

**OPINION
47-233**

March 12, 1947 (OPINION)

TAXATION

RE: Township Roads - Levy for Surfacing of

This office is in receipt of your letter of March 11, requesting the opinion of this office as to the construction of the provision of Senate Bill No. 98 and House Bill No. 234, both being emergency measures enacted by the Thirtieth Legislative Assembly of the State of North Dakota, your specific question being whether the eight mill levy provided in House Bill No. 234 must be within the ten mill levy provided in House Bill No. 234 and Senate Bill No. 98.

House Bill No. 234, is, as its title recites, an act authorizing the electors of organized townships at their annual meetings by majority vote to provide for a levy not to exceed eight mills upon taxable property within the township, to be used for the surfacing of highways within the township and the fund so created shall remain as a revolving fund for such highway purposes. The county commissioners are authorized to make such levy for unorganized townships.

Section 1 of the act provides that the electors may, by majority vote, authorize a levy not to exceed eight mills upon the valuation of all taxable property within the township the proceeds of which shall be used for the surfacing of highways within such townships.

Section 2 of said House Bill No. 234 provides that the funds so raised in organized or unorganized townships shall constitute a revolving fund to be used for the purposes therein provided.

House Bill No. 234 is an independent act, that is, it does not amend any other statute and it has no reference to the levy limitation in townships, as fixed by Senate Bill No. 98. The house bill authorizes a special levy for a specific purpose as therein defined, and requires a majority vote of the electors at the annual township meeting. Any levy authorized thereunder, therefore, must be in addition to the levy limitation for general township purposes as fixed by Senate Bill No. 98.

Senate Bill No. 98 is an amendment of section 57-1520 of the North Dakota Revised Code of 1943 relating to levy limitations in townships and it provides also for the operation of a special fund which special fund is not to be considered in determining the budget for the fiscal year.

Section 1 of said Senate Bill No. 98 amends section 57-1520 and provides that the total amount of the annual tax levy in a civil township, exclusive of levies to pay interest on any bonded debt, and to provide a sinking fund to pay and discharge the principal thereof at maturity, shall not exceed such amount as will be produced by a levy of ten mills on the dollar of the net taxable assessed valuation.

Section 2 of said Senate Bill authorizes the board of supervisors at the time of the annual township meeting upon resolution to transfer or set aside a part or all of any funds into a special road fund, which shall be separate and distinct from all other funds, but such special road fund shall not exceed the sum of \$1,000.00 for any congressional township.

Section 3 provides that this special fund may be expended at the option of the board of supervisors for the purpose of road construction, graveling or surfacing. Said section also provides that this fund shall not be taken into consideration in determining the budget or the amount to be levied for each township fiscal year for the normal tax purposes but shall be shown in each budget as a special fund and shall not be deducted from the amount of the budget, that is, the special fund thus created is not to be deducted from the amount required to be raised for the normal operating expenditures of the township for the fiscal year.

The fund created by Senate Bill No. 98 from balances in other funds has no relation to the amount that may be levied for the special fund provided for in House Bill No. 234, or the general levy limitation fixed by Senate Bill No. 98, but this special fund is to be used, as we have already pointed out, for road construction, graveling, or surfacing, as the supervisors may determine.

The special fund created by House Bill NO. 234 can be used only for the surfacing of highways within the townships. It will be noted, therefore, that the fund created by Senate Bill No. 98 vests the township supervisors with the discretion of using the fund therein created for the purpose of road construction, graveling, or surfacing, while the fund created by House Bill No. 234 may be used only for surfacing of highways within the townships.

Both of these bills are emergency measures and received the necessary vote for such purpose. House Bill No. 234 was approved March tenth at 11:35 a.m., while Senate Bill No. 98 was approved March tenth at 11:23 a.m. These bills, must, therefore, be considered as contemporaneous bills, since they were approved within a few minutes of each other, and should, therefore, be harmonized, if possible. According to our analysis, these bills are not in conflict with each other, and therefore are in full force and effect from the date of their approval.

NELS G. JOHNSON

Attorney General