

Opinion No. 55-6341

December 12, 1955

BY: RICHARD H. ROBINSON, Attorney General

TO: Mr. D. M. Smith, Jr., State Comptroller, Santa Fe, New Mexico

We have your letter of November 15, 1955 requesting an opinion from this office on the following questions:

(1) Must the motor vehicle license distribution be distributed in the same proportion as the general property taxes, which are included in the 20 mill levy and which go to the municipalities?

(2) Since the budget for the Town of Farmington provided for all of its general property taxes to go to the interest and sinking funds, has the distribution of motor vehicle license fees which were credited to the General Fund been incorrectly used?

The answer to these questions involves the construction of part of Chapter 138, Laws 1953, Section 111, being Section 64-11-12, N.M.S.A., 1953, which section is reenacted in Chapter 277, Laws 1955, and reads as follows:

"* * * the county treasurer of each county shall distribute the monies paid to him under the provision of this paragraph, when received, between the county and school district funds of such county and the various cities, towns and villages therein, in the same proportion that the receipts from the general property taxes, other than taxes for state purposes, received by said treasurer for the year in which such distribution is to be made, are so distributed in such county between said county and school district funds, and said cities, towns and villages therein."

We shall answer the questions in the order above set out.

1. It seems that the Legislature intended to provide a means of distribution of this 15% fund between the county, school districts, cities, towns and villages within such county. In order to make an equitable distribution of this fund, the Legislature used the general property tax as the base, after first eliminating the taxes for state purposes. In using the general property tax as a base, the Legislature must have intended to refer only to those taxes within the 20 mill limit in order to insure an equitable distribution of this money. If it were otherwise construed to include all taxes regardless of this limitation, the local unit by voting taxes in addition to the 20 mills could receive a greater portion of this money to the detriment of other participants in the fund and all without their having any control over the additional levy because of not being within the voting unit. It is, therefore, our opinion that each of the local units set out in the statute as participants in the fund shall receive a share of this fund in the same proportion as they share in the

general property tax within the 20 mill levy after first deducting the taxes for state purposes.

2. We are of the opinion that this section of the statute above set forth does not provide the purposes for which this fund is to be used. It is to be noted that in the 1953 Law that:

(a) Six percent was set aside for administration and enforcement.

(b) The remainder was to be distributed as follows:

1. Forty-five percent was to be used as other state road fund moneys were used.

2. Thirty percent for county road funds and used for road improvements and maintenance.

3. Ten percent to state general fund.

4. Fifteen percent under the provision we are now discussing.

This law expressly provided how the money was to be spent in three instances, but is silent about how the money which went to the General Fund and the fifteen percent were to be used. The only conclusion is that the Legislature intended that under the fifteen percent distribution, the local unit receiving this money could use the money as it might determine. This conclusion is strengthened when we consider the changes made in the law by Chapter 277, Laws 1955. In addition to changing the percentage of distribution, the ten percent distribution was given to municipalities for a designated purpose. However, the fifteen percent distribution was not changed. Now the law designates use of the funds in each case except the funds we are here considering.

We are, therefore, of the opinion that this law (§ 64-11-12) does not so far as here concerned limit the use of the funds distributed to the local unit and they may be used by the local unit for any lawful purpose of that local unit.

By: Paul L. Billhymer

Assistant Attorney General