

N.D.A.G. Letter to Crane (May 27, 1987)

May 27, 1987

Mr. David M. Crane
Hettinger County State's Attorney
Box 99
Mott, ND 58646

Dear Mr. Crane:

Thank you for your letter of May 18, 1987, posing two questions concerning the county's budget. Your first question is whether a county may divert funds from the highway tax distribution fund to its general fund. Your second question is whether the county may transfer money from other special funds to its general fund.

With your letter, you included a review of the relevant statutes and case law concerning these questions. After analyzing the applicable legal principles, you conclude that the county may not transfer highway distribution funds to its general fund for general expenditures. However, you contend that there is a possibility that such moneys may be diverted to purposes that are significantly related to the maintenance of roads and highways.

In response to the second question you conclude that counties are able to divert money for a given purpose from special funds dedicated to another purpose if they follow two statutory procedures as outlined in N.D.C.C. §§ 11-11-33, 11-23-07.

After reviewing applicable statutes and case law on the questions you have posed and in considering your excellent analysis of the legal issues, we can only tell you that we agree with your conclusions as to both of the questions. The constitution does require revenue from gasoline and other motor fuel excise taxes and license taxes and registration fees to be used solely for the construction, reconstruction, repair, and maintenance of public highways. Uses of these moneys for other purposes is not allowed. It is possible to argue that such moneys may be diverted to purposes significantly related to the maintenance of highways and roads. Indeed, the recent session of the Legislative Assembly used moneys from this source for purposes significantly related to roads and highways.

Furthermore, N.D.C.C. §§ 11-11-33, 11-23-07 do provide ways in which transfer of funds may occur. These procedures are separate and their applicability depend upon the facts and circumstances present in each case.

Instead of repeating the information you have already competently provided, we believe that it would be most efficient for us simply to indicate our review of your materials and our concurrence with your conclusions as to both of these questions.

Sincerely,

Nicholas J. Spaeth

vkk