

**OPINION
79-31**

October 12, 1979 (OPINION)

Mr. John E. Jacobson

Mercer County State's Attorney

Mercer County Courthouse

Stanton, ND 58571

Dear Mr. Jacobson:

This is in response to your request for an opinion that you made in your letter of September 21, 1971, which is quoted as follows:

This letter is to request your opinion regarding the distribution of a severance tax to counties within fifteen miles of the tipple of a currently active coal mining operation. Portions of eastern Dunn County are within fifteen miles of the North American Coal Company Indian Head Mine's tipple at Zap, which is in Mercer County. The question we have is as follows: Does the law requiring distribution of severance tax to non-coal-producing counties within fifteen miles of a tipple of a currently active coal mining operation apply to taxes collected in the quarter ending June 30, 1979? These taxes were distributed in August 1979.

Your question arises because of the change made by the 1979 Legislature in the coal severance tax and impact aid law for the allocation of the twenty percent share that a coal producing county receives as a distribution from the state treasurer of coal severance tax collected on coal mined in that county.

It is our opinion that the part of the severance tax collected on coal mined in Mercer County during the quarter year period ended June 30, 1979, which was distributed to Mercer County by the state treasurer in August 1979, should be allocated and distributed within Mercer County as provided in Subsection 3 of Section 12 of Chapter 560, S.L. 1977. No part of that amount should be distributed by Mercer County to Dunn County or the cities and school districts in Dunn County. The reasons for this conclusion follow.

Chapter 560, S.L. 1977, provided for a state collected coal severance tax and apportionment of the tax collected to the state and to the counties in which the coal was mined, with a further apportionment of a county's share to be made by the county as provided in Subsection 3 of Section 12 to the county general fund and to the cities and school districts in the county. Section 16 of Chapter 560 provided that all of the provisions of that chapter "shall be effective for the period beginning July 1, 1977, and ending June 30, 1979, and thereafter shall be of no force and effect unless reenacted by the legislative assembly."

Chapter 560, S.L. 1977, expired as a law on June 30, 1979, because it

was not actually "reenacted" by the 1979 Legislature; many of its provisions, however, were included unchanged in the new law that provides for a coal severance tax and distribution of it. This new law became effective on July 1, 1979, and is found in Chapters 626 and 627, S.L. 1979, which are codified as chapters 57-61 and 57-62 of the 1979 Supplement to the North Dakota Century Code.

As has been noted, the 1977 law that expired on June 30, 1979, provided that twenty percent of the tax collected by the state on coal mined in a county should be returned to that county for distribution to the county general fund and to the cities and school districts in that county as provided in Subsection 3 of Section 12 of that law, Chapter 560, S.L. 1977. The new 1979 coal severance tax law, however, provides in Chapter 627, S.L. 1979 (subdivision b of subsection 3 of section 57-62-02, 1979 Supplement to the North Dakota Century Code) that if the tipple of a currently active coal mining operation in a county is within fifteen miles of another county in which no coal is mined, part of the twenty percent share of tax received from the state by the coal-producing county shall be apportioned to the general fund of the non-coal-producing county and to the cities and school districts in that non-coal-producing county that are within fifteen miles of the tipple.

The question to be resolved therefore is: If the tipple of an operating coal mine in a county is within fifteen miles of another county in which no coal is mined, should the twenty percent share of the tax received from the state by the coal-producing county for coal mined during the quarter year ended June 30, 1979, be apportioned and distributed by that county in accordance with Subsection 3 of Section 12, Chapter 560, S.L. 1977, or in accordance with Chapter 627, S.L. 1979 (subdivision b of subsection 3 of section 57-62-02, 1979 Supplement to the North Dakota Century Code)?

As already stated above, it is our opinion in answer to this question that the tax collected on coal mined during the quarter year ended June 30, 1979, must be apportioned and distributed in accordance with the 1977 law, Subsection 3 of Section 12, Chapter 627, S.L. 1977, and not as provided in the 1979 law, Chapter 627, S.L. 1979 (subdivision b of subsection 3 of section 57-62-02, 1979 Supplement to the North Dakota Century Code).

This conclusion is based on the requirements of Section 175 of the North Dakota Constitution, which section provides in part that "every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied." In *City of Bismarck v. Kleinschmidt*, 145 N.W.2d. 333 (N.D. 1966), the Court held that, where the state's estate tax law provided for distribution of estate taxes that were imposed at the deaths of decedents, this provision of Section 175 prevented an amendment of the distribution provision from being interpreted to apply to estate taxes that were imposed on estates of decedents who died prior to the effective date of the amendment but which were not actually collected until after the effective date of the amendment. See also such cases as *Hart v. Bye*, 76 N.W.2d. 139 (N.D. 1956); *Brye v. Dale*, 64 N.D. 41, 250 N.W. 99 (1933); *Stinson v. Thorson*, 34 N.D. 372, 158 N.W. 351 (1916); and *State v. Klectzen*, 8 N.D. 286, 78 N.W. 984 (1899).

In the situation about which you have inquired, the coal severance tax imposed by Chapter 560, S.L. 1977, was imposed by Sections 1 and 16 on all coal mined in Mercer County during the period beginning July 1, 1977, and ending June 30, 1979, and the tax was required to be apportioned and distributed as required by Section 12, Subsection 3, which provided for allocation and distribution of twenty percent of the tax in the manner provided in that subsection. Section 12 therefore stated the object of the tax imposed for that two-year period, as was required by Section 175 of the Constitution. As to those coal severance taxes imposed for that two-year period, that object could not be changed by the Legislature by changing the distribution formula, since to do so would violate that part of Section 175 of the Constitution which requires the tax to be applied to the stated object of the tax.

The distribution formula that is provided in the 1979 coal severance tax law (chapters 57-61 and 57-62, 1979 Supplement to N.D.C.C.) that became effective on July 1, 1979, therefore can apply only to coal severance taxes imposed by that law on coal mined on or after July 1, 1979. See *City of Bismarck v. Kleinschmidt*, supra, 145 N.W.2d. at 336, syllabus paragraph 6!.

It is hoped that the foregoing will be of assistance.

Sincerely,

ALLEN I. OLSON

Attorney General