

Date Issued: January 5, 1984 (AGO 84-1)

Requested by: Ronald G. Splitt, LaMoure County State's Attorney

- QUESTION PRESENTED -

Whether a board of county commissioners may utilize tax revenues generated under an approved, but incomplete, program for the construction of farm-to-market roads authorized by section 57-15-06.3 of the North Dakota Century Code for the maintenance of roads previously constructed under such a program.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a board of county commissioners may not utilize tax revenues generated under an approved, but incomplete program for the construction of farm-to-market roads authorized by section 57-15-06.3, N.D.C.C., for the maintenance of roads previously constructed under such a program.

- ANALYSIS -

A similar question was addressed by the North Dakota Supreme Court in *City of Grand Forks v. Grand Forks County*, 139 N.W.2d. 242 (N.D. 1965). The Supreme Court was asked to respond to a certified question as to whether or not tax moneys collected under the provisions of section 57-15-06.3, N.D.C.C., were to be shared with the city of Grand Forks as provided by section 24-05-01, N.D.C.C. The Court, in responding to this question, stated, in part:

If the questions are approved by the electors of the county, the amount of the levy is not controlled by county mill levy limitations "and the proceeds of such tax shall be used only for matching federal aid available for such program which shall be the official county road program." (Emphasis supplied). This clearly refers to the proposed county road construction program as adopted and approved. Thus the statute clearly limits the use of the tax moneys collect under the levy as matching money to match federal aid available or to be made available for the county road program adopted by the county commissioners, approved by the bureau of public roads and the electors of the county. There is no authority to transfer any of the funds. The statute is restrictive in nature. That this was the legislative intent is crystal clear by Chapter 382 of the Session Laws of 1963. 139 N.W.2d. 242, 249

Since section 57-15-06.3(3), N.D.C.C. was enacted subsequent to the approval of the county farm-to-market road program by the electorate, the reasoning in *City of Grand Forks supra*, would still be controlling on the question presented and the funds could not be used for maintenance or repair purposes.

- EFFECT -

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

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