

Date Issued: January 6, 1984 (AGO 84-2)

Requested by: Charles Gilje
Stutsman County State's Attorney

- QUESTION PRESENTED -

Whether the provisions of section 40-24-10 of the North Dakota Century Code, constitute a general limitation on a county's financial participation in the cost of a paving project initiated under section 11-11-55.1, N.D.C.C.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that the provisions of section 40-24-10, N.D.C.C., do not constitute a general limitation on a county's participation in the cost of a paving project initiated under section 11-11-55.1, N.D.C.C.

- ANALYSIS -

Section 11-11-55.1, N.D.C.C., provides:

PETITION FOR IMPROVEMENTS - LEVY OF SPECIAL ASSESSMENTS. The board of county commissioners of any county, upon receipt of a petition of sixty percent of the landowners in a defined area, outside of the limits of any incorporated city, may install the petitioned improvements, and levy special assessments for the payment of all or part of the improvements within the defined area. In providing for the improvements, the county shall have the authority granted to municipalities in chapters 40-22, 40-23, 40-23.1, 40-24, 40-25, 40-26, and 40-27, and the county shall comply with the provisions of those chapters in making the improvements. Whenever action is required of city officials in those chapters, the comparable county officials shall take the action. (Emphasis supplied).

The material portion of section 40-24-10, N.D.C.C., states:

ONE-FIFTH OF COST OF IMPROVEMENT MAY BE PAID BY GENERAL ASSESSMENT WITHIN CONSTITUTIONAL DEBT LIMIT. Any municipality, at the option of its governing body, may provide for the payment by general taxation of all the taxable property in the municipality of not more than one-fifth of the cost of any improvement financed by the levying of special assessments other than the opening and widening of streets or the laying of sewer or water connections from the main to the curb line.

* * *

The provision in section 40-24-10, N.D.C.C., authorizing the payment of up to one-fifth of the cost of an improvement by a general property tax levy is a grant of authority. It is not construed as a broad limitation making it the exclusive method whereby a county could participate in the cost of a public improvement. If the Legislature had intended section 40-24-10, N.D.C.C., to operate in such a manner, it would not have given the county the broad authority to participate in the cost of such projects in section 11-11-55.1, N.D.C.C. Rather, the Legislature would have simply restricted the county's authority in such matters to the statutory provisions subsequently enumerated in the statutes. Further, in enacting section 11-11-55.1, N.D.C.C., the Legislature would have been aware that the source of moneys for such improvements would not have been exclusively derived from a general property tax.

The moneys available to the county under the provisions of section 24-05-02, N.D.C.C., are generated by a general tax levy on property situated within the county. As such, these funds would be subject to the limited participation established by section 40-24-10, N.D.C.C.

Moneys derived by the county from the highway tax distribution fund, established by section 54-27-19, N.D.C.C., are not generated by a general property tax and are not restricted in their expenditure by section 40-24-10, N.D.C.C. The legislative restriction imposed on the expenditure of these funds is that they be appropriated and used solely for highway purposes pursuant to Article X, Section 11 of the North Dakota State Constitution.

- 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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