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SPRINGFIELD

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FILE NO. S-1043

ROADS AND BRIDGES:

**Use of Motor Fuel Tax Funds to
Maintain and Improve Non-dedicated
Subdivision Roads**

Honorable William C. Harris
Illinois State Senator
Minority Leader
Springfield, Illinois 62706

Dear Senator Harris:

I have your letter wherein you seek a clarification of opinion No. S-950, issued August 8, 1975. That opinion held that the provisions of Public Act 78-1252 created a legislative scheme to maintain and improve non-dedicated subdivision roads established prior to July 23, 1959 with motor fuel tax funds and to integrate these roads into the township and district road system. You ask the following questions:

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1. If a non-dedicated subdivision road is maintained with motor fuel tax funds, but has not yet been brought up to County standards, does it become a part of the township and district road system?
2. If a non-dedicated subdivision road is maintained with motor fuel tax funds, but has not yet been brought up to County standards, may revenue sharing money be expended on them for their maintenance or improvement?

Public Act 78-1252 added section 6-701.8 to the Illinois Highway Code. (Ill. Rev. Stat. 1974 Supp., ch. 121, par. 6-701.8.) That section reads as follows:

"The formula allocation for township and road districts for the distribution of motor fuel tax funds, provided for in Section 8 in the 'Motor Fuel Tax Law', may be used by the highway commissioner, subject to the conditions set out in Sections 6-301, 6-701.1 and 6-701.2 as respects the methods, equipment and materials appropriate for such maintenance or improvement, and, in township counties, with the approval of the board of town auditors, for the maintenance or improvement of nondedicated subdivision roads established prior to July 23, 1959. Any such road improved becomes, by operation of law, a part of the township and district road system providing such road meets standards as established by the county. In township counties, the board of town auditors shall condition its approval, as required by this Section,

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upon proportional matching contributions, whether in cash, kind, services or otherwise, by property owners in the subdivision where such a road is situated. No more than 20% of such funds allocated under the formula as provided in Section 8 in the 'Motor Fuel Tax Law' and subsequently approved as provided in this Section, may be expended on eligible nondedicated subdivision roads." (emphasis added.)

Non-dedicated subdivision roads that are maintained or improved with motor fuel tax funds do not necessarily become part of the township and district road system. Section 6-701.8 provides that these roads are not a part of the township and district road system until they meet standards established by the county. Therefore, my answer to your first question is that a non-dedicated subdivision road maintained with motor fuel tax funds does not become part of the township and district road system until it meets the standards established by the county.

The legislative scheme for maintaining and improving non-dedicated subdivision roads specifies how the maintenance and improvement of these roads may be financed. Section 6-701.8 authorizes the highway commissioner of a township or a road

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district to maintain and improve non-dedicated subdivision roads with no more than 20% of the motor fuel tax funds allocated to the township or the road district. Generally when a statute expressly provides how something shall be done all other means are impliedly excluded. (People ex rel. Nelson v. Wiersema State Bank, 361 Ill. 75; National Banks of Decatur v. Board of Education, 205 Ill. App. 57.) Highway commissioners are expressly authorized by section 6-701.8 to maintain and improve non-dedicated subdivision roads only with motor fuel tax funds. The legislature determined that motor fuel tax funds allocated to a township or a road district were sufficient to carry out the scheme of maintaining and improving these roads and integrating them into the township and road district. The use of Federal revenue sharing funds to maintain and improve non-dedicated subdivision roads which do not meet county standards would disrupt the legislative plan created by Public Act 78-1252. Therefore, it is my opinion that highway commissioners may not use Federal revenue sharing funds to

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maintain and improve non-dedicated subdivision roads which
have not been brought up to county standards.

Very truly yours,

A T T O R N E Y G E N E R A L