

**LETTER OPINION**  
**97-L-162**

October 6, 1997

Mr. Stuart A. Larson  
Traill County State's Attorney  
PO Box 847  
Hillsboro, ND 58045-0847

Dear Mr. Larson:

Thank you for your letter asking whether the Traill County commissioners can use monies from the county road fund to maintain the road machinery that was purchased from monies in that fund.

N.D.C.C. § 24-05-01 authorizes a county commission to levy a tax "for the improvement of highways." The proceeds of this tax "must be kept in the county road fund and must be expended in the improvement of highways as provided in this chapter under the direction of the board of county commissioners." N.D.C.C. § 24-05-01. More specifically, N.D.C.C. § 24-05-02 provides:

The county road fund created by section 24-05-01 may be expended only for road machinery and for grading, ditching, and surfacing, in proper form and condition for public travel, such highways or parts of highways, howsoever established, as constitute the principal thoroughfares of the county, communicating with shipping points and marketplaces resorted to by inhabitants of the county, for which the means otherwise provided, in the opinion of the board of county commissioners, are not sufficient.

(Emphasis added.) There are no North Dakota court cases or Attorney General opinions interpreting whether "for road machinery" includes both the purchase and maintenance of road machinery.

Because the general purpose of the county road fund is to improve the highways, and it is necessary to have functional equipment to accomplish that purpose, it is my opinion that the phrase "for road machinery," as used in N.D.C.C. § 24-05-02, includes both the purchase and maintenance of road machinery.

Sincerely,

Heidi Heitkamp  
ATTORNEY GENERAL

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