

OFFICIAL OPINION NO. 68-48, County Road and Bridge Levy

STATE OF SOUTH DAKOTA
OFFICE OF
THE ATTORNEY GENERAL

December 16, 1968

Gerald M. Baldwin
State's Attorney, Custer County
Custer, South Dakota 57730

OFFICIAL OPINION NO. 68-48

County Road and Bridge Levy

Dear Mr. Baldwin:

You have submitted the following factual situation to our office for an official opinion.

"According to the records of the Custer County Auditor, which are available only back to 1930, a County Road and Bridge Levy has been imposed on property within the City of Custer City. The records further indicate that the 25 per cent remittance to the City of Custer City, pursuant to Section 57.0505(4) of the 1960 Supplement to the South Dakota Code has not been paid at any time."

In connection with this situation you have asked the following questions:

"1. Is the County of Custer now liable to the City of Custer City for a 25 per cent remittance of all moneys so levied?

"2. Is the County of Custer liable to the City of Custer City for interest on said amount, if due, and delinquent?"

SDC 1960 Supp. 57.0505-1 and SDC 1960 Supp. 57.0505(4) require the county to refund to the City Treasurer 25% of the funds collected by the county from the special county road levy made within all cities and incorporated towns and 25% of the funds collected by the county from the general county road levy within all cities and incorporated towns. Such

refunds are to be used by the governing body of said city or incorporated town for bridge or street purposes within said city or town.

Both counties and cities are bodies corporate, and as such may sue and be sued. The statute of limitations does not apply in this case because Article III, Section 24 provides:

"The legislature shall have no power to release or extinguish in whole or in part, the indebtedness, liability or obligation of any corporation or individual to this state, or to any municipal corporation therein."

Therefore, the answer to Question NO.1 is YES.

I have been unable to find any law which imposes an interest charge on obligations which are past due, unless there has been a Court Order or agreement between the parties to the contrary.

The answer to Question No.2 is therefore, NO.

Respectfully submitted,

Frank L. Farrar
Attorney General