December of each year thereafter, and any increases based upon the level of the index in June shall be effective on and after the following July first and any increases based upon the level of the index in December shall be effective on and after the following January first. At no time shall the amount of the severance tax be reduced. If the wholesale price index declines, the severance tax shall remain at the highest level determined prior to such decline, and shall remain at such level until further increases are warranted because of further increases in the wholesale price index beyond the point at which the last increase was determined.

Such severance tax shall be in lieu of any sales or use taxes imposed by law. Each coal mine owner or operator shall remit such tax for each calendar quarter, within thirty days after the end of each quarter, to the state tax commissioner upon such reports and forms as the tax commissioner shall deem necessary. If the method of determining increases in the amount of the severance tax provided in subsection 2 is for any reason held to be invalid, such decision shall not affect the validity of the amount of the tax provided in subsection 1. (Emphasis added).

The allocation of these moneys is specifically set forth by statute in section 57-62-02 as follows:

57-62-02. ALLOCATION OF MONEYS IN COAL DEVELOPMENT FUNDS.  
Moneys deposited in the coal development fund shall be apportioned quarterly by the state treasurer as follows:

1. Thirty-five percent shall be credited to a special fund in the state treasury for distribution through grants by the coal development impact office to impacted cities, counties, school districts, and other taxing districts, subject to appropriation by the legislative assembly.
2. Fifteen percent shall be credited to a special fund in the state treasury to be held in trust to be administered by the board of university and school lands for loans to impacted counties, cities, and school districts as provided in section 57-62-03. The board of university and school lands shall have full authority to invest such funds as are not loaned as provided in this chapter and may consult with the state investment board as provided by law. The income, including interest payments on loans, from such trust shall be deposited in the state's general fund. Loan principal payments shall be redeposited in the trust fund. Such trust fund shall be perpetual and held in trust as a replacement for depleted natural resources subject to the provisions of this chapter.
3. Twenty percent shall be allocated to the coal-producing counties and shall be distributed among such counties in such proportion as the number of tons >metric tons! of coal severed in each county bears to the total number of tons >metric tons! of coal severed in the state during such quarterly period. Such allocations shall be apportioned as follows:
  - a. If the tipple of a currently active coal mining operation in a county is not within fifteen miles >24.14 kilometers! of another county in which no coal is mined, the revenue apportioned according to this subsection shall be allocated as follows:
    - (1) Thirty percent shall be paid by the county treasurer to the incorporated cities of the county based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
    - (2) Forty percent shall be deposited by the county treasurer in the county general fund to be used for general governmental purposes.
    - (3) Thirty percent shall be apportioned by the county treasurer to school districts within the county on the average daily membership basis, as certified to him by the county superintendent of schools.

- b. If the tipple of a currently active coal mining operation in a county is within fifteen miles >24.14 kilometers! of another county in which no coal is mined, the revenue apportioned according to this subsection shall be allocated as follows:
- (1) Thirty percent shall be paid by the county treasurer of the coal-producing county to the incorporated cities of that county and to any city of a non-coal-producing county when any portion of the city lies within fifteen miles >24.14 kilometers! of the tipple of a currently active coal mining operation in the coal-producing county, based upon the population of each incorporated city according to the last official regular or special federal census or the census taken in accordance with the provisions of chapter 40-02 in case of a city incorporated subsequent to such census.
  - (2) Forty percent shall be divided by the county treasurer of the coal-producing county between the general fund of the coal-producing county and the general fund of any non-coal-producing county when any portion of the latter county lies within fifteen miles >24.14 kilometers! of the tipple of a currently active coal mining operation in the coal-producing county. The non-coal-producing county portion shall be based upon the ratio which the assessed valuation of all quarter sections of land in that county, any portion of which lies within fifteen miles >24.14 kilometers! of the tipple of a currently active coal mining operation, bears to the combined assessed valuations of all land in the coal-producing county and the quarter sections of land in the non-coal-producing county within fifteen miles >24.14 kilometers! of the tipple of the currently active coal mining operation. It shall be the duty of the county director of tax equalization of the coal-producing county to certify to the treasurer of the same county the number of quarter sections of land in the non-coal-producing counties which lie at least in part within fifteen miles >24.14 kilometers! of the tipple of a currently active coal mining operation and their assessed valuations.
  - (3) Thirty percent shall be apportioned by the county treasurer of the coal-producing county to school districts within that county and to school districts in adjoining non-coal-producing counties when a portion of those school districts' land includes any of the quarter sections of land certified by the director of tax equalization to the county treasurer to be eligible to share

county funds as provided for in paragraph 2. The county superintendent of the non-coal-producing counties shall certify to the county treasurer of the coal-producing county the number of students actually residing on these quarter sections lying outside the coal-producing county and each school district in non-coal-producing counties shall receive a portion of the money under this paragraph based upon the ratio of the number of children residing on quarter sections of that school district within the fifteen mile >24.14 kilometer! radius of the tipple of a currently active coal mining operation to the total number of schoolchildren from the coal-producing county combined with all the school children certified to be living on quarter sections within fifteen miles >24.14 kilometers! of the tipple of a currently active coal mining operation in the coal-producing county.

4. Thirty percent shall be deposited in the state's general fund. (Emphasis added).

The revenue to be apportioned according to subsection 3 of section 57-62-02 is twenty percent of the whole of the amount accumulated in the coal development fund established by section 57-61-10 at the time of the quarterly apportionment. subparagraph (b) of subsection 3 of section 57-62-02 refers to ". . .the revenue apportioned according to this subsection . . . ." The "revenue" referred to is twenty percent of the "moneys accumulated" in the coal development fund. Subparagraph (b) provides by law for the allocation to cities, county governments and school districts in both coal-producing and non-coal-producing counties where "the tipple of a currently active coal mining operation in a county is within fifteen miles . . . of another county in which no coal is mined . . ." of twenty percent of the amount accumulated in the coal development fund at the time of the apportionment by the state treasurer.

Where the language used by the legislature in a statute is clear and free from ambiguity, legislative intent must first be sought from the language of the statute. *Apple Creek Township v. City of Bismarck*, 271 N.W.2d. 583, 585 (N.D. 1978); *Monson v. Nelson*, 145 N.W.2d. 892, 898 (N.D. 1966). Section 1-02-05 of the North Dakota Century Code provides:

1-02-05. CONSTRUCTION OF UNAMBIGUOUS STATUTE. When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

Our Supreme Court has stated that "A statute must be construed as a whole, with the view of arriving at the intent of the legislature." *Horst v. Guy*, 219 N.W.2d. 153, 157 (N.D. 1974). The Court has also affirmed the rule of interpretation established in section 1-02-02 of the North Dakota Century Code that "In interpreting a statute words are to be given their plain, ordinary, and commonly understood meaning." *Weber v. State Farm*, 284 N.W.2d. 299, 302 (N.D. 1979).

From our reading of the statutes affecting the allocation of moneys accumulated in the coal development fund it is clear from the language used that the allocation provided by law in subparagraph (b) of subsection 3 of section 57-62-02 is of twenty percent of the whole of "moneys deposited in the coal development fund" at the time of the quarterly apportionment by the state treasurer. Therefore, it is our opinion that the allocation provided for in subparagraph (b) is to be made from all of the revenue received by the county from the state treasurer at the time of the quarterly apportionment. In light of the rules of interpretation set forth by our Supreme Court in the cases cited above, the admitting of more than one meaning to "twenty percent" of the "moneys deposited in the coal development fund" does not arise.

In order to give effect to the result suggested by your reading of these statutes it would be necessary for the legislature to clearly establish a separate and distinct allocation formula from an amount other than that which presently exists in subparagraph (b) of subsection 3 of section 57-62-02. The statute mentions only one amount to be allocated under subsection 3 of section 57-62-02 and that amount is twenty percent of the moneys deposited in the coal development fund and received by the coal-producing counties. For the allocation established by subparagraph (b) of subsection 3 to be derived from some amount less than twenty percent of the whole received by the coal-producing counties from the coal development fund, it is considered that it would have been necessary for the legislature to have clearly stated that a lesser amount was to be allocated. The North Dakota Supreme Court has adopted the general principle of statutory interpretation that "mention of one thing implies exclusion of another." *Dixon v. Kaufman*, 58 N.W.2d. 797 (N.D. 1953). Section 57-62-02 only mentions the allocation of twenty percent of the whole of the amount received from the coal development fund. A lesser allocation requires legislative action.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General