

**OPINION
47-230**

October 18, 1947 (OPINION)

TAXATION

RE: Sales Tax - Allocation of

Your letter of October 15 has been received and contents of same have been noted.

You inquire whether the retail sales tax act passed by the 1947 Legislature is in conflict with chapter 309 of the Session Laws of 1941 and which now appears as section 57-3932.

Chapter 309 of the Laws of 1941 was an amendment of section 25 of chapter 234 which was the sales tax act of 1939. Said chapter 234 extended the operation of the sales tax act for the biennium beginning July 1, 1939, and ending June 30, 1941. Section 25 fixed the method of allocation of the proceeds of the fund and chapter 309 of the Laws of 1941 was an initiated measure providing for the allocation of the proceeds of the sales tax act.

The question is whether or not chapter 344 of the Laws of 1947 may change the method of allocation by majority vote since chapter 309 of the Laws of 1941 was an initiated measure.

It should be borne in mind that the several sales tax acts have been in force only during the biennium following the date of their passage. In other words, these laws have all expired by their own limitation at the end of the biennium.

Referring then to chapter 309 of the Laws of 1941, the same was an amendment of a law that expired by its own limitation June 30, 1943. Consequently, said chapter 309 was no longer in existence. It would follow, therefore, that the sales tax acts enacted subsequent thereto are separate and independent acts and would not, therefore, be affected by the provisions of said chapter 309.

However, chapter 308 of the Session Laws of 1941 which was also an initiated measure would apply to all subsequent sales tax laws so far as the allocation of proceeds are concerned. It provides as follows:

"All moneys coming into the State Treasury from and after the effective date of this Act, as the proceeds of any sales tax heretofore adopted by the Legislature of the State of North Dakota, after deducting actual expenses for administering such Sales Tax Act, shall be placed in a separate fund and no disbursements shall be made therefrom save and except for the purpose of meeting the appropriation for education through the State Equalization Fund and for relief through the State Public Welfare Fund."

The Code Commission refers to chapters 308 and 309 of the Session Laws of 1941 as the source for section 57-3932. However, said section 57-3932 has omitted entirely the provisions of said

chapter 308 and 309 are separate acts and both are initiated measures. There is no conflict between these two acts. Chapter 308 provides specifically that the proceeds of the sales tax acts heretofore or hereafter adopted by the Legislature shall be a separate fund and no disbursements shall be made therefrom save and except for the purpose of meeting appropriations for education through the Equalization Fund and for relief through the State Public Welfare Fund.

As we have pointed out, chapter 309 fixes the proportion of allocation of the proceeds of the sales tax fund. But chapter 309 is no longer in existence. Therefore, the Legislature may change the proportion of allocation but no part of the proceeds of the sales tax fund can be used or expended for any purposes except for education and relief as provided in chapter 308 of the 1941 Laws.

We especially call your attention to section 1-0226 of the North Dakota Revised Code of 1943 which provides as follows:

"Any provision of this code which was enacted as an initiated, or as a part of such a measure, notwithstanding the revision, shall remain in effect as an initiated provision and shall be subject to amendment, reenactment, or repeal only as provided by Section 25 of the Constitution of this state."

In view of the provisions of the statute quoted, the attempted revision by the Code Commission could not affect chapter 308 of the Session Laws of 1941 and it follows, therefore, that the proceeds of any sales tax law can be expended only for the purpose set forth in said chapter 308 since under the specific declaration of section 1-0226, chapter 308 will remain in full force and effect until repealed or amended by a two-thirds majority of the Legislature. This most necessarily be so since chapters 308 and 309 of the Session Laws of 1941 are separate and independent initiated measures and there is no conflict between the two. Chapter 308 specifies that purposes for which the proceeds of sales tax must be expended and chapter 309 while it was in effect provided the proportion of allocation and the fact that chapter 309 is no longer in existence does not in any way affect the provisions of chapter 308.

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