

**OPINION
71-179**

July 13, 1971 (OPINION)

Mr. Theodore F. Kessel

City Attorney for City of Kulm

LaMoure, North Dakota

RE: Highways - Revenues - Use by Cities

This is in reply to your letter of July 7, 1971, with regard to utilization of the funds received by a city pursuant to the provisions of section 57-52-11, subsection 3B of the 1969 Supplement to the North Dakota Century Code.

You call attention to the language therein to the effect that the moneys received by the city shall be used solely for the construction, reconstruction, repair and maintenance of public streets and highways.

You indicate that the city council of the city of which you are city attorney asked your opinion as to whether or not these funds could be used for the purchase of street equipment. You ask that this office either confirm your position or definitely state whether or not equipment would fall in the verbal construction of this section of the law.

You might compare the language of the statutory provision in question with regard to "construction, reconstruction, repair and maintenance of public streets and highways" with the language of Article 56 of the North Dakota Constitution as shown at page 291 of Volume 13 of the North Dakota Century Code with regard to "construction, reconstruction, repair and maintenance of public highways" and the limits on use of particular funds for such purposes.

Looking through our files, under section 57-52-11 of the 1969 Supplement to the North Dakota Century Code to the year 1967 when the current language of this statute in this regard was adopted with regard to city usage of same, we find this office has not construed this statute in this respect.

We note, however, a considerable amount of correspondence considering the utilization of somewhat similar funds distributed pursuant to section 54-27-19 with various cross references to such statutes as sections 57-54-19, 39-04-39, 24-05-01 and similar statutes, as well as references to said Article 56 of the North Dakota Constitution. See xerox copies of representative examples of our holdings in this regard.

It is thus our opinion that the language of the statutory provision you cite is basically a requirement that the moneys there concerned be expended within the limitations specified in Article 56 of the North Dakota Constitution with, of course, the addition of the word "public streets" in the statutory provision, which probably does not

give a broader meaning than the language "public highways" in the constitutional provision.

As you will note from the correspondence enclosed we have thus taken the position that such funds may be used to purchase construction and maintenance machinery, construction of a building to house machinery used for construction and maintenance of streets, and a very limited share of a police chief's salary proportionate to the amount of time spent by him on road and street maintenance purposes. On such basis it is our opinion that the funds received by a city pursuant to section 57-52-11, subsection 2B of the 1969 Supplement to the North Dakota Century Code could be used for similar purposes including, in the situation you describe, purchase of machinery used in construction, reconstruction, repair and maintenance of public highways including public streets.

We hope the within and foregoing will be sufficient for your purposes.

HELGI JOHANNESON

Attorney General