

Date Issued: February 9, 1981 (AGO 81-11)

Requested by: Zane Anderson, State's Attorney for Bowman County

- QUESTION PRESENTED -

Whether a board of county commissioners has the authority to allocate a portion of the "in lieu of tax" payments it receives from the Bureau of Land Management to the various school districts in which land for which the payments are made is located.

- ATTORNEY GENERAL'S OPINION -

It is my opinion that a county commission does not have the authority or power under the statutes of North Dakota to allocate and expend a portion of the funds it receives as "in lieu of tax" payments from the Bureau of Land Management in favor of local school districts.

- ANALYSIS -

Presuming that the "in lieu of tax" payments which form the basis of the question presented are made pursuant to 31 USC Section 1601, those payments are made directly to the local units of government in which entitlement lands are located and their use is not restricted. 43 CFR Section 1881.2 provides that the payments "may be used for any governmental purpose." At least one state court has held that these funds may be allocated by the local unit of government to a school board. See Kendall v. Towns County, 247 S.E.2d. 577 (Ga. 1978). I agree with the Georgia Court of Appeals in Kendall that the terms of 31 USC 1601 et seq. and the regulations found in 43 CFR 1881 et seq. do not prevent a county from allocating a portion of the funds received by it to a school district.

The North Dakota Supreme Court has held that since counties are political subdivisions of the state, they possess only that power and authority which has been granted to them by statute. Zuger v. Boehm, 164 N.W.2d. 901 (N.D. 1969). In defining the power and authority of political subdivisions, any question as to their authority must be resolved against them. Lang v. City of Cavalier, 228 N.W. 819 (N.D. 1930). There is no general grant of power to counties to distribute or allocate funds to school districts or other political subdivisions. Chapter 15-40.1, N.D.C.C., specifically authorizes and directs counties to distribute the twenty-one mill levy moneys collected pursuant to section 57-15-24, N.D.C.C., to school districts through the county equalization fund. Sections 21-06-10 and 21-06-11, N.D.C.C., provide for the allocation and expenditure of funds received from the federal government under certain federal revenue sharing and federal leasing programs. These provisions do not, however, address "in lieu of tax" payments. Section 11-11-11(1), N.D.C.C., directing the board of county commissioners to superintend the fiscal affairs of the county, and section 11-11-14(2), N.D.C.C., directing the board to make all orders respecting the property of the county, do not give the board the authority to make expenditures which are not otherwise authorized.

-EFFECT-

This opinion is issued pursuant to section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

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