

**OPINION
60-244**

May 25, 1960 (OPINION)

SPECIAL FUELS TAX

RE: Disposition of Funds - Formula

This is in response to your letter in which you ask what figures relating to miles of rural roads in each county should be applied to the formula set out under section 9 of chapter 381 of the 1959 Session Laws.

This section deals with the disposition of funds collected pursuant to chapter 57-52 of the 1957 Supplement to the North Dakota Revised Code of 1943 and provides that the treasurer shall allocate and distribute such funds among the counties of this state for farm to market roads in accordance with the following formula: land area in each county, population in each county according to the last official census, and miles of rural roads in each county exclusive of state highways. These three factors are all to have equal weight.

It is observed that the legislature merely stated "area in each county." It did not state as of a certain date and it is understood that this being an item more or less static that no further reference need be made.

In referring to the population, the Legislature specifically designated that the last official census would be used. I am sure that the Legislature here recognized that the population in the county would vary from time to time, and that it was necessary to set the figure at a certain designated happening, and they chose to elect the last official census. The last official census we have was the one taken in 1950, and until the official census figures are released and published for the year 1960, the 1950 census will apply.

As to the miles of rural roads, the Legislature did not specify any or at what time the miles should be determined. Thus we have a situation where the formula is based on a fact not linked to any specific time or interval in which the miles of rural roads shall be determined in each county. The question is left open and it could be concluded that the actual miles as existing would govern and control.

It is realized that it is difficult for the State Treasurer to ascertain the miles of rural roads in each county on his own. It is equally well recognized that it would not be appropriate for each county to submit figures relating to miles of rural roads in its county. This brings us to the question whether the figures computed by the North Dakota Highway Department, adjusted and computed on the yearly basis, should control and govern and be used in this formula. The State Highway Department is charged with the duty of maintaining a map showing the location and status of improvement of the county road system, as well as the state highway system. The State Highway Department is required by law to file a copy of such map in the Secretary of State's office not later than the fifteenth day of

January of each odd numbered year, (section 24-0107 of the 1957 Supplement to the North Dakota Revised Code of 1943). Also under section 24-0516 the Highway Commissioner is required to give his approval on county roads designated and selected by the Board of County Commissioners. It is therefore noted that the Highway Department by law is required to keep a record of the county road system. The record so compiled by the Highway Department is presumed in all respects to be correct.

The report of the Highway Department is required to be filed each odd numbered year. However, as you stated the department compiled new figures and data as pertaining to rural road mileage as of December 31, 1959.

Being aware that the reference to miles of rural roads in the formula does not relate to any specific time or period when such miles should be computed or at what intervals it should be computed, it appears from this that the Legislature intended the true mileage as determined from time to time to be used. It could also be considered that the Legislature intended the most recent information on such mileage to be used. Being that the mileage is a question of fact, it would be only reasonable to use the figures as computed by the Highway Department and released in the formula.

It is therefore our opinion that the latest figures released by the State Highway Department pertaining to rural road mileage should be employed in the formula to determine the disposition of funds according to the formula set out in section 9 of chapter 381, 1959 Session Laws.

It is our further opinion that the figures as officially released by the State Highway Department should be employed in the following period of distribution.

LESLIE R. BURGUM

Attorney General