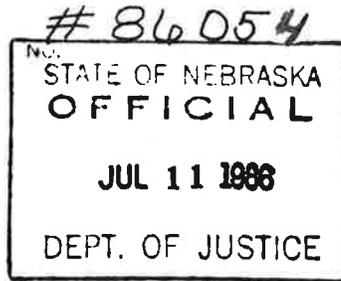


DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

TELEPHONE 402/471-2682 • STATE CAPITOL • LINCOLN, NEBRASKA 68509



ROBERT M. SPIRE  
Attorney General  
A. EUGENE CRUMP  
Deputy Attorney General

DATE: July 10, 1986

SUBJECT: Permanent Transfer of County Road Funds to  
Other County Accounts

REQUESTED BY: Senator Emil E. Beyer, Jr.  
Nebraska State Legislature

WRITTEN BY: Robert M. Spire, Attorney General  
Dale A. Comer, Assistant Attorney General

This opinion is in response to your correspondence of June 7, 1986, in which you stated that it had come to your attention that certain counties in Nebraska had transferred funds from their county road building funds to other accounts in order to finance other aspects of county government. You requested our opinion as to whether such transfers from a county road fund are permissible, and you noted your interest in drafting legislation concerning this issue, if necessary. Our opinion is set out below.

At the outset, we would note that Nebraska counties may have a number of separate funds established for the construction and maintenance of roads and bridges. For example, Neb.Rev.Stat. §39-1637 (Reissue 1984) provides that, in certain counties, former townships shall be road districts, and tax levies for roads in those districts shall become a district road fund for the district in which the taxes are levied. Neb.Rev.Stat. §39-1649 (Reissue 1984) provides for a rural road improvement district fund. Neb.Rev.Stat. §39-802 (Reissue 1984) provides for a separate special emergency bridge fund. In addition to these and other special county road funds, the county budget document formulated by the state Auditor of Public Accounts under authority of Neb.Rev.Stat. §23-905 (Reissue 1983) contains separate sections for a county road fund and a county road-bridge fund. In your correspondence of June 7, you did not specify from which county road fund monies were transferred to finance other

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aspects of county government. We assume, therefore, that your question as to such transfers is intended to be general in nature.

In many instances, where our state statutes create a specific county road fund, those same statutes prohibit the use of those monies for any other purpose. For example, under Neb.Rev.Stat. §39-1637 (Reissue 1984), tax levies for a former township's district road fund must "(2) be used exclusively in improving the public highways in such district, and (3) not be transferred to any other fund." Moreover, Neb.Rev.Stat. §23-139 (Reissue 1983) provides, in pertinent part,

Whenever a tax is levied for the payment of a specific debt, the amount of such tax collected shall be kept as a separate fund in the county treasury, and expended only in the liquidation of such indebtedness.

Obviously, under this statute it can be strongly argued that taxes levied for specific road funds must be used only for the purposes of those funds.

Neb.Rev.Stat. §23-912 (Reissue 1983) also provides:

The funds to be raised by taxation or otherwise, as provided and allowed in said budget, for the various offices, departments, activities, and funds of the county shall, upon the adoption of the budget, be deemed to be and be appropriated to the various offices, departments, activities, and funds as provided in said budget, and shall be used for no other purpose.

This statute provides that monies allocated to a particular fund in a county's budget document for a particular fiscal year are appropriated to that fund and may not be used for other aspects of county government. As a result of this statute, it is our view that monies generally allocated to a county's road fund or road-bridge fund in a county's yearly budget may not be permanently transferred to other accounts to finance other county activities. We are aware of Neb.Rev.Stat. §23-918 (Reissue 1983) which allows a county board to obtain temporary loans to make additional appropriations in emergency situations. However, those temporary loans may not constitute a permanent reallocation of county funds.

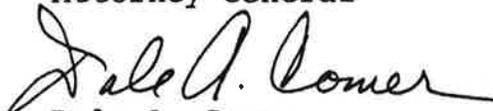
In sum, there are a number of specific county road funds created by particular statutory provisions. In great part, those particular statutory provisions do not allow those county road

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funds to be used for other purposes. In any event, to the extent that a county board allocates monies to county road funds in any given fiscal year, those monies are considered appropriated to those funds, and may not be permanently transferred to other accounts.

Sincerely,

ROBERT M. SPIRE  
Attorney General

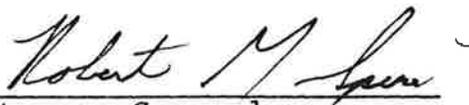


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cc: Patrick J. O'Donnell  
Clerk of the Legislature

APPROVED:



Attorney General