

Chapter

VIII

SD ASSOCIATION OF COUNTY HIGHWAY SUPERINTENDENTS

Certification Manual



Financing of Highways and Bridges

TABLE OF CONTENTS

<u>Subject</u>	<u>Page</u>
Motor Vehicle License Revenue	VII – 4
Use of Special Highway Fund	VII – 8
Highway Gift Funds	VII – 8
Matching Federal Aid for Roads and Bridges	VII – 8
Allotment of Federal Aid State Funds for County Roads	VII – 11
Financial Statement to Person Displaced by Highway Acquisitions	VII – 14
Road and Bridge Levies	VII – 14
County Vehicles	VII – 16
Highway Maintenance Facilities	VII – 16
Wheel Tax for Highway and Bridge Maintenance	VII – 17

Purposes and limitations of the Manual

This manual was updated in the summer of 2018 at the direction of the South Dakota Association of County Highway Superintendents as a resource for county highway superintendents. This Manual is not all encompassing but is instead presented as a general outline of state statutes governing the operation of county highway departments. This manual does not include every statute and court opinion related to county highways and does not constitute legal advice. Further, laws, and the courts' interpretation of such laws, often change. If you are confronted with a particular issue, contact your state's attorney to research how the latest law applies to such issue.

MOTOR VEHICLE LICENSE REVENUE

The use of the funds credited to the county road and bridge fund shall be used for grading, construction, planning, dragging, and maintaining county highways and also for dragging, maintaining, and grading secondary roads. Equipment for performing this work may be purchased from these funds.

32-11-2. Use of funds by board of county commissioners – Purchase of road-building equipment – Percentage limitation. The funds credited to the county road and bridge fund pursuant to §32-11-4.2 shall be used by the board of county commissioners for grading, constructing, planning, dragging, and maintaining county highways and also for dragging, maintaining, and grading secondary roads. Proper equipment for dragging, grading, and maintaining highways, such as graders, tractors, drags, maintainers, and planers may be purchased from such county road and bridge fund.

Source: SDC 1939, § 44.0118 as added by SL 1939, ch 170; 1949, ch 163, § 2; 1977, ch 249, § 57; 1992, ch 60, § 2; 1999, ch 149, § 3; 2000, ch 154, § 1.

32-11-4.1. Distribution of county license fund collections. All funds collected for motor vehicle licenses in each county shall be distributed in the following manner:

(1) Fifty-four percent of all funds collected shall be transmitted to the secretary of revenue and credited to the local government highway and bridge fund;

(1A) Twenty-two and one-half percent shall be credited to the county road and bridge fund of the county in which they were collected;

(2) Fourteen percent shall be retained by the county and placed in a fund to be known as the special highway fund, which shall be used for the construction, reconstruction, and maintenance of roads and bridges in the county as provided by this section and §§ 32-11-5 to 32-11-9, inclusive. If the county in which funds are collected for motor vehicle licenses has completed the construction of the county highway system, the entire amount in the special highway fund shall be used for township roads, and the board of county commissioners may direct the county auditor to pay the collected amount directly to the townships pursuant to §§ 32-11-6 and 32-11-7;

(3) Five percent shall be forwarded to the municipalities within the counties in the following proportions: each municipality within each county shall receive funds in the proportion which the total street mileage of each municipality bears to the total street mileage of all the municipalities within the county. The apportionment shall be made quarterly by the county commissioners at the first meeting in January, April, July, and October. In any county having no municipalities, the five percent collection shall be placed in the county road and bridge fund of the county;

(4) One and three-fourths percent shall be credited to the state motor vehicle fund; and

(5) One-fourth of one percent shall be credited to the county treasurer fund in the county in which the fees were collected to cover expenses for supplies such as toner, paper, etc.;

(6) Two and one-half percent shall be credited to the state license plate special revenue fund.

Source: SDC 1939, § 44.0118 (1); SL 1939, ch 170; SL 1949, ch 163, § 2; SL 1953, ch 226; SDCL § 32-11-4; SL 1977, ch 249, § 50; SL 1984, ch 30, § 45; SL 1985, ch 238, § 5; SL 1985, ch 252, § 4; SL 1987, ch 225, § 1; SL 1994, ch 251, § 2; SL 1999, ch 149, § 2; SL 2007, ch 173, § 14.

Notes of Decisions/Attorney General Opinions:

Where the creek crossed a road that provided access to residents of the county to the county highway system, the county could determine the creek crossing to be a county aid road pursuant to § 31-13-12; this would authorize the expenditure of county highway funds or township funds apportioned pursuant to this section and authorized to be spent by the county pursuant to §§ 32-11-7 and 32-11-8. Op.Atty.Gen. Opinion No. 87-34, 1987 WL 341038.

By the fifteenth day of January, May, July, and October, the secretary of revenue shall apportion moneys in the local government highway and bridge fund as provided by this Section to each county for maintenance and construction of highway and bridges on the county highway system. (SDCL 32-11-35).

The county road and bridge fund is established for the accounting and safe keeping of Highway and bridge funds of the counties and for the deposit and receipt of all public Moneys usable for county highway and bridge construction, maintenance, and repair. SDCL 32-11-4.2 spells out the various revenues that are to be deposited in the county road and bridge fund.

32-11-4.2. County road and bridge fund established – Revenues. The county road and bridge fund is hereby established for the accounting and safekeeping of highway and bridge funds of the counties for the deposit and receipt of all public moneys usable for county highway and bridge construction, maintenance, and repair. Revenues to be deposited in the fund include:

- (1) Distribution of funds from the local government highway and bridge fund pursuant to §§32-11-34 and 32-11-35;
- (2) Levies under subdivisions 10-12-9(4) and (6);
- (3) Levies for the county highway and bridge reserve fund established pursuant to §10-12-13;
- (4) Levies for secondary roads in unorganized territory pursuant to §31-12-27;
- (5) Levies for the county snow removal and special emergency reserve fund established pursuant to §34-5-2;
- (6) Funds collected from motor vehicle licenses and credited to the county pursuant to subdivision 32-11-4.1 (1A);
- (7) Distribution of mobile home license fees pursuant to §32-5-16.2;
- (8) Distribution of interstate reciprocity and proportional registration of fleets fees pursuant to §32-10-35;
- (9) Proceeds from the wheel tax pursuant to §32-5A-2;
- (10) Revenue accruing from the sale of surplus highway equipment to property pursuant to §6-13-8;
- (11) Other revenue received by the county for service or work performed by the county highway department under force account or agreement with other entities.

This section does not affect the deposit and use of the special highway fund for township roads established pursuant to subdivision 32-11-4.1(2).

Source: SL 1999, ch 149, § 1.

32-11-35. Apportionment of local government highway and bridge fund. By the fifteenth day of January, May, July, and October, the secretary of revenue shall apportion moneys in the local government highway and bridge fund as provided by this section.

Each county shall receive for the maintenance and construction of highways and bridges on the county highway system the following portions of the fund:

AURORA	0.8617309603 %	HYDE	0.4292080042 %
BEADLE	2.0755107734 %	JACKSON	0.4560146613 %
BENNETT	0.4734169574 %	JERAULD	0.5365174265 %
BON HOMME	1.0169475454 %	JONES	0.4170248305 %
BROOKINGS	2.1666130448 %	KINGSBURY	1.1599421375 %
BROWN	3.3837994168 %	LAKE	1.2709474261 %
BRULE	0.8685550126 %	LAWRENCE	1.3890380456 %
BUFFALO	0.1942359749 %	LINCOLN	1.7910561825 %
BUTTE	0.9414879792 %	LYMAN	0.8324312504 %
CAMPBELL	0.5549615991 %	McCOOK	0.8705021402 %
CHARLES MIX	1.3836481578 %	McPHERSON	0.8377215214 %
CLARK	1.0622839396 %	MARSHALL	1.0509208775 %
CLAY	1.1000055795 %	MEADE	1.7355156417 %
CODINGTON	1.9607491030 %	MELLETTE	0.4756255207 %
CORSON	0.7630419859 %	MINER	0.7421074191 %
CUSTER	0.6413765166 %	MINNEHAHA	6.6748549646 %
DAVISON	1.6352521120 %	MOODY	1.0900595183 %
DAY	1.3459975332 %	OGLALA LAKOTA	0.2495434791 %
DEUEL	0.8554833973 %	PENNINGTON	4.3779103882 %
DEWEY	0.4886083669 %	PERKINS	1.2068983310 %
DOUGLAS	0.6975344528 %	POTTER	0.6522667104 %
EDMUNDS	0.9950255066 %	ROBERTS	1.5113164284 %
FALL RIVER	0.8157379401 %	SANBORN	0.7349600188 %
FAULK	0.7853236077 %	SPINK	1.7564065178 %
GRANT	1.4775883396 %	STANLEY	0.5116293810 %
GREGORY	1.0004275289 %	SULLY	0.7146023779 %
HAAKON	0.7713979701 %	TODD	0.4212731230 %
HAMLIN	0.8453020898 %	TRIPP	1.3577222772 %
HAND	1.0317240142 %	TURNER	1.4567334816 %
HANSON	0.6541118086 %	UNION	1.3409371240 %
HARDING	0.7525179093 %	WALWORTH	0.8588951448 %
HUGHES	1.1080693584 %	YANKTON	1.6781556555 %
HUTCHINSON	1.5017102025 %	ZIEBACH	0.3321176342 %

Each municipality shall receive for construction and maintenance of their municipal streets system the following portions of the fund: (See SDCL 32-11-35 for complete list).

Each county shall receive for construction and maintenance of roads and bridges on the township road system the following portions of the fund:

AURORA	0.0632253218 %	HYDE	0.0402144818 %
BEADLE	0.1260019718 %	JACKSON	0.0526870082 %
BENNETT	0.0441786605 %	JERAULD	0.0463317376 %
BON HOMME	0.0617151584 %	JONES	0.0396308438 %
BROOKINGS	0.0879797802 %	KINGSBURY	0.0951649111 %
BROWN	0.1958233148 %	LAKE	0.0622951487 %
BRULE	0.0572311771 %	LAWRENCE	0.0115815665 %
BUFFALO	0.0172492386 %	LINCOLN	0.0646251410 %
BUTTE	0.0529833869 %	LYMAN	0.0629088805 %
CAMPBELL	0.0518389092 %	McCOOK	0.0665237884 %
CHARLES MIX	0.1013915990 %	McPHERSON	0.0649944744 %
CLARK	0.0874490344 %	MARSHALL	0.0725936235 %
CLAY	0.0450121685 %	MEADE	0.0671712618 %
CODINGTON	0.0728672038 %	MELLETTTE	0.0373400647 %
CORSON	0.1102309788 %	MINER	0.0660477586 %
CUSTER	0.0227500267 %	MINNEHAHA	0.0933018292 %
DAVISON	0.0429949697 %	MOODY	0.0584075725 %
DAY	0.0994582981 %	OGLALA LAKOTA	0.0420119045 %
DEUEL	0.0645977830 %	PENNINGTON	0.0549385741 %
DEWEY	0.0687525560 %	PERKINS	0.0813627844 %
DOUGLAS	0.0518471166 %	POTTER	0.0618163832 %
EDMUNDS	0.0876387167 %	ROBERTS	0.1025707301 %
FALL RIVER	0.0318493078 %	SANBORN	0.0573013961 %
FAULK	0.0668411451 %	SPINK	0.1612801529 %
GRANT	0.0654486177 %	STANLEY	0.0278222057 %
GREGORY	0.0639402783 %	SULLY	0.0590796681 %
HAAKON	0.0334898778 %	TODD	0.0506679855 %
HAMLIN	0.0541725493 %	TRIPP	0.0996005599 %
HAND	0.1117958582 %	TURNER	0.0745570182 %
HANSON	0.0451890838 %	UNION	0.0505466982 %
HARDING	0.0346106451 %	WALWORTH	0.0393253458 %
HUGHES	0.0422663341 %	YANKTON	0.0486051899 %
HUTCHINSON	0.0862452810 %	ZIEBACH	0.0525237719 %

Moneys to the township road system apportioned by this section to a county shall be apportioned within the county as provided by §§ 32-11-5 to 32-11-7, inclusive.

Source: SL 1985, ch 252, § 8; SL 1986, ch. 253, § 1; SL 1987, ch 226, § 1; SL 2015, ch 56 (HJR 1005), eff. May 1, 2015.

32-11-38. Local bridge improvement grant fund created. There is hereby created in the state treasury the local bridge improvement grant fund. Interest earned on money in the fund shall be deposited into the fund. Any money in the fund is continuously appropriated to the Department of Transportation. Any money deposited into and distributed from the fund shall set forth in an informational budget as described in § 4-7-7.2.

The Transportation Commission may award grants from the fund to any local government entity to construct, reconstruct, and repair bridges. The Transportation Commission shall consider the need for the project and funding mechanisms available to and utilized by the applicant when making a decision to award a grant. No county may receive a grant from the

fund unless such county has adopted and annually updated its county highway and bridge improvement plan pursuant to the provisions of § 1-44-7.5 and has imposed a county wheel tax pursuant to § 32-5A-1.

Source: SL 2015, ch 165, § 1, eff. Apr. 1, 2015.

32-11-39. Promulgation of rules regarding local bridge improvement grant fund. The Transportation Commission shall promulgate rules, pursuant to chapter 1-26, regarding the application process and timelines, the guidelines and criteria for approval of applications, and the distribution of funds from the local bridge improvement grant fund. The criteria for evaluating the projects may include the proximity of other bridges and culverts, alternative routes available, structural deficiencies, functionality and use of the bridge or culvert, and project costs.

Source: SL 2015, ch 165, § 2, eff. Apr. 1, 2015.10-12

Use of Special Highway Fund

All bills for county road construction work must be filed in itemized form and certified by the county highway superintendent before allowed by the county board and before warrants are drawn by the auditor. (SDCL 31-12-17)

31-12-17. Superintendent's approval of bills before payment. All bills for road construction work on the county highway system shall be filed in itemized form and certified to by the county highway superintendent before being allowed by the board of county commissioners, and before warrants in payment therefore are drawn by the county auditor.

Source: SL 1919, ch 333, § 28; SDC 1939, § 28.0310.

The following opinion is no longer listed in West's annotated SDCL. It is retained here for reference purposes.

Opinions of Attorney General

Approval of bills when highway superintendent abandons his employment as superintendent, Report 1919-20, p. 428.

Highway Gift Funds

The county may accept a gift of funds to improve county highways. (AGR 1941-42, p.110)

Matching Federal Aid For Roads And Bridges

The board of county commissioners may levy an annual tax not to exceed one dollar and Twenty cents per thousand dollars of taxable valuation in order to establish a special fund to be known as the county highway and bridge reserve fund. This fund is initially used for the purpose of matching federal aid in the various phases of road and bridge construction. The tax levy is in addition to all other authorized levies for road and bridge purposes. (SDCL 10-12-13). Any unexpended balance remaining in any road, bridge, or county bridge fund may be transferred at the end of the fiscal year to the county highway bridge fund. Any money in the fund not used for matching federal aid grants for the current year may be expended on the county secondary federal aid system, or the reserve fund may be allowed to accumulate and be used for future improvement and construction of public highways and bridges. Additionally, the county board may use other funds appropriated for highway and bridge purposes for matching federal aid. The reserve fund may not revert to the general fund. It may not be used for any expenditures other than highway or bridge purposes. (SDCL 10-12-16)

Where the law affects cities and incorporated towns, twenty-five percent of the money raised therein must be paid by the county treasurer to the city or town treasurer for bridge or street purposes. (SDCL 10-12-14)

10-12-13. County levy for maintenance, repair, and construction of roads and bridges-Reserve fund. The board of county commissioners may levy an annual tax as a reserve fund to be accumulated and used for the purpose of maintaining, repairing, constructing, and reconstructing roads and bridges as follows:

- (1) A levy not to exceed one dollar and twenty cents per thousand dollars of taxable valuation, if the total taxable valuation of the county is one billion dollars or less;
- (2) A levy not to exceed ninety cents per thousand dollars of taxable valuation, if the total taxable valuation of the county is more than one billion dollars but less than two billion dollars; and
- (3) A levy not to exceed sixty cents per thousand dollars of taxable valuation, if the total taxable valuation of the county is two billion dollars or more.

Money in the fund may be expended in the laying out, marking, maintaining, constructing, and reconstructing roads and maintaining, constructing, and reconstructing bridges, under the jurisdiction of the board of county commissioners. The 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. Any increased tax levy imposed pursuant to this section is exempt from the provisions of chapter 10-13, if the county establishes the amount of revenue payable from taxes on real property pursuant to § 10-12-13.1.

The total amount of revenue payable from any increased tax levy imposed pursuant to this section may increase no more than the lesser of three percent or the index factor, as defined in § 10-13-38, over the amount of revenue payable in the preceding year. After applying the index factor, a county may increase the revenue payable from taxes on real property above the limitations provided by this section by the percentage increase of value resulting from any improvements or change in use of real property and any adjustments in taxation of property separately classified and subject to statutory adjustments and reductions under chapters 10-4, 10-6, 10-6A, and 10-6B, except § 10-6-31.4, only if assessed the same as property of equal value.

Source: SL 1951, ch 35, § 1; SL 1953, ch 29, § 1; SL 1957, ch 29, § 1; SDC Supp 1960, § 57.0505-1; SL 1982, ch 28, § 30; SL 1989, ch 87, § 15B; SL 2015, ch 165, § 20, eff. Apr. 1, 2015; SL 2016, ch 58, § 1.

Cross-References

Levy pursuant to this section in addition to maximum county levy, § 10-12-21.1.

Notes of Decisions/Attorney General Opinions:

Board of County Commissioners

Under 1959 amendment to statute pertaining to purposes for which county taxes may be levied, all specific levy restrictions for county roads and county bridges have been removed, but power and duty remains with Board of County Commissioners to levy such amounts as are needed within general limiting statute. SDC 57.0505; SDC 1960 Supp. 57.0505-2, 57.0511. Chicago & N.W. Ry. Co. v. Gilbert, 1969, 84 S.D. 37, 166 N.W.2d 573.

Surplus Funds

Code section limiting power of board of county commissioners to levy taxes for county road purposes, does not prohibit transfer of surplus funds to county road fund in accordance with code sections, where objects for which the surplus funds were raised and collected have been accomplished. SDC 57.0505, as amended, Laws 1945, c. 322;

SDC 12.1904, 12.2016. *State ex rel. Widdoss v. Esmay, 1948, 72 S.D. 270, 33 N.W.2d 280.*

The following opinion is no longer listed in West's annotated SDCL. It is retained here for reference purposes.

Use of funds in "county highway and bridge reserve" account, Opinion. No. 80-63, 1980 S.D. AG LEXIS 17;1980 Op. Atty Gen. S.D. 268.

10-12-13.1. Authorization of increased tax levy--Publication. The governing body of the county may, by resolution, impose the increased tax levy provided in § 10-12-13 with an affirmative two-thirds vote of the governing body on or before July fifteenth. The action of the governing body to authorize an increased tax levy shall be published within ten days of the action and shall be published at least twice in each legal newspaper designated by the county. The action to authorize an increased tax levy is subject to the referendum process in accordance with chapter 7-18A.

The governing body of the county may continue to impose the increased tax levy authorized by this section in subsequent years in accordance with the limitation on the amount of revenue payable from property taxes provided under § 10-12-13.

The governing body of the county may increase the amount of revenue payable from property taxes in excess of the limitation provided under § 10-12-13 if the increased tax levy is authorized by the governing body of the county in accordance with the requirements of this section.

Source: SL 2015, ch 165, § 21, eff. Apr. 1, 2015; SL 2016, ch 58, § 2.

10-12-16. Use of unexpended balances in county road and bridge funds – Reversion to general fund prohibited. 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 the 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 the said funds be used for any other purpose than for highway or bridge purposes as provided herein.

Source: SL 1951, ch 35, §§ 2,3; 1953, ch 29, §§ 2,3; 1957, ch 29, § 2,3; SDC Supp 1960, § 57.0505-1.

Opinions of Attorney General

Funds budgeted in county road and bridge reserve account for use as matching funds in federal secondary highway projects, but not used for that purpose may not be transferred to county's general road and bridge account for projects not on federal secondary system; therefore these funds must be replaced with funds appropriated from the general account or the county's general road and bridge account when they had been used on projects not on federal secondary system, Opinion No. 80-63.

10-12-14. Payment to municipalities from federal matching-aid levy. In all municipalities, twenty-five percent of the money raised by the levy made pursuant to §10-12-13 within said municipalities shall be paid by the county treasurer to the treasurer of said municipality to be expended by the governing body of said municipality for bridge and street purposes within said municipality.

Source: SL 1953, ch 29, § 4; 19578, ch 29, § 4; SDC Supp 1960, § 57.0505-1; SL 1992, ch 60, § 2.

Commission Note

SL 1992, ch 60, § 2 changed the term “city” to “first class municipality” and “second class municipality” and changed the term “town” to “third class municipality”. Section 2 also substituted “municipality” for “city or town” if the class of the municipality was not specified. The Code Commission implemented this act in this section.

10-12-28.2. Authorization of tax levy for secondary road capital improvement fund. The voters of an organized civil township at the annual township meeting may authorize an annual property tax levy not to exceed fifty cents per thousand dollars of the taxable valuation of the township for the secondary road capital improvement fund for projects and purposes as defined in § 31-13-3.1. The secondary road capital improvement tax levy authorized by this section is in addition to the levies authorized in §§ 10-12-28 and 31-13-22. Any tax levy imposed pursuant to this section is exempt from the tax limitations imposed on a township pursuant to chapter 10-13.

Source: SL 2015, ch 165, § 22, eff. Apr. 1, 2015.

Allotment of Federal Aid State Funds For County Roads

Federal aid for roads allotted by the federal government must be expended by the department of transportation on the type of highway as provided by the terms of the allotment. All money levied and collected by the state through general state taxation for state highway purposes, received from the sale of bonds or appropriated for state highway purposes must be expended in laying out, marking, constructing, reconstructing, repairing or maintaining highways of the state (SDCL 31-5-8). As indicated previously, the department of transportation’s approval must be obtained on many aspects of the county highway system.

Since the county board may cooperate with the department of transportation in the construction and maintenance of the state trunk highway system lying within the county and to use the county road fund for such purposes, the board may enter into a binding agreement with the department, whereby the state will pay for the county costs, and the county will reimburse the state in installments rather than one lump sum payment for the funds advanced on federal aid projects. The special highway funds have no application to the county budget law. County funds for certain federal aid projects can be acquired under the special levies which contain their own limitations. (SDCL 10-12-13; AGR 1955-56, pp. 233-234)

31-5-8. Moneys to be expended on highways and expenses of commission-- Loans to local government highway jurisdictions. All moneys levied and collected by the state by general state taxation for state highway purposes, or received from the sale of bonds, or appropriated for state highway purposes, shall be expended only in the laying out, marking, constructing, reconstructing, or maintaining public highways forming the trunk highway system and for the expenses of the Transportation Commission. However, twenty-five percent of all such moneys accruing to the state highway fund, other than from federal funds, may be used by the department in marking, constructing, reconstructing, repairing, or maintenance of highways and bridges of the state. The commission may promulgate rules, pursuant to chapter 1-26, to establish procedures for the application and approval of loans to local government highway jurisdictions. The jurisdictions may use the money for the marking, constructing, reconstructing, repairing, and maintenance of the highways and bridges of the state pursuant to terms and conditions determined by the commission.

Source: SL 1919, ch 333, § 54; SL 1920 (SS), ch 89; SL 1923, ch 284, § 5; SDC 1939, § 28.0212; SL 1953, ch 140; SL 2010, ch 145, § 31; SL 2017, ch 123, § 1.

Notes of Decisions/Attorney General Opinions:

In general

Monies in state highway fund are specifically appropriated to pay for work fully performed under terms of highway construction contracts whether such payment is voluntary or results from judgment being entered against state. SDC 28.0212. Alexander v. State, 1951, 74 S.D. 48, 48 N.W.2d 830.

Breach of Contract

This section did not appropriate or authorize the use of highway money to pay damages for breach by the former highway commission of a contract for construction of a building, and where no appropriation had been made for that purpose, contractor could not recover damages, G.H. Lindekugel & Sons, Inc. v South Dakota State Highway Comm. (1972) 87 SD 32, 202 NW 2d 125.

Under constitutional provision that all state money be placed in treasury subject only to appropriation by representatives of the people, it is intended that disbursement of public funds shall at all times be subject to will of people as expressed by their duly elected representatives. Const. art. 11, § 9; art. 12, § 1. State ex rel. Mills v. Wilder, 1950, 73 S.D. 330, 42 N.W.2d 891.

Appropriation

Statute imposing tax on all motor fuels sold or used in state and providing that funds be disbursed to various subdivisions of state, was an appropriation bill, and where withdrawal of funds from state treasury would occur, a two-thirds vote by legislature was essential to its passage. Const. art. 12, § 2; art. 13, § 9. State ex rel. Mills v. Wilder, 1950, 73 S.D. 330, 42 N.W.2d 891.

Statute imposing a tax upon all motor fuel sold or used in state and providing for funds to be disbursed to various subdivisions of state, constituted a state-wide program for immediate road improvements, and invalid appropriation provisions were not severable from revenue provisions. Laws 1950, Sp.Sess. c. 21. State ex rel. Mills v. Wilder, 1950, 73 S.D. 330, 42 N.W.2d 891.

Amendment to constitution providing proceeds from imposition of any tax, registration fee, or other charge with respect to operation of motor vehicles upon public highways, and proceeds from imposition of any excise tax on gasoline except taxes imposed upon gasoline not used to propel a motor vehicle over highways, shall be used exclusively for maintenance, construction and supervision of highways and bridges, did not operate as a constitutional appropriation, but required a legislative act to permit disbursement of such fund. Const. art. 6, § 27. State ex rel. Mills v. Wilder, 1950, 73 S.D. 330, 42 N.W.2d 891.

Place of expenditure

State is not required to expend its highway funds in the area in which the funds are collected. SDCL 10-48-57, 31-5-8; Const. art. 11, § 8. Matter of State Motor Fuel Tax Liability of A. G. E. Corp., 1978, 273 N.W.2d 737.

Discretion of department

Statute held to express intention that 75 per cent. of funds coming to highway commission should be distributed among counties in proportion to assessed valuation, but such direction is not mandatory; there being intention to vest

discretion in commission regarding distribution and use of such funds (Laws 1919, c. 333, § 54, as amended by Laws 1923, c. 284). *State ex rel. Conway v. Berry*, 1934, 63 S.D. 275, 257 N.W. 664.

Damages

Statutory and constitutional provisions limiting expenditure of moneys levied, collected or appropriated for state highway purposes to, *inter alia*, maintenance and construction of highways do not permit payment of damages for breach of contract, as distinguished from payments due under a contract, nor for extra or unexpected costs incurred by a contractor, which costs were not provided for and are in excess of the contract. SDCL 31-5-8; Const. art. 11, § 8. *G. H. Lindekugel & Sons, Inc. v. South Dakota State Highway Commission*, 1972, 87 S.D. 32, 202 N.W.2d 125.

Funds appropriated for highway construction and maintenance are not available for payment of damages for breach of contract. SDC 33.0604. *Griffis v. State*, 1943, 69 S.D. 439, 11 N.W.2d 138.

Back pay

While State Personnel Policy Board required State Department of Transportation to grant back pay to employee for six-week period wherein he performed work which entitled him to higher employee classification and higher salary, Board ordered expenditure of Department funds for compensation of employee for work performed, and such compensation did not violate constitutional limitation on expenditure of dedicated highway funds. Const. art. 11, § 8. *Chilstrom v. State, Dept. of Transp., Division of Highways*, 1978, 271 N.W.2d 4.

Actions against state

An action against state could not be brought by contractor who contracted to lay riprap along highway to recover increased expense in being forced over protest to use larger stone on project than specified in contract, where no appropriation was available with which to pay the claim. Laws 1919, c. 333, § 54; SDC 28.0212, 33.0604; Const. art. 11, § 9. *Griffis v. State*, 1943, 69 S.D. 439, 11 N.W.2d 138.

Action cannot be brought against state for breach of contract for surfacing road, where no appropriation is available out of which to pay claim (Rev.Code 1919, §§ 2109-2112; Const. art. 11, § 9; Laws 1919, c. 333, § 54, as amended by Laws Sp.Sess.1920, c. 89). *Sigwald v. State*, 1926, 50 S.D. 37, 208 N.W. 162.

Prohibition

Where bill levying tax on all motor fuels sold or used in state and appropriating funds so realized for state-wide road improvement program was not enacted by a two-thirds vote of members of both branches of legislature, as required by Constitution, statute did not become effective, and writ of prohibition would issue to restrain state treasurer and director of taxation and licensing from enforcing its provisions. Laws 1950, Sp.Sess. c. 21; Const. art. 12, § 2; art. 13, § 9. *State ex rel. Mills v. Wilder*, 1950, 73 S.D. 330, 42 N.W.2d 891.

The following opinions are no longer listed in West's annotated SDCL. They are retained here for reference purposes.

Opinions of Attorney General

Expenditure by the state highway commission of funds apportioned to counties, Report 1919-20, p. 267.

Funds appropriated for maintenance of state highway commission offices not to be used for construction of building to house state highway commission, Report 1931-32, p. 53.

Highway funds not legally expendable for machinery to manufacture highway markers, Report 1925-26, p. 200.

*Purchases of county from state highway commission not deductible from county's allotment, Report 1923-24, p. 200.
State highway commission not authorized to use highway funds for progress show exhibit, Report 1933-34, p. 549.*

State not liable for damages occurring through defect in state highway systems, Report 1925-26, p. 196.

Use of funds on county roads after construction of trunk system completed, Report 1925-26, p. 197; 1927-28, p. 188; 1937-38, p. 304.

Use of highway funds for purpose of making legislative investigation of highway department not authorized, Report 1929-30, p. 212

Financial Statement To Persons Displaced By Highway Acquisitions

When federal funds are available for payment of direct financial assistance to persons displaced by highway acquisition, the department of transportation, the commissioners or county highway board may match such federal funds to the extent provided by federal law, and provide the direct financial assistance to the instance and on the conditions set forth by federal law and regulations. When federal funds are not available, the county commissioners, department of transportation, or the county highway board may provide direct financial assistance to such persons, but the amount may not exceed the amount that would have been payable if federal funds had been available or used. (SDCL 31-19-49, 31-19-49.1)

31-19-49. Financial assistance to persons displaced by highway acquisition. If federal funds are available for payment of direct financial assistance to persons displaced by highway acquisition, the Department of Transportation, any board of county commissioners, or any county highway board may match such federal funds to the extent provided by federal regulation as of February 3, 2005.

Source: SL 1963, ch 194; 1969, ch 114; 1971, ch 178, § 1; 1987, ch 210, § 10; 1988, ch 48, § 2; SL 2006, ch 156, § 1.

31-19-49.1. Financial assistance when federal funds are unavailable. If federal funds are not available or used for payment of direct financial assistance to persons displaced by the acquisition of property by the department of transportation or counties, the department or boards of county commissioners or county highway boards may provide direct financial assistance to such persons. Financial assistance authorized by this section may not exceed the total amount that would have been payable under §31-19-49 if federal funds had been available or used.

Source: SL 1963, ch 194 as enacted by SL 1969, ch 114; 1971, ch 178, § 2; 1987, ch 210, § 11.

Road And Bridge Levies

A county may levy for county roads and bridges within the general fund pursuant to SDCL 10-12-8. An amount equal to the average road levy distributed to the cities within the county for years 1984, 1985 and 1986 shall be paid by the county treasurer to the municipal finance officer for bridge and street purposes within the municipality. (SDCL 10-12-9).

The county commissioners may levy an annual tax not to exceed one dollar and twenty cents per thousand dollars of taxable valuation as a reserve fund to be accumulated and used for the purpose of matching federal aid grants. Moneys in the fund may be expended in cooperation with the federal government in the planning and actual constructing of roads and bridges under the jurisdiction of the county commissioners. The tax levy shall be in addition to the maximum tax levy (twenty dollars per thousand dollar taxable valuation). The taxes shall be placed in a special fund to be known as the "County Highway and Bridge Reserve Fund" (SDCL10-12-13). Nothing in SDCL 10-12-13 to 10-12-16, inclusive, may be construed to prohibit the county commission from using other funds appropriated for highway and bridge purposes for the purpose of matching federal aid grants. (SDCL 10-12-17)

10-12-9. Purposes included in county general-purpose levy. The levy of county taxes pursuant to §10-12-8 shall include the following purposes:

- (1) For general county purposes;
- (2) For the support of the mentally ill pursuant to § 27A-13-15 and developmentally disabled pursuant to chapters 27B-4 and 27B-9;
- (3) For salaries;
- (4) For county roads, in addition to the road taxes levied by townships and municipalities, and it shall have the entire supervision of the expenditure of such taxes. In all municipalities an amount equal to the average road levy distributed to the municipalities within the county for calendar years 1984, 1985, and 1986 shall be paid by the county treasurer to the municipal finance officer of the municipality. If a municipality is incorporated after January 1, 1984, the amount paid to the municipality shall be determined pursuant to § 10-12-32.1. Such money shall be expended by the governing body of the municipality only for bridge and street purposes within the municipality;
- (5) For fire guards in territory not organized into civil townships, to be levied against the taxable property of such unorganized territory;
- (6) For county bridges; ...

Source: SDC 1939, § 57.0505 (1) to (7); SL 1945, ch 322; SL 1947, ch 44, § 1; SL 1959, ch 434, §§ 1, 2; SDC Supp 1960, § 57.0505 (1) to (7), (10), (11); SL 1985, ch 77, § 2; SL 1987, ch 89; SL 1998, ch 58, § 1; SL 2014, ch 55, § 2.

Notes of Decisions/Attorney General Opinions:

Support of the poor

In statute authorizing county commissioners to "raise money for the support and employment of the poor," the word "employment" does not authorize county to provide employment as well as direct relief to persons without means of support, but applies only to persons committed to a county asylum. Rev.Code 1919, § 10037. Sioux Falls Paint & Glass Co. v. Knudtson, 1938, 66 S.D. 261, 281 N.W. 201.

10-12-15. County highway and bridge reserve fund exempt from budget law. The provisions of §§10-12-13 to 10-12-17, inclusive, relating to the administration, use or expenditure of any fund in the county highway and bridge reserve fund shall not be subject to or limited by any provision contained in the county budget law.

Source: S L 1951, ch 35, § 3; 1953, ch 29, § 3; 1957, ch 29, § 3; SDC Supp 1960, § 57.0505-1.

Cross-References

County budget law, Chapter 7-21.

10-12-17. Use of general road and bridge funds for matching aid permitted.

Nothing in §§ 10-12-13 to 10-12-16, inclusive, may be construed to prohibit the board of county commissioners from using any other funds appropriated for highway and bridge purposes for the purpose of matching federal aid grants heretofore or hereafter made.

Source *SL 1951, ch 35; § 3; 1953, ch 29, § 3; 1957, ch 29, § 3; SDC Supp 1960, § 57.0505-1; SL 1982 ch 28, § 31.*

County Vehicles

Motor vehicles which are property of the county may be registered upon application direct to the department of revenue. No fees are charged for the registration, and number plates are furnished by the department of revenue for the actual cost of the plates. (SDCL 32-5-42)

32-5-42. Registration of vehicles owned by public entities, Indian tribes, or churches--Costs--New registration required for business use. Any motor vehicle that is the property of this state, the United States, a county, a township, a municipality, a public or nonpublic school accredited by the Department of Education, an Indian mission school in this state, an Indian tribe, a fire department, or any bus or van owned by a church may be registered upon application, in the manner provided for other motor vehicles. However, the custodian of the vehicle shall make the application directly to the department. No fees may be charged for the registration of the vehicle. The department, upon payment to it of the actual cost of the plates, shall furnish number plates for the vehicle. All costs collected under the provisions of this section shall be deposited in the license plate special revenue fund. If the vehicle is used for a private business use or as a commercial motor carrier as defined in § 32-9-1, the operator shall secure vehicle registration pursuant to chapter 32-9 for such use.

Source: SDC 1939, § 44.0108 (11); SL 1939, ch 169; SL 1953, ch 225; SL 1957, ch 211; SL 1961, ch 220; SL 1974, ch 210; SL 1979, ch 203, § 1; SL 1981, ch 239, § 4; SL 1983, ch 237, § 3; SL 1985, ch 15, § 38; SL 1988, ch 242; SL 1989, ch 257, § 62; SL 1990, ch 235; SL 1995, ch 173; SL 1997, ch 179, § 6; SL 2003, ch 166, § 1; SL 2003, ch 272 (Ex. Ord. 03-1), § 63; SL 2014, ch 140, § 1.

Highway Maintenance Facilities

Before funds authorized by the legislature for the construction or acquisition of district highway maintenance facilities are used, the department of transportation shall meet with the local governing bodies of the counties and cities where highway maintenance will be located to discuss joint construction or conversion of highway maintenance facilities. The department shall notify the local governing bodies to determine the feasibility of constructing or converting highway maintenance facilities in the counties and cities where facilities will be located. The department shall consider sharing facilities whenever the local governing bodies express interest in sharing the cost of constructing or converting the facility. (SDCL 31-5-23)

Written agreements are required for joint use of maintenance facilities. It shall specify the joint use areas and how the costs are to be shared (SDCL 31-5-24). The design and construction of joint facilities is under the supervision of the state engineer and is subject to the approval of the state transportation committee and the governing body of the involved unit of government. (SDCL 31-5-26)

31-5-23. Consultation with first and second class municipalities and counties on construction or conversion of maintenance facilities--Sharing facilities.

Before funds authorized by the Legislature for the construction or acquisition of district highway maintenance facilities are used, the Department of Transportation shall meet with the local governing bodies of the counties and first and second class municipalities where highway maintenance facilities will be located to discuss joint construction or conversion of highway maintenance facilities. The Department of Transportation shall notify the local governing bodies in writing of its intention to construct new highway maintenance facilities. Then, the department shall meet with the local governing bodies to determine the feasibility of constructing or converting highway maintenance facilities in the counties and municipalities where the facilities will be located. The department shall consider sharing facilities whenever the local governing bodies express interest in sharing the cost of constructing or converting the facility.

Source: *SL 1981, ch 224, § 1; SL 1992, ch 60, § 2.*

31-5-24. Written agreements required for joint use of maintenance facilities.

Written agreements as provided in §1-24-3, between the department of transportation and the local governing bodies shall be executed before joint use is initiated, and shall specify the joint use areas and how the costs are to be shared.

Source: *SL 1981, ch 224, § 2.*

Cross-References

Agreements for cooperative action between governing bodies, §1-24-3.

31-5-26. Supervision of design and construction of joint facilities. The design and construction of a joint facility is under the supervision of the state engineer, as provided in §5-14-2, is subject to the approval of the transportation commission and the governing body of the involved unit of government.

Source: *SL 1981, ch 224, § 4.*

Cross-References

Public buildings and improvements, § 5-14-1et seq.

Wheel Tax For Highway And Bridge Maintenance

Any county, by ordinance, may impose a wheel tax not to exceed five dollars per wheel with a maximum per vehicle tax of sixty dollars. (SDCL 32-5A-1).

Proceeds of this tax shall be retained by the county and deposited in a special highway fund and may be used only for highway and bridge maintenance and construction. (SDCL 32-5A-2).

Upon purchasing a vehicle from a dealer, the purchaser shall pay the appropriate tax at the time of title transfer (SDCL 32-5A-5).

The board of county commissioners shall, by resolution, establish a means of distributing the revenue generated by the wheel tax among the county, municipalities and townships located within the county. (SDCL 32-5A-3)

If a motor vehicle is licensed for a period of time less than twelve months, any wheel tax shall be prorated on a monthly basis (SDCL 32-5A-7).

32-5A-1. Wheel tax rate--Maximum vehicle tax. Each county may, by ordinance, impose a wheel tax on all motor vehicles, as defined in § 32-3-1, registered in the county at a rate not to exceed five dollars per vehicle wheel. The tax shall be administered and collected by the county. The total vehicle tax may not exceed sixty dollars per vehicle.

Source: SL 1985, ch 248, § 1; SL 1994, ch 244, § 1; SL 2015, ch 165, § 25, eff. Apr. 1, 2015.

32-5A-2. Deposit, use and distribution of proceeds. The proceeds from the tax created by this chapter shall be retained by the county and deposited in the county road and bridge fund, and the revenue may be used only for highway and bridge maintenance and construction. The board of county commissioners shall, by resolution, establish a means of distributing the revenue generated by this chapter among the county and the municipalities and townships located within the county.

Source: SL 1985, ch 248, § 2; SL 1999, ch 149, § 4.

32-5A-3. Payment by purchaser of vehicle – Dealers exempt. Upon purchasing a vehicle from a dealer, the purchaser shall pay the appropriate tax at the time of title transfer. Nothing in this chapter shall prevent an automobile dealer from licensing the vehicles on his lot without paying taxes created by this chapter.

Source: SL 1985, ch 248, § 4.

32-5A-5. Schedule of rates. The per vehicle wheel rate imposed pursuant to § 32-5A-1 may be imposed according to the manufacturer's shipping weight, including accessories, and may vary according to the following table:

- (1) Two thousand pounds or less, inclusive;
- (2) From 2001 to 4000 pounds, inclusive;
- (3) From 4001 to 6000 pounds, inclusive;
- (4) Over 6000 pounds.

Source: SL 1994, ch 244, § 2.

32-5A-7. Prorated tax if licensed for less than twelve months. If a motor vehicle is licensed for a period of time of less than twelve months, any wheel tax imposed on such motor vehicle pursuant to this chapter shall be prorated on a monthly basis.

Source: SL 1994, ch 244, § 4.

32-11-5. Quarterly apportionment of amounts set aside to townships. In apportioning the amount set aside to the various civil townships pursuant to § 32-11-4.1, the apportionment shall be made quarterly by the county commissioners at the first meeting in January, April, July, and October, and shall be made as provided by §§ 32-11-6 to 32-11-8, inclusive.

Source: SL 1931, ch 183, § 16; 1931, ch 184; 1933, ch 146, 1935, ch 154; SDC 1939, § 44.0118 (3); SL 1939, ch 170; 1949, ch 163, § 2; 1977, ch 249, § 51.

32-11-6. Apportionment of funds among townships according to number of miles of maintained roads--Distribution and payment. The amount set aside to the various unorganized and organized civil townships pursuant to §§ 10-47B-149.1, 32-10-35, 32-11-4.1, and 32-11-35 shall be apportioned among the townships according to the number of miles of maintained township roads within the townships, including roads designated as minimum maintenance pursuant to § 31-13-1.1. The county treasurer shall distribute the money to each organized township within the county within thirty days of apportionment. However, an organized township may request in writing that the money remain in the custody of the county treasurer and shall be paid out only on warrants issued by the county auditor in payment of claims for the construction, reconstruction, or maintenance of roads and highways within the township highway system.

Source: SDC 1939, § 44.0118 (3) (a); SL 1939, ch 170; SL 1949, ch 163, § 2; SL 1993, ch 229, § 1; SL 1994, ch 251, § 1; SL 2011, ch 61, § 4; SL 2012, ch 166, § 1.

32-11-7. Counties with unorganized territory – Use of funds. If any portion of a county is unorganized territory, the amount that would have gone to the unorganized territory under § 32-11-6, shall be retained by the county and expended by the county upon construction, reconstruction, and maintenance of roads and bridges of the unorganized portion of the county.

Source: SDC 1939, § 44.0118 (3) (b); SL 1939, ch 170; SL 1949, ch 163, § 2; SL 1993, ch 229, § 2; SL 2011, ch 143, § 1.

Amendments

The 2011 amendment deleted the former second sentence, which read: "The county shall expend the money among the congressional townships in the unorganized territory according to the number of miles of maintained township roads within the unorganized territory."

Opinions of Attorney General

Where the creek crossed a road that provided access to residents of the county to the county highway system, the county could determine the creek crossing to be a "county aid road" pursuant to §31-13-12; this would authorize the expenditure of county highway funds or township funds apportioned pursuant to §32-11-4.1 and authorized to be spent by the county pursuant to this section and §32-11-8, Opinion No. 87-34.