

**Iowa Department of Justice
Memorandum**

To: Jim Nervig, Department of Management
Andy Nielson, State Auditor's Office

From: Chris Scase, Assistant Attorney General 

Date: November 24, 2003

Re: SF 451 – Interest of secondary road fund

You have jointly requested my advice regarding application of a recent amendment to Iowa Code section 313.4, which governs disbursement of the state primary road fund. During the 2003 legislative session, the general assembly enacted Senate File 451, entitled “An act providing for the jurisdiction and funding of roads by transferring funding for and jurisdiction of certain primary and farm-to-market roads, modifying the procedure for classification of area service ‘C’ roads, and establishing a street construction fund distribution advisory committee, and making appropriations.” 2003 Iowa Acts, 80 G.A., ch. 159 [S. F. 451]. Section 8 of this act created a “transfer of jurisdiction fund” in the office of the treasurer, ordered the annual transfer of a percentage of the primary road fund to the transfer fund, and included the following directive for appropriation from the fund to counties and cities:

b. For each fiscal year in the period beginning July 1, 2003, and ending June 30, 2013, there is appropriated the following percentages of the moneys deposited in the transfer of jurisdiction fund for the fiscal year for the following purposes:

(1) Seventy-five percent of the moneys shall be apportioned among the counties and cities that assume jurisdiction of primary roads pursuant to section 306.8A. Such apportionment shall be made based upon the specific construction needs identified for the specific counties and cities in the transfer of jurisdiction report on file with the department pursuant to section 306.8A. All funds, including any interest or other earnings on the funds, received by a county from the transfer of jurisdiction fund shall be deposited in the secondary road fund of the county to be used only for the maintenance and construction of roads under the county's jurisdiction. All funds received by a city from the transfer of jurisdiction fund shall be used only for the maintenance and construction of roads under the city's jurisdiction.

2003 Iowa Acts, 80 G.A., ch. 159, § 8 [to be codified as Code § 313.4(6)(b)(1)] (emphasis added). You have requested my advice regarding the portion of the new statute which is underscored above.

Specifically, you ask whether this new provision allows the county to retain interest on the funds appropriated from the transfer of jurisdiction fund after receipt by the county secondary road fund. As we have discussed, Iowa Code section 12C.7 establishes the general rule that the interest and earnings on investments and time deposits of public funds “shall be credited to the general fund of the governmental body making the investment or deposit, with the exception of specific funds for which investments are otherwise provided by law, constitutional funds, or when legally diverted to the state sinking fund for public deposits. Funds so excepted shall receive credit for interest or earnings derived from such investments or time deposits made from such funds.” Iowa Code § 12C.7(2) (2003); see 1992 Op. Att’y Gen. 192 [#92-11-5(L)] (recognizing applicability of previous version of this statute, Code § 453.7(2) (1991), to county funds). Statutes providing exemption from this general rule are not uncommon. Such statutory exceptions “must be narrowly construed, with any doubts resolved in favor of the rule and against the exception.” 1984 Op. Att’y Gen. 140 [#84-7-5(L)], citing Hellinger v. City of Sheldon, 236 Iowa 146, 18 N.W.2d 182 (1945).

The controlling language of Senate File 451 provides that “[a]ll funds, including any interest or other earnings on the funds, received by a county from the transfer of jurisdiction fund shall be deposited in the secondary road fund of the county to be used only for the maintenance and construction of roads under the county’s jurisdiction.” This provision is subject to two interpretations. First, the limiting language “including any interest or earnings on the funds” may be read as requiring all funds received by the county to be treated in the same way, regardless of whether the funds represent money initially appropriated to the transfer jurisdiction fund or interest accrued in that fund. Thus, the clause relating to interest is read as clarifying the “funds . . . received by the county.” Alternatively, this provision may be read to authorize the county secondary road fund to retain interest earned on funds received from the state transfer of jurisdiction funds after these funds are transferred to the county.

Although both interpretations are plausible, I do not believe that the new statute clearly allows for retention of interest on transferred funds held within the secondary road fund. If the drafters of this legislation had intended for the county secondary road fund to retain interest earned on transfer of jurisdiction moneys after transfer into the county secondary road fund, they could have clearly provided for this outcome by indicating that interest was to be retained by the fund “notwithstanding the provisions of Code section 12C.7(2)” (see Iowa Code § 312.1, last unnumbered paragraph, requiring interest on the state road use tax fund to be deposited into that fund “notwithstanding section 12C.7(2)”) or by explicitly calling for the retention of interest earned upon the moneys after transfer into the secondary road fund, as they did in the case of the re-allocation of funds from the street construction fund of cities to county secondary road funds to compensate for the transfer of jurisdiction of farm-to-market roads. See 2003 Iowa Acts, 80 G.A., ch. ___, § 6 [to be codified as Code § 313.3(2)(b)] (“The amount of moneys by which the

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apportionment to the city is reduced shall be transferred to the secondary road fund of the respective county, to be used only for the maintenance and construction of roads under the county's jurisdiction, and all interest and earnings on the moneys transferred shall remain in the secondary road fund of the county, to be used for the same purposes.”). As noted above, to the degree that new section 313.4(6)(b)(1) is ambiguous it must be narrowly construed and a clear intent for retention of interest within a special fund must be found in order to overcome the general rule of section 12C.7(2).

I understand that local officials are turning to you for guidance on this issue. It is my belief that the new statutory language is ambiguous, at best. Because an interpretation of the statute to allow interest retention within the secondary road fund would represent a departure from the general rules governing this and other county funds, it is quite possible that the new provision would not be interpreted by the courts as allowing interest to be retained by the county secondary road fund. If this is the outcome desired, further legislative action to clarify this section is advisable.