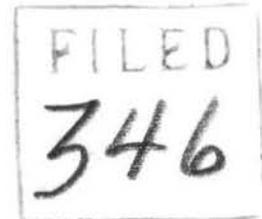


CITIES, TOWNS AND VILLAGES:
ROADS AND STREETS:

A city may use funds allocated to it under provisions of Article 30(a), Constitution of Missouri, (Motor Fuel Tax) to purchase rights-of-way for street expansion.

OPINION NO. 346

August 10, 1967



Honorable Lloyd J. Baker
State Representative - 97th District
Missouri House of Representatives
R.F.D. 3, Box 150
Moberly, Missouri 65270

Dear Representative Baker:

This is in reply to your request of August 2, 1967, for an official opinion on the following question:

"May a city use gas tax monies to pay for their share of purchase of Right of Way for a new highway coming into town?"

Your question concerns an interpretation of the following Constitutional Provision (Section 30(a) 1, Article IV, Const. Mo.)

"(2) Fifteen per cent of the remaining net proceeds shall be allocated to the various incorporated cities, towns and villages within the state having a population of more than two hundred according to the last preceding federal decennial census, solely for construction, reconstruction, maintenance, repair, policing, signing, lighting and cleaning roads and streets and for the payment of principal and interest on indebtedness incurred prior to the effective date of this section on account of road and street purposes, and the use thereof being subject to such other provisions and restrictions as provided by law."

It is our opinion that the City of Moberly may properly use its share of the Motor Fuel Use Tax for the purposes of acquiring Rights-of Way in connection with expansion of the state highways within its corporate limits.

In the Case of Reilly et al. vs. Sugar Creek Tp., Harrison County et al. (1940) 139 SW2d 525, the Supreme Court of Missouri held that the statutory authority for a township to issue bonds and use the proceeds in "paying the costs of constructing or improving roads," in such township necessarily carried with it the authority to pay for rights-of-way upon which to build the roads stating l.c. 526:

"If such were not the case the authority to construct roads would be an empty and useless power."

Decision of courts of other states are consistent with this interpretation of the word "construct," e.g:

The statute providing that funds received by municipal corporations from road use tax fund should be used solely for "construction" of roads and streets, authorized a city to use road use tax fund in payment of preliminary engineering services in contemplation of building an expressway through city, as against contention that such services were not sufficiently related to "construction." Slapnicka v. City of Cedar Rapids, 139 NW2d 179, 182 (Ia.)

Cost of utility relocation necessitated by improvement of highways established as part of national system of interstate and defense highways was cost of "constructing" highway within constitutional provisions to effect that revenues received from motor fuel taxes could be used only for constructing public roadways. State v. City of Austin, 381 SW2d 737, 746 (Texas.)

The statutory power given to the State Highway Commission to "construct" highways includes the power to purchase rights-of-way; State v. District Court, 260 P. 134, 138 (Mont.)

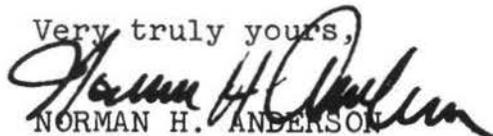
County officer's expenditures of proceeds of sale of county road and bridge bonds for acquisition of state highway rights-of-way was within general statutory limitation of expenditure of such funds for "construction and maintenance of roads and bridges," Rice v. Marcum, 172 SW2d 75, 76 (Ky.)

CONCLUSION

It is the opinion of this office that a city may properly use motor fuel tax funds allocated to it under provisions of Section 30(a) 1(2), Article IV, Constitution of Missouri, to acquire rights-of-way in connection with improvement of its roads and streets.

The foregoing opinion of which I hereby approve was prepared by my assistant Mr. Louren R. Wood.

Very truly yours,


NORMAN H. ANDERSON
Attorney General