

Official Opinion No. 80-63, Use of Funds in 'County Highway and Bridge Reserve' Account

October 6, 1980

Mr. Thomas A. Lloyd  
Deputy State's Attorney  
Lemmon, South Dakota 57638

Official Opinion No. 80-63

**Use of Funds in 'County Highway and Bridge Reserve' Account**

Dear Mr. Lloyd:

You have requested an official opinion from this office in regard to the following factual situation:

**FACTS:**

The County Commissioners have levied and budgeted a certain amount of money to the 'county highway and bridge reserve' account. The amount budgeted to this account for fiscal 1980 is used at 25% matching funds for projects undertaken as part of the designated 'Federal Aid Secondary' highways. The projects that had been selected for its use, however, were not all undertaken for fiscal 1980 and the moneys budgeted for 1980 are not now required for the purpose of matching federal grants for 'F.A.S.' projects. Taxes will be levied again for 1981 and future years for the purpose of meeting all matching obligations in any future years.

Out of this 'county highway and bridge reserve' account the county commissioners have expended a portion of funds budgeted but unused for 1980. This expenditure has been used to repair or replace bridges not on the 'F.A.S.' designated system. This expenditure was not in an amount to deplete the 'county highway and bridge reserve' account.

Based on the above facts, you ask the following questions:

**QUESTIONS:**

1. May funds budgeted in the 'county road and bridge reserve' account but unused as matching funds for the fiscal year be transferred to the county's general 'road and bridge'

account for projects on roads and bridges not on the federal aid secondary system, 'F.A.S.'?

2. If these funds may not be so used will it be necessary for the county commissioners to replace them with funds appropriated from the general account or the county's general 'road and bridge' account?

IN RE QUESTION NO. 1:

SDCL 10-12-16 provides:

Any unexpended balance remaining in any road, highway or bridge fund of the county may at the end of the fiscal year be transferred to the county highway and bridge reserve fund established in § 10-12-13. Any money in said fund, not necessary for the purpose of matching federal aid grants heretofore made or for the current year may be expended for laying out, marking, constructing, reconstructing and maintaining any roads and any bridges on the county secondary federal aid system under the jurisdiction of the board of county commissioners, or such funds may be allowed to accumulate as a reserve fund and be used for future improvement and construction of public highways and bridges. No part of such fund shall revert to the general funds of the county nor shall any of said funds be used for any other purpose than for highway or bridge purposes as provided herein.

SDCL 10-12-13 provides:

The board of county commissioners of any organized county in this state or the highway board of unorganized counties may in their respective discretion cause to be levied an annual tax levy of not to exceed two mills on the dollar as a reserve fund to be accumulated and used for the purpose of matching federal aid grants which have or may hereafter become available, to be expended in co-operation with the federal government in the laying out, marking, constructing and reconstructing roads and constructing and reconstructing bridges, under the jurisdiction of the board of county commissioners or of the highway board. The said tax levy shall be in addition to all other levies authorized to be made by the board of county commissioners for road and bridge purposes provided for in § 10-12-21. The proceeds of such levy shall be placed in a special fund to be known as the 'county highway and bridge reserve fund.'

Thus, § 10-12-16 provides two methods by which excess county highway and bridge reserve fund moneys may be spent. First, such moneys may be spent for 'laying out, marking, constructing, reconstructing and maintaining any roads and any bridges on the county secondary federal aid system.' Second, such moneys may be allowed to accumulate 'as a reserve fund and be used for future improvement and construction of public highways and bridges.'

In the first instance, it is clear that such excess moneys must be expended \_for roads and bridges on the federal aid system. In the second instance, it is my opinion that the reserve fund referred to is the county highway and bridge reserve fund. Therefore, moneys in the reserve fund may only be used for those purposes authorized by SDCL § 10-12-13 'for the purpose of matching federal aid grants.'

Therefore, it is my opinion that the answer to your first question is no.

IN RE QUESTION NO. 2:

The answer to your second question is yes.

Respectfully submitted,

Mark V. Meierhenry  
Attorney General