

OPINION
58-177

August 9, 1958 (OPINION)

MOTOR VEHICLES

RE: Unsatisfied Judgment Fund - Fund Level and Levy

Your request for an opinion regarding the interpretation of the Unsatisfied Judgment Fund Act has been received.

You specifically inquire whether or not the \$70,000.00 biennial appropriation should be subtracted from the Unsatisfied Judgment Fund cash fund in determining whether or not it is below \$100,000.00 on June first of each year, the date set for deciding if the one dollar levy should be applied to all motor vehicle licenses for the ensuing year. You cite section 39-1702 of the 1957 Supplement to the North Dakota Revised Code of 1943 which reads as follows:

UNSATISFIED JUDGMENT FUND ESTABLISHED: CONTINUING APPROPRIATION: WHEN COLLECTION OF FEE SUSPENDED. The fees paid pursuant to section 39-1701 shall be deposited with the state treasurer, who shall credit the same to a special fund which shall be known as the 'unsatisfied judgment fund'. The treasurer, when authorized by the state industrial commission, may invest moneys of the fund in bonds of the United States, bonds of the state of North Dakota or any other state, or certificates of indebtedness of the state of North Dakota, or in bonds or certificates of indebtedness of any political subdivision of the state of North Dakota, which constitute general obligations of the issuing taxing authority or may deposit moneys of the fund upon time certificates of deposit in the Bank of North Dakota. This section shall constitute a continuing appropriation out of the fund of all moneys required for administration purposes but not to exceed thirty-five thousand dollars annually for administration of the unsatisfied judgment fund and for the making of authorized investments. All income from such investments and all sums received as repayments are hereby appropriated and shall be credited to the fund. If on the first day of June in any year the amount of such fund is \$100,000.00 or more, the requirement for the payment of such fee shall be suspended during the succeeding year and until such year in which, on the first day of June of the previous year, the amount of such fund is less than \$100,000.00 when such fee shall be reimposed and collected as provided herein."

Section 39-1702 was amended by the 1957 Session of the Legislature to provide for the continuing annual appropriation of \$35,000.00 for administrative purposes and also to change the date from the thirty-first day of December and the first day of January to the first day of June for determining whether or not the dollar fee should be added to each motor vehicle registration fee.

Prior to the 1957 amendment section 39-1702, as amended by Chapter

257 of the 1951 Session Laws read in part in part as follows:

If on the 31st day of December in any year the amount of such fund exceeds \$175,000.00, the requirement for the payment of such fee shall be suspended during the succeeding year and until such year in which, on the 1st day of January, the amount of such fund is less than \$100,000.00, when such fee shall be reimposed and collected as provided herein."

This language was identical with the original legislation setting up the Unsatisfied Judgment Fund which has been designated as Chapter 274 of the 1947 Session Laws.

It would appear from a reading of the original act and its amendment by the 1951 Legislature that a clear legislative intent is indicated that at no time should the Fund go below \$100,000.00 without requiring the imposition of the one dollar fee on each motor vehicle registered by the state.

In your letter you refer to a biennial appropriation of \$70,000.00. Generally, appropriations are made by the biennium. It appears, however, that the instant statute has set an annual limitation of \$35,000.00. Therefore, the appropriation should be made on an annual basis and should be in the amount of \$35,000.00. The appropriation should be made on July first, the beginning of the fiscal year. Because it is a continuing appropriation, it is not necessary for the Legislature to pass this appropriation each subsequent session. Appropriations should be of a certain amount. However, if an appropriation fixes the extent to which the funds will be drawn upon, it has been held that such an appropriation is not void as to uncertainty of amount. See 43 Amer. Juris., Public Funds, Section 46.

It would appear that if the administrative appropriation were not subtracted from the total Unsatisfied Judgment Fund cash fund, that it would be possible to use all of the cash fund pay all unsatisfied judgments so that there would not be funds sufficient to pay the current expenses and administer the Unsatisfied Judgment Fund.

Therefore, it is my opinion that on the first day of June the balance that is left from the \$35,000.00 appropriated for administrative purposes should be subtracted from the entire Unsatisfied Judgment Fund to determine whether or not the dollar should be imposed on each motor vehicle registered for the following year. It is my further opinion that the amount appropriated for administrative purposes should not be used to the extent that there will not be sufficient funds remaining to pay the administration expenses for the remainder of the year.

LESLIE R. BURGUM

Attorney General