

LETTER OPINION
80-51

January 9, 1980 (OPINION)

Mr. Robert A. Keogh
Slope County State's Attorney
Slope County Courthouse
Amidon, North Dakota 58620

Dear Mr. Keogh:

This is in response to your letter dated December 14, 1979, wherein you request our opinion on several matters respecting the State Revenue Sharing Act, sections 54-27-20.1 through 54-27-20.3 of the North Dakota Century Code. In your letter you state:

Concern has developed with respect to the manner in which the State Treasurer has distributed revenue sharing funds to the counties and townships pursuant to subsection 4 of the above section, particularly to those counties which contain both organized and unorganized townships. It appears that the State Treasurer has determined that in situations where the counties contain only organized townships, the ten percent of allocation figure set forth in subsection 4 was considered to be the maximum allocation to the townships. However, the Treasurer apparently determined that in those situations where counties contain both organized and unorganized townships, the ten percent figure did not apply, and that the distribution was to be determined based upon the total allocation to the county and apportioned out based upon the population of the townships.

The State Treasurer did allocate and distribute the most recent revenue sharing payment to Slope County, which contains both organized and unorganized townships, in the manner above described. I disagreed with that distribution, and have given the County Commissioners my written opinion, a copy of the same being attached hereto for your information.

I have been in contact with State Treasurer, Bob Hanson, both prior to the issuance of my opinion and subsequently, and there appear to be a number of areas in the above section of law which require clarification by means of your opinion.

I request your opinion on the following matters:

1. Whether the opinion I have issued to the Slope County Commissioners is substantially correct.
2. Whether subsection 4 of the above section provides that the maximum allocation to townships is ten percent of the county allocation, whether the county contains all organized townships or a combination of organized and unorganized townships.
3. Whether the "county's share of revenue sharing funds"

referred to in subsection 4 includes amounts allocated to the county pursuant to subsections 1a and 2.

4. Whether the allocation to cities set forth in subsection 1d >sic! applies as the only allocation to which cities are entitled.
5. In what way the population of incorporated cities is to be considered in making the allocation among townships based on population of the townships as compared with the "countywide" area population.

We will respond to your questions in the order presented in your letter.

1. Your opinion dated December 5, 1979, to the Slope County Auditor, gives interpretation to the manner in which county revenue sharing funds are to be distributed pursuant to subsection 4 of section 54-27-20.2. Subsection 4 provides:

If within any county there shall be located townships created pursuant to chapter 58-02, such county's share of revenue sharing funds shall be divided between the county and such townships. The townships shall receive ten percent of the allocations made to such county in the proportion that the population of each township within the countywide area bears to the population of all townships within the countywide area. If the countywide area is not fully organized into townships, the allocation to townships shall be divided between the county government and the townships within the countywide area, in the proportion that the population of the townships bear to the population of the countywide area, and the allocation of the township's share shall be distributed among the townships within the countywide area in the manner otherwise provided by this section. The county treasurer shall transfer the township share of such revenue sharing funds to the respective township or townships. The remainder shall be allocated to the county government, and thereafter shall be considered a part of the initial allocation of the county government.

Your opinion states:

It is my opinion that the county is entitled to, for its general fund, 90 percent of the total amount. The remaining 10 percent is to be divided or allocated to townships in the proportion that the population of each townships bear the population of the entire county. Each organized township shall be entitled to its percentage share of the described 10 percent, and the share for each unorganized township shall be paid over to the county.

It is further my opinion that the allocation formula used by the State Treasurer for Slope County was incorrect and should not be followed by Slope County.

It is my understanding that the State Treasurer's allocation among the townships in Slope County was based upon the conclusion that the second sentence of Subparagraph 4 of the above statute provided a separate allocation formula in cases where there were only organized townships within a county, and that the third sentence provided a separate allocation formula in counties where there were both organized and unorganized townships. My conclusion differs in that I believe the statute provides one formula which essentially allocates an initial 90 percent of the fund to the county, and the remaining 10 percent to be divided among townships, whether organized or unorganized. In those situations where all of the townships are organized, then each township would share in the 10 percent based upon the proportionate population of each township. In those counties where there are both organized and unorganized townships, then the 10 percent allocation to the townships would be divided among both organized and unorganized townships based upon their population, but the share for the unorganized townships would be paid over to the county to be used by it in addition to the initial 90 percent allocation.

We concur with the conclusions in your December 5, 1979, opinion and consider them to be substantially correct.

2. While our answer to your first question answers your second question, we restate our agreement with your conclusion that subsection 4 provides only one designated percentage of funds to be subtracted from a "county's share of revenue sharing funds" for purposes of distribution to townships. A maximum ten percent of the allocations made to a county are made available to the townships. Where a county is fully organized into townships created pursuant to chapter 58-02, the total ten percent amount is to be shared by the townships ". . . in the proportion that the population of each township within the countywide area bears to the population of all townships within the countywide area." Where a county is not fully organized into townships, the ten percent amount designated for townships is to be divided between county government and the organized townships ". . . in the proportion that the population of the township bears to the population of the countywide area." Subsection 4 further provides that the remainder of the ten percent amount not distributed to the organized townships within a county not fully organized into townships is allocated to the county government and becomes a part of the initial allocation to the county government.
3. The "county's share of revenue sharing funds", referred to in subsection 4, is considered to consist of those funds allocated to a county pursuant to subsection 1a and 2b of section 54-27-20.2. We find no other allocation made to the counties that could be considered to be included in a "county's share of revenue funds."
4. Our answer to this question is "no". Cities receive revenue sharing funds pursuant to the allocation provided

in subsection 1b and subsection 2b of section 54-27-20.2. For your information, we are enclosing copies of correspondence dated September 6, 1979, and November 20, 1979, to the State Treasurer which contain discussions of the allocations made to both counties and cities pursuant to the State Revenue Sharing Act.

5. We do not believe that the population of incorporated cities is to be considered in making the allocation among townships provided in subsection 4 of section 54-27-20.1 and discussed above. While subsection 2a of section 54-27-20.2 defines "countywide area" to be the "geographic area of a county", it is considered that the context in which "countywide area" is used in subsection 4 respecting the determination of the proportionate amount of each township's share of the allocation of funds made to townships by that subsection, limits the "population" of the "countywide area" to be considered, for purposes of determining township distribution, to the population of all organized townships in a county fully organized into townships and to the population of organized townships and unorganized township areas in counties not fully organized into townships. The basic ten percent allocation made to townships by subsection 4 consists only of funds originally allocated to counties pursuant to subsection 1a and subsection 2b of section 54-27-20.2. No funds allocated to cities pursuant to subsection 1b and subsection 2b of section 54-27-20.2 are included in the ten percent allocation made and to be distributed to townships pursuant to the provisions of subsection 4. Therefore, it is reasonable to conclude, within the context of subsection 4, that the distribution of funds exclusively derived from a "county's share of revenue sharing funds" to townships within a county not fully organized into townships and the remainder of which is to be allocated to county government should be determined on the basis of a "countywide area" population that does not include the population of incorporated cities.

Where a statute is not clear on its face, legislative history is often available in determining the intention of the legislation. However, since the State Revenue Sharing Act resulted from an initiated measure, we do not have the benefit of legislative committee reports for the purpose of determining legislative intent.

In light of the reasoning discussed above and in the absence of legislative history, it is considered that the interpretation given to subsection 4 by your opinion and the further interpretation given by this opinion is correct. However, as in all such cases, the courts would make the final determination of the statute's meaning and effect if presented with the question in an appropriate proceeding.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General