

APPROPRIATION:
CONSTITUTION:
GENERAL ASSEMBLY:
ROADS:
TAXATION:

The General Assembly can create a special fund for the purpose of financing local roads, but such special fund would be subject to dissolution, and appropriation for other purposes, by succeeding General Assemblies.



February 1, 1954

Honorable William R. Nelson
Director of Research
Committee on Legislative Research
State Capitol
Jefferson City, Missouri

Dear Sir:

By letter of January 7th, 1954, you requested an official opinion as follows:

"The Joint Local Roads Study Commission, which was created by the Sixty-seventh General Assembly under the terms of Senate Concurrent Resolution No. 8, among other matters is considering the problems connected with the financing of local roads.

"The commission has instructed me to request your opinion on the following question:

"Under present constitutional provisions can the General Assembly create a special fund such as the county aid road fund for the purpose of financing local roads and provide by general law that all sales tax money (less a percentage for the support of free public schools) which is collected on the sale of specified automotive products be deposited in such a fund subject to appropriation by succeeding general assemblies only for the support of local roads? * * *"

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You stated in your letter that it is proposed that sales tax from "specified automotive products" be placed into a special fund to aid local roads. You are cautioned that certain types of taxes on automobiles are restricted by the Constitution to use by the State Highway Commission for its purposes.

"Sec. 30. Source and application of highway funds.--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, 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:
* * *."

You are further cautioned that a certain percentage of the state revenue must be used for the support of public schools. This is required by Article IX, Section 3(b), Constitution of Missouri, 1945:

"In event the public school fund provided and set apart by law for the support of free public schools, shall be insufficient to sustain free schools at least eight months in every year in each school district of the state, the general assembly may provide for such

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deficiency; but in no case shall there be set apart less than twenty-five per cent of the state revenue, exclusive of interest and sinking fund, to be applied annually to the support of the free public schools."

Your opinion request raises two questions. They are, (1), can the General Assembly by general law create a special fund, and (2), can succeeding general assemblies appropriate from that special fund for purposes other than for which the fund was created.

Article III, Section 36, Constitution of Missouri, 1945, requires that all revenue be paid into the treasury:

"All revenue collected and money received by the state shall go into the treasury and the general assembly shall have no power to divert the same or to permit the withdrawal of money from the treasury, except in pursuance of appropriations made by law. All appropriations of money by successive general assemblies shall be made in the following order:

"First: For payment of sinking fund and interest on outstanding obligations of the state.

"Second: For the purpose of public education.

"Third: For the payment of the cost of assessing and collecting the revenue.

"Fourth: For the payment of the civil lists.

"Fifth: For the support of eleemosynary and other state institutions.

"Sixth: For public health and public welfare.

"Seventh: For all other state purposes.

"Eighth: For the expense of the general assembly."

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A situation similar to the one at hand was presented in State ex rel. Fath v. Henderson, 160 Mo. 190, 60 S.W. 1093. The General Assembly in 1899 passed an inheritance tax law, which provided in part, as follows:

"Sec. 4. The moneys received by the State Treasurer under the provisions of this act shall be deposited in the State Treasury to the credit of the fund now existing in the State Treasury and known as the 'State Seminary Moneys,' for the maintenance, support, and better equipment of the buildings, apparatus, books, instruction, etc., of the University of the State of Missouri, * * *."

The relators objected to collection of this tax on constitutional grounds. One of the contentions was that the creation of a special fund by the Legislature was prohibited by Article IV, Section 43, Constitution of Missouri, 1875. This provision is substantially identical, for our purposes, to Article III, Section 36 quoted above. The Supreme Court of Missouri stated that the General Assembly was not prohibited from creating a special fund, saying l.c. 209:

"* * * The argument of relator is predicated on section 43 of article 4 of the Constitution, namely, that 'all revenue collected and moneys received by the State from any source whatsoever shall go into the Treasury, and the General Assembly shall have no power to divert the same or permit the money to be drawn from the Treasury except in pursuance of regular appropriations made by law,' which is followed by the provision directing the order in which the Legislature shall pass appropriation bills.

"From these words counsel deduce the proposition 'that all revenue collected and moneys received by the State from every source shall go in the first instance into one common or general fund, unfettered, unpledged and unappropriated,' and that these words

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necessarily prohibit the creation of any special funds in the Treasury to be supplied out of revenue provided by the General Assembly.

"Other words must be read into the article to justify such an interpretation, to-wit, 'one general fund.' If such was the intention of the framers of the Constitution they were singularly unhappy in expressing themselves, an imputation which we are unwilling to cast upon that body, especially when they were preparing an instrument so solemn and important in its nature." (Emphasis theirs).

Having determined that the General Assembly can create a special fund, it is now necessary to determine whether that action is binding on succeeding General Assemblies, and whether succeeding Assemblies can appropriate funds that have been placed into the special fund for other purposes. It is too clear to warrant discussion that if the General Assembly has the power to pass general legislation, it has the same power to repeal that legislation. Therefore, a succeeding Legislature could repeal the legislation setting up the special fund. This problem was also discussed in *State ex rel. v. Henderson, supra, l.c. 214*:

"The method of the assessment or the process by which it is to be collected is not challenged by relators, but the great objection, as already seen, is to the fact that it creates a special fund, in the Treasury, instead of placing it in the general or common fund. Let it be freely admitted that one General Assembly can not tie the hands of its successor, and that although this tax is set apart into a special fund, it still belongs to the State and may be appropriated to another and different use, * * *." (Emphasis ours).

CONCLUSION

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It is, therefore, the opinion of this office that the General Assembly can create a special fund for the purpose of financing local roads, but that such special fund would be subject to dissolution, and appropriation for other purposes by succeeding General Assemblies.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

PMcG:vlw