

## **Opinion No. 65-141**

August 2, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General James V. Noble, Assistant Attorney General

**TO:** Mr. Frank Horan, City Attorney, P.O. Box 1293, Albuquerque, New Mexico 87103

### **QUESTION**

#### QUESTION

Is the basis for distribution of motor vehicle license tax receipts in the various counties and subdivisions thereof restricted to the statutory proportion of receipts of general property taxes within the constitutional 20 mill levy?

#### CONCLUSION

Yes.

### **OPINION**

#### {\*236} ANALYSIS

Section 64-11-12, N.M.S.A., 1953 Compilation was originally enacted as the laws of 1953, Chapter 138, Section III and was amended by the laws of 1955, Chapter 277, Section 1, and Laws of 1959, Chapter 28, Section 1. However, the pertinent provisions have remained essentially the same since originally enacted and the act in general provides that 4% of the moneys collected by the Uniform Motor Vehicle Administration, Certificate of Title and Anti-Theft Act shall be paid to the motor vehicle fund to defray the expense of administration and enforcement of such acts and discharge of such other duties as may be imposed upon the division by law. The remainder is distributed as follows:

A. 37 1/2% placed to the credit of the state road fund;

B. 37 1/2% paid to the county treasurers of the various counties as follows:

- (1) 50% of such 37 1/2% in the proportion that the total amount of registration fees from motor vehicles paid in such county bears to the total amount of registration fee paid for vehicles in the entire state;
- (2) 50% of such 37 1/2% paid to each county in the proportion to which the total mileage of public roads maintained by such county bears to the total of public roads maintained by all of the counties of the state.

C. 10% of the remainder, after the 4% administration fee, is paid to the county treasurer in the proportion that the total amount of registration fee paid for motor vehicles in such county bear to the total amount of registration fees paid for motor vehicles in the state. The respective county treasurers then are required to distribute such 10% among the various incorporated municipalities in the proportion that the total assessed valuation of each such municipality bears to the total assessed valuation of all such municipalities within the county.

D. 15% of the remainder, after payment of the 4% administration fee, is paid to the county treasurers of the several counties of the state, is distributed between such counties in the proportion that the total amount of registration fees paid for vehicles in each county bears to the total amount of registration fees paid for vehicles in the state, and then is distributed by the treasurer of each such county between the various county and school district funds, and the various incorporated cities, towns and villages therein in the same proportion that the receipts from general property taxes, other than taxes for state purposes, received by said county treasurer for the year in which such distribution is to be made.

E. Any balance shall be credited to the State Public School Equalization Fund.

The particular provision in question {*\*237*} is that of the distribution by the county treasurer between the county and school district funds, and various incorporated cities, towns and villages in such county, in proportion to receipts from general property taxes for such subdivision, other than taxes for state purposes, received by the treasurer for the year in which the distribution is made.

Article VIII, Section 2 of the Constitution in pertinent portion reads as follows:

". . . Provided, however, that taxes levied on real or personal tangible property for all purposes, except special levies on specific classes of property and except necessary levies for public debt, shall not exceed twenty mills annually on each dollar of the assessed valuation thereof, **but laws may be passed authorizing additional taxes to be levied outside of such limitation when approved by at least a majority of the electors of the taxing district voting upon such proposition.**" (Emphasis added.)

The question is thus squarely presented as to whether or not, under the exception contained in the constitutional provision above quoted and the provisions of Section 64-11-12, *supra*, governing the distribution of the 15% of the motor vehicle registration fees; a subdivision of a county may, by a vote causing a levy in excess of 20 mills to be made on tangible personal and real property within such subdivision, consequently obtain a greater proportion of the 15% motor vehicle funds than would otherwise be available to it. In this connection, it is noted, that only the local subdivision seeking to increase its mill levy and consequently to obtain a greater portion of the motor vehicle fund distribution has a vote on the matter and the entire county and other subdivisions therein do not have such a vote upon that particular proposition. It is also noted that the last amendment to Section 64-11-12, *supra*, was in 1959. Prior to such date Opinion

No. 6341 appearing at page 303, Report of the Attorney General 1955-56, was issued by this office on the same question as is here presented. That opinion held that the legislature, by the provisions of the statute above set forth, did provide a means of distribution of the 15% fund between the various local subdivisions within the counties. The opinion then went on to state what the obvious intent of the legislature was in setting forth the distribution provisions, and stated as follows:

". . . 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 noted that this opinion was issued approximately two years after Section 64-11-12, supra, as originally enacted became law and less than one year after the 1955 amendments thereto became law. It is stated in **Southerland Statutory Construction**, 3d Ed. Vol. 2, page 525, Section 5109 as follows:

". . . Likewise, legislative action by amendment or appropriations with respect to a law which has received a contemporaneous and practical construction may indicate approval of interpretations given the unchanged parts of the law." (Emphasis added.)

It is therefore apparent that the interpretation by the office of the attorney general above quoted and cited had made at the time of the {238} 1959 amendments to the act that the legislature did leave unchanged the portions of the act therein interpreted. This would indicate acquiescence in such interpretation.

As stated above the statute is a method devised by the legislature for the distribution of the particular funds among the various subdivisions of each particular county and as heretofore interpreted provides a firm and reasonably stationary base with which to compute as well as one which is not dependent upon the will or whim of the individual voters of each individual subdivision. It is an effort to make such distribution as equitable as possible. If the distribution should be based upon the exception of the constitutional provision above cited then the same would tend to become inequitable and based upon reasons other than receipts from general property taxes received by the local subdivisions, since a local subdivision could, as a result of wanting a tax in order to solve a purely local problem, increase its own share of funds from the motor vehicle distribution which would also have the effect of decreasing the amount of revenue which the other local subdivisions would normally receive. Section 64-11-12, supra, subparagraph D (3) expresses the apparent scheme set forth throughout the statute above cited and states specifically:

"For the purpose of effecting an equitable distribution. . . ."

This section is concerned with an effort to make certain that the distribution is equalized between cities, towns and villages incorporated, organized and operated under the general act and those incorporated under special acts. It provides for certification of the assessed valuation and total tax rate in said cities, towns or villages incorporated under such special acts.

It is stated in **State v. So. Pac. Co., 34 N.M.** 306 that statutes will be construed in the most beneficial way which that language will permit to prevent absurdity, hardship or injustice, to favor public convenience, and to oppose all prejudice to public interest.

Applying the rules of statutory construction above enunciated and looking to the whole purpose of the legislative provision, it seems apparent that opinion No. 6341, dated December 12, 1955, *supra*, is correct and it is hereby affirmed.