

**OPINION
47-225**

December 22, 1947 (OPINION)

TAXATION

RE: Estate Taxes - Refund of Estate Taxes Erroneously Paid

Re: Estate Tax Refund, Estate of Archie F. Simonson. Deceased, Grand
Forks County, N. Dak.

Your letter of December 17 addressed to this office relative to the above entitled matter has been received and contents noted.

It appears from your letter that some time ago Grand Forks County erroneously remitted approximately \$1,421.26 to the State of North Dakota on account of estate taxes in the above entitled estate and that thereafter when the error was discovered the County Treasurer of Grand Forks County attempted to withhold funds belonging to the state in lieu of refund. The County Treasurer, of course, had no authority to withhold the funds of the state to offset a claim which the County might have for overpayment since the County never had any interest in the monies which it is attempting to withhold. The County Commissioners have no authority in such cases to direct the County Treasurer to withhold monies belonging to the State. This was squarely held in the case of State Ex Rel Strutz v. Nelson, Treasurer of Griggs County, 72 N.D. 402. "Where state taxes are collected by a county treasurer and demand is made upon him for the same by the state officers authorized to receive them, he cannot withhold such taxes and apply them in satisfaction of a claim of the county against the state for prior overpayments made to it."

You further inquire whether refunds may be made out of the general fund when there is not sufficient money in the miscellaneous fund.

Under the provisions of Section 186 of the Constitution as amended no money can be paid out of the general fund of the state without an appropriation first being made therefor. However, Section 186 of the Constitution provides: "That there is hereby appropriated the necessary funds required * * * for refunds made under the provision of * * * the estate and succession tax law." This provision would apply in this case.

This question was passed upon in the case of Boe v. Steele County, 74 N.D. 58. The opinion in this case refers to the statute providing for refunds and it also refers to Section 186 of the Constitution as amended in the following language: "Subsequent to its enactment (the refund statute) the people of the state recognized the propriety and validity of claims for refunds for overpayment of the estate taxes and by amendment to the Constitution specifically appropriated the necessary funds required for the payment of valid claims against the state for refunds under the estate tax law."

It is the opinion of this office, therefore, that Grand Forks County may not withhold funds belonging to the state for the purpose of

reimbursement for money erroneously paid to the state, but must present a claim for the refund as provided by the statute governing refunds.

It is further the opinion of this office that when a claim is presented in proper form a refund may be made from the general fund of the state since refunds, for overpayments of estate taxes are specifically covered by Section 186 of the Constitution as amended.

NELS G. JOHNSON

Attorney General