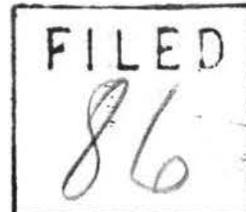


HIGHWAYS - Motor vehicle registration fees and state gasoline taxes are dedicated to State Highway purposes.

June 7, 1938

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Honorable Louis V. Stigall
Chief Counsel
State Highway Commission
Jefferson City, Mo.



Dear Mr. Stigall:

This will acknowledge receipt of your letter of recent date, which reads as follows:

"During the past few months a number of inquiries have been made concerning the dedication to state highway purposes of state motor vehicle registration fees and state gasoline taxes. In several instances we have been requested to secure your opinion regarding this matter, and we are, therefore, asking for a ruling from you.

"Under the express provisions of Section 44a, Article IV, and Section 4, Article X, Constitution of Missouri, it seems to us quite clear that such fees and taxes are clearly dedicated to state highway purposes, not only so long as any road bonds might be outstanding, but even after the retirement of all such bonds. While the Constitution does not fix the rates of these taxes, and while the Legislature might abolish them altogether, nevertheless so long as the General Assembly provides for the collection of such taxes, all of the proceeds must be used for the various state highway purposes outlined in Section 44a.

"We are forwarding herewith a copy of a speech delivered by Mr. C. W. Brown, Chief Engineer, before the American Road Builders Association in New Orleans January 13, 1937, as it contains a historical summary of the constitutional amendments and statutes relating to dedication of these taxes to state highway purposes.

"We will indeed appreciate an opinion from you regarding this matter and advising us whether or not we are correct in the interpretation which we have made, as outlined above."

In the general election on November 2, 1920, the people of Missouri amended Article IV of the Constitution by adding a new section known as Section 44a, said amendment being found at page 707, Laws 1921, said amendment providing in part as follows:

" ** Any motor vehicle registration fees or license fees or taxes, authorized by law, except the property tax thereon, less the cost and expense of collection and the cost of maintaining any state highway department or commission, authorized by law, shall, after the issuance of such bonds, and so long as any bonds herein authorized are unpaid, be and stand appropriated without legislative action for and to the payment of the principal of the said bonds, and shall be credited to a sinking fund to be provided for by law. ** "

Said amendment (Section 44a) was amended by the people at a special election held August 2, 1921 so as to provide for payment of the interest on bonds as well as the principal of said bonds out of the motor vehicle license fees. Said latter amended section is found at page 196, Laws 1921, First Extra Session.

By the foregoing amendments, it will be seen that the motor vehicle registration fees, less the costs of their own collection, were dedicated to two purposes, viz:

(1) Defraying the cost of maintaining any State Highway Department or Commission authorized by law, and

(2) Payment of the principal and interest of bonds issued for road purposes.

In discussing the fund created by motor vehicle license fees, the Supreme Court, in the case of State ex rel. vs. Hackmann, 282 S. W. 1.c. 1011, said:

"It thus appears that not only is the fund public revenue or state money, but it is public revenue of a very extraordinary kind, levied, collected, and held by the state for two specific public uses, the major use of which is the payment and retirement of state bonds."

Prior to the general election of November 7, 1922, Section 4 of Article X of the Constitution of Missouri read as follows:

"All property subject to taxation shall be taxed in proportion to its value."

In that general election, the people amended said section by adding thereto the following proviso found at page 392, Laws 1923:

"Provided, that all motor vehicles subject to taxation in this state shall be subject to license taxes, the rate for state and municipal purposes to be fixed by the general assembly; so long as any road bonds

of the state authorized by section 44a, of article 4, of the Constitution, are outstanding a sufficient amount of such license taxes collected by the state shall be and stand appropriated without legislative action, for and to the payment of the principal and interest of such bonds, and the remainder of such funds less the cost and expenses of collection and the cost of maintaining any state highway department, or commission, shall be used in road and bridge construction and maintenance of roads in such manner as may be prescribed by law."

By the foregoing amendment to Section 4 of Article X, the people re-affirmed the dedication of motor vehicle registration fees found in the amendments of 1920 and 1921 to Article 4 of the Constitution to the payment of the principal and interest of road bonds, and went further and dedicated the remainder of such funds, less the cost of their own collection and the cost of maintaining any State Highway Department or Commission, to use in road and bridge construction and maintenance of roads. Therefore, by this latter amendment, the people dedicated the motor vehicle registration fees to the following purposes:

(1) Payment of principal and interest on road bonds issued under authority of Section 44a, Article 4 of the Constitution, (2) cost and expenses of collecting such registration fees, (3) cost of maintaining any State Highway Department or Commission, and (4) construction of roads and bridges and maintenance of roads in such manner as may be prescribed by law. By this amendment, therefore, the motor vehicle registration fees were "earmarked" for certain purposes by the people.

At the general election on November 4, 1924, the people, by adopting initiative proposition #5 found at page 282, Laws 1925, levied a tax of 2¢ per gallon on motor vehicle fuel, (hereafter referred to as the gaso-

line tax) and also increased the motor vehicle registration fees. Section 2 of said act reads as follows:

"For the purpose of providing funds to complete the construction of and for the maintenance of the State Highway System of this state as designated by law there is hereby provided a license tax equal to two cents per gallon of motor vehicle fuels as defined in this act used in motor vehicles on the public highways of the state, which license tax shall apply and become effective January 1, 1925. "

Section 15 of said act reads in part as follows:

"For the purpose of providing additional funds to complete the construction of and for the maintenance of the state highway system of this state the annual fees for the state registration of motor vehicles shall, beginning January 31, 1925, be increased by the following amounts, over the fees now fixed by law: ** "

It will be seen that the declared purpose of levying the gasoline tax and of increasing the motor vehicle registration fees was to provide funds "to complete the construction of and for the maintenance of the State Highway System of this State." This law adopted by the people recognized the previous dedication of registration fees to Highway purposes as contained in the amendment to Section 4 of Article 10, supra, and in addition it specified that the gasoline tax should be used for Highway purposes.

Section 17 of this act specifically directed the disbursement of the funds provided for by the act. This initiative proposition being a law with as much force as an act of the legislature, the expenditure of these funds, as set out in Section 17, would be carry-

ing out the provisions of the amendment to Section 4, Article 10, supra, as to the use of motor vehicle registration fees. Likewise, the people by such a law had the right to " earmark " the gasoline tax as they did, and such " earmarking " of the gasoline tax would hold, unless otherwise changed by later laws of the Legislature or by the people. Therefore, upon the adoption of the foregoing initiative proposition by the people, both motor vehicle registration fees and gasoline taxes were dedicated to Highway purposes, the former by constitutional amendments and the latter by a law adopted by the people.

Further carrying out their declared purpose of completing a State-wide road system and of dedicating motor vehicle registration fees and gasoline taxes to the payment of same, the people of Missouri, at the general election on November 6, 1928, adopted an amendment to Section 44a of Article 4 of the Constitution, said new amendment embracing much of the previous Section 44a and making enlarged provisions for Highway construction and maintenance.

Said amendment is found at page 453, Laws 1929. After providing that motor vehicle registration fees and gasoline taxes, less certain costs and expenses, shall stand appropriated to the payment of the principal and interest of road bonds so long as the same remained outstanding, said amendment provides:

"** If in any year there should be any balance in the state road bond interest and sinking fund beyond the requirements of the next succeeding calendar year for interest and sinking fund of the said bonds, such balance shall be transferred and credited to the state road fund to be administered and expended under the direction and supervision of the state highway commission for the following purposes: (Enumerating numerous highway purposes)

"After the principal and interest of all said bonds shall have been paid,

all state motor vehicle registration fees, license fees or taxes, authorized by law, on motor vehicles (except the property tax on motor vehicles and state license fees or taxes on motor vehicle common carriers) and also all state taxes on the sale or use of motor vehicle fuels, authorized by law, less the expense of the collection of such registration fees and license taxes on motor vehicles and taxes on the sale or use of motor vehicle fuels and less also the cost of maintaining the state highway department and the state highway commission and the cost of administering and enforcing any state motor vehicle law or traffic regulation, shall be and stand appropriated without legislative action to the state road fund, to be administered and expended under the direction and supervision of the state highway commission for the purposes and in the manner hereinbefore set forth."

Therefore, by the foregoing amendment, it is clear that the people have definitely said that so long as road bonds are outstanding, the surplus of the registration fees and gasoline taxes remaining after retiring maturing bonds shall be used for Highway purposes, and that after all the bonds and interest have been paid, then all of such registration fees and gasoline taxes, less certain enumerated costs and expenses, shall be expended under the direction and supervision of the State Highway Commission for Highway purposes.

It is to be noted that the amendment of 1928 re-affirms the dedication of motor vehicle registration fees contained in the amendment to Section 4 of Article 10 adopted in 1922, and the dedication of the gasoline taxes contained in initiative proposition #5 adopted by the people in 1924. In all three instances, the people have spoken directly on the questions, and in their last expression they have adopted their previous declarations

contained in the first two. It would seem that the people have spoken in such plain language as to the dedication of the registration fees and gasoline tax that there can be no question as to their intention. The amendment further provides that such registration fees and gasoline taxes cannot be increased for a period of ten years after the adoption of the amendment, unless the same shall not be sufficient to produce funds requisite to pay the costs and expenses enumerated in the amendment, and the bonds and interest, and provide for the proper maintenance of State highways, in which event the Legislature may increase such rates and taxes to an amount sufficient to provide for such payments and the proper maintenance of State highways.

The amendment further provides that if the said fees and taxes should not be sufficient to pay the expenses therein authorized and make provision for the sinking fund and interest on the bonds and also for suitable and proper maintenance of State highways, then not more than \$60,000,000 of the said bond should be issued in addition to those already authorized. All of the language of the said amendment clearly indicates that the funds arising from said registration fees and gasoline taxes, after payment of bonds and interest and certain costs and expenses, should be used for constructing and maintaining the State Highway system.

CONCLUSION.

It is therefore the opinion of this office that State motor vehicle registration fees and State gasoline taxes are dedicated to the following purposes:

- (1) The expense of collection of said fees and taxes,
- (2) The cost of maintaining the State Highway Department and the State Highway Commission,
- (3) The cost of administering and enforcing any State motor vehicle law or traffic regulation,

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(4) Payment of principal and interest of bonds issued under authority of Section 44a of Article 4 of the Constitution, and

(5) The construction and maintenance of a State Highway road system and other Highway purposes enumerated in Section 44a, page 453, Laws 1929.

It necessarily follows that said funds could not be used for any other purposes than the foregoing.

Respectfully submitted

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APPROVED:

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