

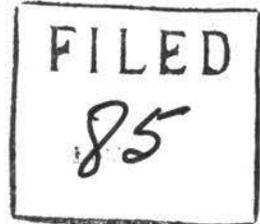
SCHOOLS:
STATE FUNDS:
CONSTITUTIONAL LAW:
STATE HIGHWAY COMMISSION:
DRIVERS' EDUCATION COURSES:

It would be unconstitutional to appropriate revenue derived from highway users as an incident to their use or right to use the highways of the state for state approved courses in driver education in school districts.

OPINION NO. 85

June 7, 1974

Honorable Eugene L. Lang
Representative, District 114
322 McGoodwin
Warrensburg, Missouri 64093



Dear Representative Lang:

This official opinion is issued in response to your request for a ruling on the following question:

".6 of the first paragraph, Section 30(b), Article IV of the Missouri Constitution provides that state revenue derived from highway users as an incident to their use, or right to use, the highways of the state may be appropriated for 'administering and enforcing any state motor vehicle laws...'

"Would not it be constitutional therefore, to appropriate certain highway user fees for assistance to local school districts providing state approved courses in driver education, based upon the enactment of proposed legislation which would establish the successful completion of a state approved course in driver education as a requisite for the issuance of a drivers license to persons under the age of 18 years?"

Article IV, Section 30(b) of the Missouri Constitution states:

"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,

Honorable Eugene L. Lang

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, and less refunds and that portion of the fuel tax revenue to be allocated to counties and to cities, towns and villages under section 30(a) of Article IV of this Constitution, shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other:

First, to the payment of the principal and interest on any outstanding state road bonds.

Second, any balance in excess of the amount necessary to meet the payment of the principal and interest of any state road bonds for the next succeeding twelve months shall be credited to the state road fund and shall be expended under the supervision and direction of the commission for the following purposes:

(1) To complete and widen or otherwise improve and maintain the state system of highways heretofore designated and laid out under existing laws;

(2) To reimburse the various counties and other political subdivisions of the state, except incorporated cities and towns, for money expended by them in the construction or acquisition of roads and bridges now or hereafter taken over by the state as permanent parts of the system of state highways, to the extent of

Honorable Eugene L. Lang

the value to the state of such roads and bridges at the time taken over, not exceeding in any case the amount expended by such counties and subdivisions in the construction or acquisition of such roads and bridges, except that the commission may, in its discretion, repay, or agree to repay, any cash advanced by a county or subdivision to expedite state road construction or improvement;

(3) In the discretion of the commission to locate, relocate, establish, acquire, construct and maintain the following:

(a) supplementary state highways and bridges in each county of the state as hereinafter provided;

(b) state highways and bridges in, to and through state parks, public areas and reservations, and state institutions now or hereafter established, and connect the same with the state highways; and also national, state or local parkways, travelways, tourways, with coordinated facilities;

(c) any tunnel or interstate bridge or part thereof, where necessary to connect the state highways of this state with those of other states;

(d) any highway within the state when necessary to comply with any federal law or requirement which is or shall become a condition to the receipt of federal funds;

(e) any highway in any city or town which is found necessary as a continuation of any state or federal highway, or any connection therewith, into and through such city or town; and

(f) additional state highways, bridges and tunnels, outside the corporate limits of cities having a population in excess of one hundred fifty thousand, either in the congested traffic areas of the state or where

Honorable Eugene L. Lang

needed to facilitate and expedite the movement of through traffic.

(4) To acquire materials, equipment and buildings necessary for the purposes herein described; and

(5) For such other purposes and contingencies relating and appertaining to the construction and maintenance of such highways and bridges as the commission may deem necessary and proper." (Emphasis added)

The words used in the Constitution are presumed to have been employed in their natural and ordinary meaning and no forced or unnatural construction is to be placed upon them. State ex rel. Randolph County v. Walden, 206 S.W.2d 979 (Mo. Banc 1947). Any limitation in the Constitution on the use of funds by the State Highway Commission is binding on the legislature and such limitation is mandatory. State ex rel. Barrett v. Hitchcock, 146 S.W. 40 (Mo. Banc 1912).

Broadly, in your opinion request you ask whether a highway user fee may be expended as a part of "administering and enforcing state motor vehicle laws or traffic regulations." Specifically, you suggest that a requirement of successful completion of a state-approved driver education course as a requisite for the issuance of a driver's license would be the administration or enforcement of a state motor vehicle law. Application of the principles of constitutional construction cited herein and the principles expressed in decisions interpreting the constitutional provisions dealing with the expenditure of highway moneys compel this question to be answered in the negative.

There have been several instances in which attempts to divert highway user taxes to other purposes than those expressed in the Constitution have been thwarted. In an unreported decision, the Circuit Court of Cole County declared unconstitutional Senate Bill No. 39 enacted by the 70th General Assembly which diverted the driver's license fund to the state revenue fund. State Highway Commission v. Mount Etna Morris (unreported decision issued 10-6-60). The St. Louis Court of Appeals, in State ex rel. State Highway Commission v. Pinkley, 474 S.W.2d 46 (St.L.Ct.App. 1971), rejected the contention of the State Highway Commission that Article IV, Section 30(b) (5) authorizes the Commission to provide a rest area abutting a state route, holding that subsection (5) did not grant any new or unspecified power. This office in Opinions No. 224, Walsh, April 26,

Honorable Eugene L. Lang

1967, and No. 23, Graham, February 1, 1972, held that the State Highway Department does not have authority to use state funds for the purpose of making surveys and tests for the establishment of an airport in Lake Ozark State Park and that the State Highway Commission may not utilize state road or highway fund moneys to defray the cost of the administration of a system of permits for the regulation of outdoor advertising. These holdings and opinions are structured on strict and literal interpretations of the language of Article IV, Section 30(b) of the Missouri Constitution.

The extreme restrictions which are placed on highway user fees are further set forth in Joseph L. Pohl, Contractor v. State Highway Commission, 431 S.W.2d 99 (Mo. Banc 1968). In that case, the State Highway Commission expended highway user fees on a road which was to be constructed by the issuance of revenue bonds and then placed in the state highway system. At page 105, the court stated:

" . . . The people thereby emphasized their determination that the highway user taxes could be used only for the purposes listed in the Constitution and, as we have previously held, toll roads are not included.
. . . "

This holding was made in spite of the fact that Section 30(b) says that the State Highway Commission may expend these funds "For such other purposes and contingencies relating and appertaining to the construction and maintenance of such highways and bridges as the commission may deem necessary and proper."

More recently, in State Highway Commission v. Spainhower, 504 S.W.2d 121 (Mo. 1973), the State Highway Commission brought an action against the State Treasurer for declaratory judgment in order to ascertain whether it was constitutionally required that interest on the state road fund be paid into such fund. The Supreme Court held that interest or income from such fund must be credited to that fund under constitutional provision and held against transfer or use for any purpose other than state highway purposes. In addition, the court remarked that the intent of the constitutional provision that all state revenue derived from highway users as an incident to their use or right to use highways of the state shall be credited to a special fund and stand appropriated without legislative action for specified road purposes is that no money be diverted from the state road fund and no other use be permitted of the fund except for enumerated purposes.

Article IV, Section 30(b) of the Missouri Constitution expressly enumerates the purposes for which state highway funds may

Honorable Eugene L. Lang

be allocated. The language is explicit and precise. It neither describes nor authorizes a nexus between the concept of requisite driver education and the administration and enforcement of state motor vehicle laws or traffic regulations.

CONCLUSION

Therefore, it is the opinion of this office that it would be unconstitutional to appropriate revenue derived from highway users as an incident to their use or right to use the highways of the state for state approved courses in driver education in school districts.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Jay M. Shapiro.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General