

Date Issued: January 27, 1984 (AGO 84-7)

Requested by: Jerome L. Renner, Kidder County State's Attorney

- QUESTIONS PRESENTED -

I.

Whether a board of county commissioners can terminate a county road program enacted under section 57-15-06.3 of the North Dakota Century Code without the approval of the county electorate.

II.

Whether the funds generated under a county road program can be expended for purposes not specified in the county road program.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that a board of county commissioners cannot terminate a county road program enacted under section 57-15-06.3, N.D.C.C., without the approval of the county electorate.

II.

It is my further opinion that funds generated under a county road program cannot be expended for purposes not specified in the county road program.

- ANALYSES -

I.

At the time the voters of the county in question approved the county road program, section 57-15-06.3, N.D.C.C., provided as follows:

COUNTY ROAD PROGRAM INCLUDING FARM TO MARKET AND FEDERAL AID - TAX LEVY. The board of county commissioners of any county in this state may prepare a proposed county construction program of farm to market and federal aid roads on the county road system, setting forth a general description of the roads to be constructed, the location of bridges constituting a part of the program, the approximate total mileage, and the priority of construction. After approval of such program by the department and the bureau of public roads, the board may submit such program to the electors of the county with the question of levying a tax of not to exceed ten mills upon the net taxable assessed valuation of all property in the county for the completion of such program by matching,

from the proceeds of such tax, federal funds available for federal aid, secondary and feeder roads, farm to market roads, and all roads as provided for under Public Law 769, 81st Congress, or future federal aid highway Acts of a similar character. If the majority of the electors voting on the question approved such program and levy, annually thereafter until such program is completed the board shall levy a tax not in excess of ten mills, which levy shall not be subject to the county mill levy limitations, and the proceeds of such tax shall be used, except as herein provided, only for matching federal aid available for such program which shall be the official county road program. Any proceeds of a tax levy in excess of the amount needed to match federal funds in any year may be used by the county, at any time such proceeds may become available, for providing paved or any other type of road surfacing on roads included within the county road program for which the tax levy was originally made. Such paved or other type road surfacing may be used only after the question has been submitted to the electors of the county at a special election called for that purpose by the county commissioners. The use of such excess funds shall be approved by a majority of the electors voting at such special election.

Section 57-15-06.3, N.D.C.C., addresses the termination question by stating that the tax shall be levied annually until the program is complete. It also states that the proceeds from the tax shall be used only to match the federal aid available for the program.

The tax levy is one that is self-imposed by the electorate under section 57-15-06.3, N.D.C.C.

The Legislature has conferred no authority upon boards of county commissioners permitting them to cease the levy or halt the road program. The authority to effect a substantial change in the road program is, by implication, vested in the voters of the county and, therefore, an election is required to terminate the county road program prior to its completion.

II.

In Huber v. Miller, 101 N.W.2d. 136 (N.D. 1960), the North Dakota Supreme Court considered the question of diverting the proceeds from a levy made under section 57-15-06.3, N.D.C.C.

The proceeds of such levy must be used for the particular purpose authorized by the voters. Using the proceeds of such levy for any other purpose would be an unlawful and wrongful diversion of tax monies raised by such levy. 101 N.W.2d. 136, 142.

The rationale of the case is applicable to the question presented and is controlling as to the disposition of the tax moneys. This ruling is consistent with an earlier opinion of this office on a similar question. (See N.D. Attorney General's Opinion 82-24)

- 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 questions presented are decided by the courts or the applicable provisions of law are amended or repealed.

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