

OPINION
46-126

April 26, 1946 (OPINION)

HIGHWAYS

RE: Secondary - Federal Aid

This will acknowledge the receipt of your letter of April 24, 1946, in regard to the construction of so-called secondary federal aid roads by counties.

The question, as I interpret your letter, which you desire this office to answer is, whether the state highway department can designate the part of the allotted secondary road system in a county where federal aid funds shall be spent, or whether the board of county commissioners may in its discretion spend such funds on any part of the allotted secondary system. In your letter you say:

"On the basis of the allocation as made, the county in question has an allowable mileage within its boundaries of 503 miles of highways consisting of both the State and County Federal-Aid Systems. They have an existing mileage of 334. They are therefore allowed an increase of 169 miles. Of the total existing highway mileage, 74 miles are already a part of the County Secondary System. This 74 miles plus the allowable increase of 169 miles will give them a Federal-Aid County Secondary System of 243 miles.

"The County feels that they should have authority to establish a system of, say, approximately 500 miles and to spend the Federal Aid monies on any portion of the System. This, of course, would nullify the entire restrictions imposed by chapter 199, 1945 Session Laws, and we would therefore desire your opinion in the matter."

It is possible that I do not fully comprehend the situation outlined in your letter and the mimeographed explanation of the procedure adopted by the highway department for handling the county federal-aid program which accompanied your letter. But it is my opinion that the purpose of federal aid for secondary roads, as well as primary roads, is to promote the construction of an integrated highway system in each county and that the planning of such system is the responsibility of the state highway commissioner and the board of county commissioners. It is my understanding that federal aid is made available only after highway projects have been first approved by the state highway department and thereafter approved by the federal agency which administers federal aid for highways. If I am correct in this, the expenditures in any county of federal aid funds on any project not approved by the state highway department and the federal authorities would, in effect, constitute a misapplication of federal funds and would jeopardize any future federal aid for the county concerned.

It is, therefore, my opinion that federal aid funds made available to any county must be used for the construction of highways approved by

the state highway commissioner.

NELS G. JOHNSON

Attorney General