

DEPARTMENT OF JUSTICE

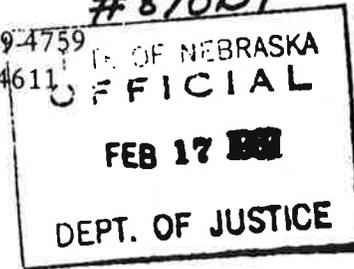
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DATE: February 11, 1987

SUBJECT: County's share of highway allocation funds.

REQUESTED BY: Senator Howard Lamb
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General
Warren D. Lichty, Jr., Assistant Attorney General

Your inquiry of January 22, 1987, relative to Nebraska Revised Statutes, Chapter 39, Article 25, indicates you are considering legislation to address the question of a township's interest in county allocations of funds from the State Highway Allocation Fund. Your specific question is whether sections 39-2501 to 39-2510 require an allocation to township roads by the county, or whether more specific statutory language is required.

The answer to the first part of that question is no. These particular sections only have only to do with the manner in which the county share allocated by section 39-2402 is divided among the counties.

To get a better idea of the relationship between counties and constituent townships, one should refer sections 39-1519 to 39-1524, 23-108, 39-1402, Chapter 23, Article 2, and Chapter 39, Article 21; especially, section 39-2105.

These sections make several things clear, and some of those things conflict. For example, the county board is clearly in charge of all roads in the county. Yet, the township has responsibility to build, repair and maintain township roads. The bridges on all roads, county and township, however, are the responsibility of the county.

Section 39-2105(2) allocating functional classifications between governmental entities states that the counties have responsibility for the design, construction, reconstruction, maintenance, and operation of all rural roads under the various classifications which make them county roads rather than State

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highways. Also, the statutes provide that townships may petition counties for financial assistance with certain large projects. It is presumed that discretion in responding to such petitions rests with the county board.

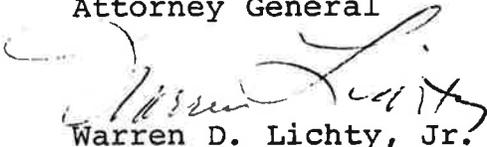
In answer to the broader question--"Is there any statute which requires counties to share their allocation funds with constituent townships?"--we believe the answer is no. The most logical place to expect such a requirement would be in Chapter 23, Article 2, or sections 39-1519 to 39-1524, inclusive. No such blanket requirement is to be found.

Of course, §39-1521 does require the county to build, maintain and repair all bridges, and 39-1522 requires the county to pay for all right-of-way costs, services of the county highway superintendent, and other persons engaged in locating, establishing or altering any public road. Section 39-1524 is the section which provides for a township petitioning the county for funds to assist with large projects.

While counties are required to be responsible for certain expenditures on township roads which may vary from county to county, there is no statutory language requiring them to specifically share funds they receive from the Highway Allocation Fund.

Sincerely,

ROBERT M. SPIRE
Attorney General

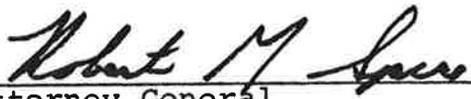


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cc: Patrick J. O'Donnell
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APPROVED:



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