

**OPINION
64-331**

December 18, 1964 (OPINION)

The Honorable Frank A. Wenstrom

Chairman

Legislative Audit and Fiscal Review Committee of North Dakota

RE: State Treasurer - Public Funds - Abstract of Driving Records

This is in response to your letter in which you state the following:

On page 5 of the 'Remarks' of the audit of the Safety Responsibility Division of the State Highway Department, covering the years July 1, 1962 to June 30, 1964, the state auditor notes that under the provisions of sections 39-16-03 and 39-06-22 a fee of \$1.00 is paid to the Division for abstracts of driving records. The State Highway Department has followed a practice of depositing these funds in the state highway fund.

The state auditor also notes Section 186 of the Constitution and section 54-06-07 which require funds not otherwise designated for a special fund to be deposited in the state general fund, and raised the question of whether payments for drivers' abstracts should not be credited to the general fund.

The Legislative Audit and Fiscal Review Committee has requested that I obtain an opinion from your office as to the proper fund in which these moneys should be deposited."

The Financial Responsibility Division, often referred to as the Safety Responsibility Division, is placed within the jurisdiction and responsibility of the state highway commissioner.

Under section 29-06-22 of the North Dakota Century Code the highway commissioner is required to maintain records of accident reports, abstracts of court records of convictions and other associated matters pertaining to records of motor vehicle operators.

Under section 39-16-03 of the North Dakota Century Code the highway commissioner, upon request, is required to furnish a certified abstract of the operating record of any person, subject to the provisions of the Financial Responsibility Act. This same section directs that he shall charge \$1.00 for furnishing such abstract. The question now is what disposition is to be made of the \$1.00 fee collected for furnishing such abstract.

The Financial Responsibility Division, or the Safety Responsibility Division, is maintained and operated by funds appropriated to the Highway Department under the general appropriation to said department. On the theory that the \$1.00 fee is a product resulting

from the efforts of a department financed by Highway Department appropriations, it could be suggested that said product should be recovered into the fund from which the department is financed and operated. This suggestion would have legal force if the state Constitution or statutes were silent on this subject. However, Section 186 of the North Dakota Constitution, amongst other things, provides that "All public moneys, from whatever source derived shall be paid over monthly by the public official, employee, agent, director, manager, board, bureau, or institution of the state receiving the same, to the state treasurer, and deposited by him to the credit of the state, and shall be paid out and disbursed only pursuant to appropriation first made by the Legislature;* * * *." It further continues by making an exception to the funds allocated under the law to the State Highway Department and the various counties for construction, reconstruction and maintenance of public roads. It further provides that the amendment does not apply to fees and moneys received in connection with licensing certain professions and occupations. (Emphasis supplied.)

There can be no question that the fee charged and received for furnishing the abstract under section 39-16-03 is public money. Under Article 56 of the North Dakota Constitution we find that certain revenues from gasoline taxes are allocated to the State Highway Department. A similar provision exists under other statutes pertaining to motor fuel tax. There is, however, no provision related to the disposition of the \$1.00 fee in question. While the charge of \$1.00 is termed a fee under the statute, it does not constitute a fee as such term is used in Section 186 of the North Dakota Constitution. Aside from the general law mentioned herein we are not aware of any law pertaining to this fee specifically.

In 1963, House Bill No. 689 was introduced which was to provide that the money collected under section 39-16-03 was to be remitted to the state treasurer and credited to the state highway fund. This bill was amended in the Senate, requiring that said revenues be placed into the general fund (Senate Journal, page 723). The bill was further amended on other matters (Senate Journal, pages 777 and 778) and was indefinitely postponed. The journals do not give any explanation why the bill was postponed.

In addition to the foregoing, we find that by an initiated measure, section 54-06-07 was adopted, which is as follows:

SALARIES FULL COMPENSATION - FEES PAID OVER TO STATE TREASURER. All salaries of elective and appointive state officers shall be full compensation for all official services. All fees which are not otherwise by the laws of this state directed to be deposited in a special fund or disbursed for a special purpose, received or charged by any elective or appointive officer or deputy state officer for any act or service rendered in his official capacity shall be accounted for and paid over by him monthly to the state treasurer and shall be credited to the general fund of the state."

The above section was in a sense a forerunner of Section 186 of the North Dakota Constitution and it is in complete harmony with such provision. It is to be noted that it provides, amongst other things,

that all fees which are not otherwise directed to be deposited in a special fund or disbursed for a special purpose shall be accounted for and paid over to the state treasurer and be credited to the general fund of the state. This provision has application to the fees charged for furnishing an abstract of an operator's record.

The reference to the proposed legislation, House Bill No. 689, was merely to show that the Legislature had an opportunity to consider this matter. The indefinite postponement of this bill suggests that the Legislature after amending same to provide that the revenue was to be paid into the general fund assumed, and correctly so, that this was what the present law by construction already requires, and that there is really no need for such legislation. What is significant about the introduction and indefinite postponement of the bill is that the Legislature refused to pass the bill as introduced, which would have provided that the funds received for furnishing an abstract of an operator's record would have been credited to the state highway fund.

It is therefore our opinion that the fees or funds collected under section 39-16-03 of the North Dakota Century Code are to be deposited with the state treasurer and credited to the general fund of the state, unless the Legislature were to enact a law specifying for disposition of such funds in some other manner.

HELGI JOHANNESON

Attorney General