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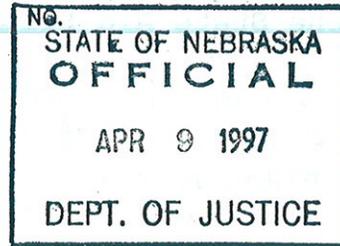
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DATE: April 9, 1997

SUBJECT: State Aid Bridge Fund

REQUESTED BY: Allan Abbott, Director-State Engineer
Nebraska Department of Roads

WRITTEN BY: Don Stenberg, Attorney General
Gary R. Welch, Assistant Attorney General

You have requested our opinion as to whether the current method of applying the transfer of funds to the State Aid and Bridge Fund, which can be found at Neb. Rev. Stat. § 39-847.01 (1993), is consistent with the distribution of funds from the Highway Trust Fund and the Highway Allocation Fund as required by State statute and the intent of the Nebraska Legislature.

The Highway Trust Fund was created by Neb. Rev. Stat. § 39-2215(1). Paragraphs (2) through (5) give direction to the State Treasurer on source of funds and disbursement thereof. Paragraph (6) is the important section for our discussion, which provides:

Except as provided in subsection (7) of this section, the balance of the Highway Trust Fund shall be allocated fifty-three and one-third percent, less the amount provided for in section 39-847.01, to the Department of Roads, twenty-three and one-third percent, less the amount provided for in section 39-847.01, to the various counties for road purposes, and twenty-three and one-third percent to the various municipalities for street purposes....

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Paragraph (6) of Neb. Rev. Stat. § 39-2215 (1993) sets forth the percentage distribution to State, county and municipalities with a provision that the State and counties' balance shall be reduced by the amount provided for under Neb. Rev. Stat. § 39-847.01, the State Aid Bridge Fund. That section provides:

The State Treasurer shall transfer monthly thirty-two thousand dollars from the Department of Roads' share of the Highway Trust Fund and thirty-two thousand dollars from the counties' share of the Highway Trust Fund which is allocated to bridges to the State Aid Bridge Fund.

The key phrase of the above statute is "from the counties' share of the Highway Trust Fund which is allocated to bridges."

The "less the amount provided in § 39-847.01" provision of Neb. Rev. Stat. § 39-2215 activates the "from the counties' share of the Highway Trust Fund, which is allocated to bridges" provision of Neb. Rev. Stat. § 39-847.01.

Examining the strict provisions of the State Aid Bridge Fund, Neb. Rev. Stat. § 39-847.01, we need to find that portion of the county share allocated to bridges in the Highway Trust Fund. The the language of the State Aid Bridge Fund would indicate that there is an allocation under the Highway Trust Fund for bridges that the \$32,000 comes out of in order to be placed in the State Aid Bridge Fund. The language is not clear, and therefore one can only apply the best possible interpretation to give purpose to the statute.

Our examination takes us to Neb. Rev. Stat. § 39-2507, the allocation and "factors used" section. Within that section we find seven difference factors that are utilized in determining the counties' share of the Highway Trust Fund for allocation. Paragraph (3) provides:

Lineal feet of bridges twenty feet or more in length and all overpasses in each county, as determined by the most recent inventory available within the Department of Roads, ten percent, . . .

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Neb. Rev. Stat. § 39-2508 (1993) provides:

The Department of Roads shall compute the amount allocated to each county under each of the factors listed in section 39-2507 and shall then compute the total allocation to each such county and transmit such information to the local governing board and the State Treasurer, who shall disburse funds accordingly.

Neb. Rev. Stat. § 39-2508 states that the Department of Roads shall utilize the seven factors under Neb. Rev. Stat. § 39-2507, which include the ten percent toward the bridge allocation. That being the case, and this being the only section that deals with the "county share of the Highway Trust Fund which is allocated to bridges" we must determine that the \$32,000 of the county share of the money shall be taken from the ten percent allocated under paragraph (3) of Neb. Rev. Stat. § 39-2507 and applied to the State Aid Bridge Fund.

We believe this application to be correct since a reading of the legislative hearing transcripts on the creation of the State Aid Bridge Fund and the Highway Allocation Fund refers to the ten percent bridge language of Neb. Rev. Stat. § 39-2207(3). The Committee Statement on LB87 dated February 28, 1973, by Senator Kremer contained the following language:

The State Aid Bridge Fund would be administered by the Department of Roads. Source of funds would be \$32,000 monthly from the Department of Roads allocation and \$32,000 monthly from the county 10% allocations for bridges.

Also, on page 8 of the Committee Statement on LB1312, "Subsection (3) is the lineal feet of bridges over twenty feet which was 10%." And, on page 13, "Then for the first time we assign a factor for bridges, a 10% factor for the lineal feet of bridges and overpasses the county has to maintain."

The above would appear to be the legislative intent as to Neb. Rev. Stat. §§ 39-847.01 and 39-2215(6) since no other allocation

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section for bridges can be found. The \$32,000 per month, of the counties' share of the State Aid Bridge Fund would therefore be taken from the ten percent under Neb. Rev. Stat. § 39-2507(3). That amount then would be removed from the allocation to the counties as required by Neb. Rev. Stat. § 39-2215(6).

Sincerely,

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Approved By:


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