

**OPINION  
45-105**

February 22, 1945            (OPINION)

**GASOLINE TAXES**

RE:    Budget - Deducted

Your letter of recent date addressed to the Attorney General has been received and contents noted.

Owing to the rush and the demands made upon this office by the Legislature now in session, we have been unable to reply to your letter sooner, but trust that the delay has not in any way caused you a great deal of inconvenience.

The substance of your inquiry is whether or not the monies your county receives from gasoline tax and motor vehicle registration fees are to be taken into consideration in preparing and computing the county budget. The statutes applicable to the situation are Sections 39-0467 and 57-4113 of the North Dakota Revised Code of 1943.

Section 57-4113 provides that one-third of the motor vehicle license tax received by the state treasurer shall be credited to a county highway fund. It further provides that the monies so received by each county shall be set aside in a separate fund under the jurisdiction and control of the board of county commissioners, and shall be appropriated and applied solely by such counties in the construction, reconstruction, maintenance and repair of the county highways, bridges and culverts thereon, and city streets leading up to and connected with Federal Aid and State Aid highways.

Section 39-0467 provides that any monies in the registration fund accruing from license fees or from other like sources, in excess of the amount required to pay salaries and other necessary expenses, in accordance with the legislative assembly's appropriation for such purposes, shall be transferred quarterly and credited by the state treasurer, as follows:

1. Fifty percent to the state highway department; and
2. Fifty percent to the counties of this state.

Article 56, amendment to the Constitution, provides that revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, after deduction of cost of administration, etc., shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways.

The constitutional provision quoted applies to the funds allocated to the counties as well as to the funds allocated to the state, and the funds allocated to the counties must be used only and solely for the purposes designated in the statutes and the constitutional amendment

referred to herein.

In making up your budget, you are not required to include the balance in the special fund as a part of the balance on hand in the general fund. It is a fund "ear-marked" for a special purpose and may be used only for that purpose. The only fund which would be affected or reduced by the balance in this special fund would be the road and bridge fund; that is, since the road and bridge fund is included in your general budget, it could be reduced to the extent of the balance in the special fund which would thus give you a greater margin for increase of your general budget.

In order to make my position clear, let us assume that you have \$5,000 in the special fund; that according to your past experience and future calculations, you would normally need \$6,000 in your road and bridge fund. Since you have \$5,000 in this special fund which can be used only for the purposes specified in the Constitution and Section 57-4113, it would be necessary to levy only the sum of \$1,000 for the road and bridge fund, which together with the amount on hand in the special fund would be \$6,000, or the amount you have calculated would be required for the ensuing year.

I trust that I have made this matter clear, but if you desire further information, we shall be glad to have you write us again.

NELS G. JOHNSON

Attorney General