

LETTER OPINION
2000-L-55

April 18, 2000

Ms. Lisa B. Gibbens
Towner County State's Attorney
P.O. Box 708
Cando, ND 58324-0708

Dear Ms. Gibbens:

Thank you for your letter asking whether tax proceeds in excess of the amount needed to match federal funds to construct farm-to-market roads may be used for maintenance of roads constructed under a road improvement program approved by voters in 1972. You advise that voters in a special election on November 7, 1972 approved a tax levy to construct and surface farm-to-market roads pursuant to N.D.C.C. § 57-15-06.3. The ballot also provided that tax "proceeds in excess of the amount needed to match Federal funds in any year [be] made available to the county for providing paved or any other type of road surfacing on roads in the . . . program all in accordance with [N.D.C.C. § 57-15-06.3]."

At the time of the 1972 election, N.D.C.C. § 57-15-06.3 provided for use of tax proceeds in excess of the amount needed to match federal funds for surfacing of roads included in the county road program, but not for maintenance. In 1981, N.D.C.C. § 57-15-06.3 was amended to also provide for use of excess funds for maintenance of "roads included within the county road program for which the tax levy was originally made." See 1981 N.D. Sess. Laws ch. 568, § 1 and ch. 569, § 1. The amendments made that year also eliminated a previous requirement that the use of such excess funds be approved by voters in a special election. See 1981 N.D. Sess. Law ch. 569, § 1. Amendments that year also permit the Board of County Commissioners to change the construction program if the program has not been completed within ten years of the election approving the program and the tax levy. Id.

You further advise that the construction program approved by the voters in 1972 has not been completed, nor has it been changed by the Board of County Commissioners pursuant to N.D.C.C. § 57-15-06.3(2) or (3).

The current version of N.D.C.C. § 57-15-06.3(4) specifically provides "that proceeds of a tax levy in excess of the amount needed to match

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federal funds in any year may be used by the county, at any time the proceeds may become available, . . . or for maintenance of, roads included within the county road program for which the tax levy was originally made" This office has previously concluded that excess tax proceeds may not be used for maintenance regarding construction programs approved by voters prior to July 1, 1981. 1987 Op. Att'y Gen. 96, 99-100. This opinion was based in part on an amendment in 1987 which provided for retroactive application of subsection 3 of N.D.C.C. § 57-15-06.3 allowing county commissioners to change the road program if the program has not been completed within ten years of the election establishing the program. 1987 N.D. Sess. Laws ch. 674, § 2. Because the 1987 provision for retroactivity did not relate to N.D.C.C. 57-15-06.3(4) allowing the use of excess funds for maintenance that use is impermissible for road programs approved before July 1, 1981. 1987 Op. Att'y Gen. 96, 99-100. See 1993 N.D. Op. Att'y Gen. L-139 (Apr. 22 to Mary O'Donnell).

In accordance with prior opinions of this office, it is my opinion that tax proceeds in excess of those needed to match federal funds to construct farm-to-market roads may not be used for maintenance of roads unless such use was approved as part of the ballot language when the tax levy was passed.

Sincerely,

Heidi Heitkamp
Attorney General

bab/vkk