

Date Issued: March 13, 1981 (AGO 81-24)

Requested by: John Steven Lesmeister, State Treasurer

- QUESTION PRESENTED -

Whether section 15-40.1-13 of the North Dakota Century Code (N.D.C.C.) is consistent with Section 35 of the Mineral Land Leasing Act of 1920 as amended by the Federal Land Policy and Management Act of 1976.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that section 15-40.1-13, N.D.C.C., is consistent with section 35 of the Mineral Land Leasing Act of 1920 as amended by the Federal Land Policy and Management Act of 1976.

- ANALYSIS -

Section 35 of the Mineral Land Leasing Act of 1920, as subsequently amended prior to 1971, granted the states the authority to use the federal money received under the Act "for the construction and maintenance of public roads or other public educational institutions, as the legislature of the State may direct. . . ." 30 USC 181. The Federal Land Policy and Management Act of 1976 (FLPMA) amended Section 35 of the Mineral Land Leasing Act of 1920. Section 317 of FLPMA provides that money paid to any state on or after January 1, 1976, is to be used by the state and its subdivisions "as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by the development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service. . . ." 30 USC 191. (Emphasis supplied).

Section 15-40.1-13, N.D.C.C., authorizes the distribution of this federal money for state school aid purposes. It states:

All moneys paid to the state by the secretary of the treasury of the United States under the provisions of an Act of Congress of February 25, 1920, chapter 85, 41 Statutes at Large, page 437, entitled "An Act to Promote the Mining of Coal, Phosphate, Oil, Oil Shale, Gas, and Sodium on the Public Domain" 30 USC 181 et seq., shall be credited to the state general fund and shall be distributed only pursuant to the terms of this chapter. Such moneys shall be deemed the first moneys withdrawn or expended from the general fund for state school aid purposes.

This section does not specifically state that the needs of those areas socially or economically impacted by the development of minerals leased under the Act of 1920 were given priority; however, sections 57-62-02 and 57-51-15, N.D.C.C., allocate money from the coal development fund and the oil and gas production tax to impacted cities, counties, and school districts. One must assume that the State Legislature considered the needs of

those areas impacted by the development of minerals and viewed the allocations made pursuant to sections 57-62-02 and 57-51-15, N.D.C.C., as adequate to meet those needs.

The House Conference Report No. 94-1724 states that the intent of Section 317 was to permit "the States to use all the funds they receive for any purpose the State legislatures directed, provided priority was given to subdivisions impacted by development of leased minerals." P. 63. Because there are other state statutes which provide funding to impacted areas, it appears that the State Legislature did consider the needs of those areas and determined that additional funding was not necessary under section 15-40.1-13, N.D.C.C.

- EFFECT -

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions the actions of public officials until such time as the question presented is decided by the courts.

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