

OPINION
46-37

June 6, 1946 (OPINION)

COUNTY COMMISSIONERS

RE: Emergencies - Transfer of Funds

This office is in receipt of your letter of June 5, 1946, in which you say:

"The County Commissioners of Logan County, have found it necessary to purchase trucks and snow removal equipment, because of the strenuous demand made on them by the rural citizens of the county. By reason of this they exceeded their last appropriation for highway purposes, by approximately \$10,000.00.

"Logan County has in its emergency fund, the sum of \$10,964.68, and as I am advised by the County auditor no further levies can be made towards that fund.

"The County Commissioners would like to make a transfer of \$10,000.00 out of this emergency fund, to the credit of the highway fund, with which to pay for these trucks and snow removal equipment, and wish to know if it is legal to do so, under section 11-2307 of the N.D. Revised Code of 1943."

I assume that the trucks and snow removal equipment were purchased last winter in order to keep the roads passable under the difficult conditions of travel, due to the heavy snows. In other words, I assume that obligations to pay for the trucks and snow removal equipment have been incurred and that the vendors of same are pressing for payment.

Whether or not the transfer of moneys from the emergency fund to the state highway fund is authorized by the provisions of section 11-2307 of the revised code is, in my opinion, unnecessary to determine under the facts set forth in your letter. For under the provisions of section 57-1528, "each county may create an emergency fund, and all taxes levied for emergency purposes by any county, when collected, shall be covered into such emergency fund and shall be used only for such emergency purposes as the governing body of the county, by resolution, shall determine, to meet the mandatory obligations of the county."

Transfer of funds from the emergency fund to the highway fund should, of course, have been made when the county commissioners were confronted with the emergency. But since the trucks and snow removal equipment were purchased to meet the emergency highway conditions existing last winter, and since the obligations to pay for same were incurred to meet those conditions, I am of the opinion that the board of county commissioners may, by resolution, set forth the emergency purpose for which the trucks and equipment were purchased and direct the transfer of \$10,000.00 to the highway fund.

NELS G. JOHNSON

Attorney General