

**OPINION**  
**45-246**

November 24, 1945            (OPINION)

SCHOOLS

RE: Special Reserve Fund - Use of

This will acknowledge the receipt of your letter of November 20, 1945, in which you say that Independent School District No. 1 of Grand Forks has a balance of \$60,000.00 in the reserve fund authorized under the provisions of chapter 57-19 of the North Dakota Revised Code of 1943; that the moneys in said fund were transferred from the general fund of the district and were not accumulated through a levy of three mills authorized under section 57-1904.

You say further: "The superintendent contends that they are allowed to draw seventy-five percent of their \$60,000.00 since it has been transferred from the general fund into the special reserve instead of being raised by a levy; whereas according to the amount available from their delinquent taxes they would be allowed \$41,000.00." You request the opinion of this office in regard to the amount which may be legally withdrawn from the reserve fund.

The amount which may be legally drawn from the reserve fund is determined under the provisions of section 57-1907 of the Revised Code. This section provides:

The amount of outstanding, unredeemed vouchers shall never exceed in the aggregate a sum equal to seventy-five percent of the uncollected and unencumbered delinquent taxes for the current and four preceding years which are apportionable to the general fund of such school district. Such vouchers, in the hands of the county treasurer, shall be redeemed from the collection of such delinquent taxes. - - -"

The provisions of section 57-1908 are somewhat ambiguous and confusing. But in view of the provisions of section 57-1908 to the effect that, "any treasurer - - - transferring from such special reserve fund moneys in excess of seventy-five percent of the uncollected delinquent taxes for the current and preceding four years - - - shall be personally liable for the sum involved.", it is my opinion that it makes no difference whether the special reserve fund has been created by a transfer from the general fund or whether it has been created through a three mill levy. If this were not so, the budgetary law relating to school districts would be rendered meaningless by transfers from the general fund to the reserve fund.

NELS G. JOHNSON

Attorney General