

APPROPRIATION OF LICENSE FEES PAID BY MOTOR : Counties, road districts and  
VEHICLES OF MISSOURI TO COUNTIES, ROAD DIS- : cities must file claim for its  
TRICTS AND CITIES UNDER SECTION 5728, EXTRA : share of such funds with the  
SESSION, LAWS OF 1944. : State Auditor who shall issue  
warrant therefor to the State  
Treasurer who may then pay the  
same.

August 6, 1945

Honorable Robert W. Winn  
State Treasurer  
Capitol Building  
Jefferson City, Missouri



Attention: Mr. Albert F. Smith.

Dear Mr. Winn:

This will acknowledge your letter of July 3, 1945, requesting an opinion concerning the subject matter mentioned in your letter. Your letter is also accompanied by House Bill #429, an Act passed by the 1945 Legislature, which has a part thereof, Section 32, which constitutes the basis of your request for this opinion. Your letter states:

"The State Legislature made an appropriation for the payment of the pro-rated Bus & Truck Fees to the various Counties, cities, towns, and Special Road Districts as shown in Section 32 of House Bill 429, copy of which is attached hereto, but the Legislature did not make any provision as to how the payments were to be made or by whom they were to be made.

"The 1943 Legislature provided by an additional section, that the State Treasurer should notify the County Courts of the various counties and the Board of the City of St. Louis, who should make a requisition for the amount of money due them, and then the money was sent to the County Clerk, whose duty it was to disburse it to the various cities or towns or road districts, to which it belonged in that particular county.

"In the absence of any provision as to manner of payment, the State Treasurer respectfully requests an opinion

from your office as to the manner of payment and by whom to be made under the appropriation set out in Section 32 of House Bill 429, relative to payment of fees due the various counties, cities, towns and Road Districts, from the Bus and Truck Fees for the Biennium 1943 and 1944."

Section 32, House Bill 429, page 16, states that said appropriation was under Section 5728, R.S. Mo. 1939. Section 5728, R.S. Mo. 1939, was repealed by the Act of 1943, at page 864, and a new Section known as 5728 was enacted in lieu thereof, which included provisions practically and effectually the same as were the provisions of Section 5728, R.S. Mo. 1939.

Said Section 5728, Laws of 1943, appearing at pages 864 and 867, inclusive, was in turn repealed by the Extra Session of the Legislature, Laws 1944, page 45, and a new Section to be known as Section 5728 was enacted, covering the same subject matter, with practically the same provisions as were contained in the Revision of 1939, and in the Act of 1943, above referred to, and is in part as follows:

"(a) In addition to the regular registration license fee imposed on all motor vehicles in this state, and its personal property tax, every motor carrier, except as provided in section 5721 shall, at the time of the issuance of a certificate of convenience and necessity and/or an interstate permit, and annually thereafter, on or between January 1, and January 15 of each calendar year, pay to the state treasurer of the State of Missouri the annual license fee, as set out in this article, for the maintenance and repair of the public highways; \* \* \*

\* \* \* \* \*

"In all cases where the mileage of any route covered by any certificate of convenience and necessity and/or an interstate permit issued under the provisions of this article shall be in question,

the public service commission shall by order determine such question and the order of the public service commission in such cases shall be final.

"For the purpose of determining the mileage of any such route, the certificate of the state highway commission, with respect to state highways, the county engineer, with respect to county or other highways not constituting a part of the state highway system, or of the streets of any municipal corporation, and in the case of streets in any municipal corporation, the certificate of any city engineer or mayor shall be accepted by the public service commission as conclusive evidence:

\* \* \* \* \*

"The commission, upon the issuance of a license for any vehicle, as defined in this article, shall notify the state treasurer who shall receive the license fee for such vehicle; and the commission shall also notify the state treasurer of the number of lineal miles of route used by the owner of that vehicle and the number of miles in which it operates on state roads, the number of miles it operates on county roads and the number of miles it operates on city roads not maintained by the state highway commission, and the state treasurer shall distribute and credit to the state highway commission and to the proper county or city in the proportion that the number of lineal miles of route used by the licensed motor vehicles in each case bears to the number of lineal miles of route over which such carrier operates and the said funds so derived from said license shall be used for the maintenance and repair of the highways and streets over which said carrier operates."

Thus we observe that the appropriation made by Section 32 of House Bill 429, must be based upon Section

August 6, 1945

5728, Laws 1944, Extra Session, instead of Section 5728, R. S. Mo. 1939, since said Section in Revised Statutes 1939, was repealed as above indicated.

Section 44a, Article IV, of the last Constitution of Missouri, at the top of the left column, page 93c, is as follows:

"\* \* \* All state motor vehicle registration fees, license taxes 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, after the issuance of any of said bonds and so long as any of said bonds herein authorized remain unpaid, be and stand appropriated without legislative action, to the payment of the principal and interest of the said bonds and for that purpose shall be credited to the State Road Bond Interest and Sinking Fund provided by law. \* \* \* "

Said Section 44a of said Article IV of the Constitution in the first independent paragraph in the right column, on page 93c, is as follows:

"After the principal and interest of all of 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."

It will thus be observed that State license fees and taxes on common carrier motor vehicles were exempted from vehicles required to pay the additional license fees and taxes named in Section 5728, Laws of Missouri, 1944, Extra Session, so that the license fees and taxes paid by that class of motor vehicles did not "stand appropriated, without legislative action to the State Road Fund," but were subject to legislative action appropriating the funds derived from such source to other purposes.

The Legislature of this State at the Special Session of 1944, had the right, without Constitutional restriction, to enact Section 5728, found on page 45 of the Special Session Acts of 1944, providing that the license fees and taxes imposed upon motor vehicles therein named, should go to the counties, cities and road districts therein named. The appropriation of like funds had been made by the Legislatures in the Sessions of 1941 and 1943, evidently with full knowledge of the exemption provisions in Section 44a, Article IV, supra, of the old Constitution, as to such motor vehicles.

Section 32 of House Bill 429, makes a like appropriation of such license fees and taxes as were made by the Legislature in its respective Sessions of 1941 and 1943. The only difference between the appropriations in House Bill 429, and the Acts of 1941 and 1943, appropriating money out of the same fund, and for the same purposes, as does House Bill 429, is that House Bill 429 does not carry the machinery as was set up in the Acts of the Legislature of 1941 and 1943, specifically directing the Treasurer as to the method he should follow in distributing the fund.

The appropriating language of Section 32 of House Bill 429, is as follows:

"Section 32. There is hereby appropriated out of the State Highway Department fund, and from the \$1,555-658.60 annual motor carriers license fees collected during the biennium

of 1943 and 1944 under Section 5728, R.S. 1939, the total amount of \$106,590.63 to be paid to the counties, cities and road districts as hereinafter named in the amounts set forth opposite their names, as follows;"

Then follows the names of the counties, cities and road districts to which said funds are to be paid.

Even though there is a failure in House Bill 429 to direct the State Treasurer as to the method he should follow in distributing such appropriated funds, each county, city and road district named in said Section 32 would have, and does have, the legal right to present its claim to the State Auditor for auditing, and for the issuance of his warrant to the State Treasurer to be paid the respective sums as allocated to them from truck fees and bus fees as specified and as set opposite their respective names in said Section 32.

The State Treasurer, is by law, prohibited from paying money out of the State Treasury except as may be specifically directed by law.

This was stated in Section 15 of Article X of the recent Constitution of Missouri, pages 150c and 151c, in force when Section 5728, Special Session 1944, was passed, is as follows:

"Sec. 15. Deposit of State funds by treasurer--how disbursed.-- All moneys now, or at any time hereafter, in the State treasury, belonging to the State, shall, immediately on receipt thereof, be deposited by the Treasurer to the credit of the State for the benefit of the funds to which they respectively belong, in such bank or banks as he may, from time to time, with the approval of the Governor and Attorney General, select, the said bank or banks giving security, satisfactory to the Governor and Attorney General for the safekeeping and payment of such deposit, when demanded by the State Treasurer on his check--such bank to pay a bonus for the use of such deposits not less than the

August 6, 1945

bonus paid by other banks for similar deposits; and the same, together with such interest and profits as may accrue thereon, shall be disbursed by said Treasurer for the purposes of the State, according to law, upon warrants drawn by the State Auditor, and not otherwise."

To the same effect, is Section 28, Article IV of the New Constitution of Missouri, which is as follows:

"Section 28. No money shall be withdrawn from the state treasury except by warrant drawn in accordance with an appropriation made by law, nor shall any obligation for the payment of money be incurred unless the comptroller certifies it for payment and the state auditor certifies that the expenditure is within the purpose of the appropriation and that there is in the appropriation an unencumbered balance sufficient to pay it. At the time of issuance each such certification shall be entered on the general accounting books as an encumbrance on the appropriation. No appropriation shall confer authority to incur an obligation after the termination of the fiscal period to which it relates, and every appropriation shall expire six months after the end of the period for which made."

The exact question and subject matter was not involved in the case, but the same principle here involved, was being considered by our Supreme Court in the case of State ex rel. vs. Treasurer of Missouri, 41 Mo. 590, l.c. 593. In determining the duties and powers of the State Treasurer in paying out public money, the Court said:

"It is the province of the Treasurer to see that all warrants presented to him are drawn against the proper fund, and drawn in such a manner as to make them, when paid, such vouchers as will show conclusively to whom and

August 6, 1945

for what services the public moneys  
have been paid out by him. \* \* \*

Section 13021, Article 1, Chapter 87, defines the duties of the State Auditor, with respect to hearing and auditing claims against the State. Said Section is as follows:

"The state auditor shall be the general accountant of the state, and the keeper of all public account books, accounts, vouchers, documents, bonds and coupons, paid or redeemed, And all papers relating to the accounts and contracts of the state, and its revenue, debt and fiscal affairs, not required by law to be placed in some other office, or kept by some other person, and he shall also be secretary of the state board of equalization, and shall cause all of the clerical work of said board to be performed by the clerks in his office."

Sections 13042 and 13043, setting forth the duty of the State Auditor to draw, and the State Treasurer to pay warrants for claims audited and allowed against the State, are respectively, as follows:

"Auditor to draw warrant on treasurer for claims allowed. -- In all cases of accounts audited and allowed against the state, and in all cases of grants, salaries, pay and expenses allowed by law, the auditor shall draw a warrant on the treasurer for the amount due. The warrant shall be in the following form:

(Seal)                      No. \_\_\_\_\_  
Office of the State Auditor.  
Jefferson City, Mo.

\_\_\_\_\_, 19 \_\_\_\_.

The State Treasurer of Missouri:

Pay to \_\_\_\_\_ in cash, or by state  
treasurer's draft made to his order \_\_\_\_\_  
dollars out of any money appropriated

for the payment of \_\_\_\_\_.

\_\_\_\_\_  
State Auditor.

By \_\_\_\_\_  
Chief Clerk.

"Provided, that in all cases where state moneys are to be mailed to the payee of state auditor's warrants, the state auditor shall take his warrant to the state treasurer's office and exchange such state warrants for state treasurer's drafts."

Section 13043:

"No warrant to be drawn or paid unless money appropriated for payment --  
No warrant shall be drawn by the auditor or paid by the treasurer, unless the money has been previously appropriated by law; nor shall the whole amount drawn for or paid, under any one head, ever exceed the amount appropriated by law for that purpose."

Section 30 of Article IV of our New Constitution, page 33 and page 34, exclusively and perpetually appropriates all State license fees and taxes upon motor vehicles, trailers and motor vehicle fuels, and respecting the manufacture, receipt, storage, distribution and sale, or use thereof, except sales tax on motor vehicles and trailers, and all property taxes, for the purpose of constructing and maintaining the State Highways. That part of said Section 30, so providing, is as follows:

"For the purpose of constructing and maintaining an adequate system of connected state highways all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt, storage,

August 6, 1945

distribution, sale or use thereof (excepting the sales tax on motor vehicles and trailers, and all property taxes.) less the cost, (1) of collection thereof, (2) of maintaining the commission, (3) of maintaining the highway department, (4) of any workmen's compensation, (5) of the share of the highway department in any retirement program for state employees as may be provided by law, (6) and of administering and enforcing any state motor vehicle laws or traffic regulations, shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other: "

While it is true that Section 5728, Extra Session 1944, was not in conflict with Section 44a, Article IV of the former Constitution of this State, because the fees and taxes paid by common carrier vehicles were exempted by said Section 44a from being appropriated for the construction and maintenance of highways, said Section 5728 is in conflict with Section 30, Article IV as hereinabove quoted, of our present Constitution. However, said Section 5728, Laws of 1944, Extra Session, even though so in conflict with the Constitution, unless sooner amended or repealed, will remain in force under the terms of Section 2 and Section 5 of the Schedule of our New Constitution as read together, page 62, of the outstanding pamphlet containing the Constitution. Section 2 is as follows: (Section 5 being hereinafter quoted in a later paragraph):

"Section 2. All laws in force at the time of the adoption of this Constitution and consistent therewith shall remain in full force and effect until amended or repealed by the general assembly. All laws inconsistent with this Constitution, unless sooner repealed or amended to conform with this Constitution, shall remain in force and effect until July 1, 1946."

Section 5728, found in Laws of 1944, Extra Session being lawfully enacted, and in harmony with the Constitution of 1875, and the appropriation passed by the present session of the General Assembly, known as House Bill 429

August 6, 1945

construed together, created valid obligations of the State of Missouri respecting the claims therein enumerated. By the terms of Section 5 of the Schedule, appended to the Constitution of 1945, such claims maintain their validity under the new Constitution, and may be lawfully paid according to law. Said Section 5 of the Schedule, appended to the Constitution of 1945, reads as follows:

"All rights, claims, causes of action and obligations existing and all contracts, prosecutions, recognizances and other instruments executed or entered into and all indictments which shall have been found and informations which shall have been filed and all actions which shall have been instituted and all fines, taxes, penalties and forfeitures assessed, levied, due or owing prior to the adoption of this Constitution shall continue to be as valid as if this Constitution had not been adopted."

The claims of the various counties, cities and road districts thereby constitute obligations which may be presented to and audited by the State Auditor in accordance with the sections quoted, *supra*, and upon his determination that the same are valid may be paid upon a warrant issued by the State Auditor directed to the State Treasurer.

It is apparent from the positive terms of said Section 30, Article IV of the new Constitution, hereinabove quoted, that such State license fees and taxes therein mentioned, upon the motor vehicles therein mentioned, may not again be appropriated by the Legislature for any purpose whatsoever, because said Section 30, constitutes a perpetual appropriation of all of such funds exclusively for the construction and maintenance of an adequate system of connected highways in this State. Any appropriation thereof hereafter would be in conflict with said Section 30, Article IV, of the present Constitution, and would be void.

#### CONCLUSION.

It is, therefore, the opinion of this Department:

1) That Section 32 of said House Bill 429, does not contain sufficient direction to authorize the State Treasurer how to pay, or to whom to pay the funds appropriated.

August 6, 1945

2) That said Section 32 of said House Bill 429, does, in the appropriation of the funds involved to the respective counties, road districts and cities of the State, create a financial obligation upon the part of the State to each of them for the amounts set opposite to their respective name. That each of them has the right to present a claim for the amount so appropriated to each of them to the State Auditor for allowance, and that if and when allowed by the State Auditor he may issue his respective warrants to each of them drawn on the State Treasurer, who, under the statutes hereinabove cited and quoted, will be authorized to pay said respective amounts to the owners thereof. Such warrants to be drawn in conformity to the terms of Section 13042, R.S. Mo. 1939, supra, and so as to make them, when paid, such vouchers as will show conclusively to whom paid, and for what claims public monies have been paid out by the State Treasurer.

3) That if, under such statutes as are now in force, other like fees and taxes should be collected from like sources, the same method of disbursement should be followed until July 1, 1946, unless such statutes be sooner amended or repealed.

4) That after July 1, 1946, under the provisions of Section 30, Article IV, of the New Constitution of this State, all State revenue derived from highway users as an incident to their use or right to use the highways of this State, including all State license fees and taxes upon motor vehicles, trailers, and motor vehicle fuels, and upon, with respect to, or on the privilege of the manufacture, receipt, storage, distribution, sale or use thereof (excepting the sales tax on motor vehicles and trailers, and all property taxes), shall be credited to a special fund and stand appropriated without legislative action for the purpose of constructing and maintaining an adequate system of connected State highways, and only for the purposes set forth in said Section 30.

Respectfully submitted,

GEORGE W. CROWLEY  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

GWC:ir