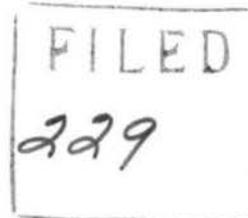


November 6, 1969

OPINION LETTER NO. 229  
(Answered by letter-Nowotny)

Honorable John A. Grellner  
Representative, 40th District  
7380 Dale  
Richmond Heights, Missouri 63117



Dear Representative Grellner:

This is in reply to your request for an opinion of this office concerning the question whether the General Assembly can authorize the use of a "certain portion of non-motor vehicle tax funds for acquisition, construction, repair and maintenance of boating and recreational facilities." By "non-motor vehicle tax funds" we understand you to mean those funds collected from sales of gasoline as provided in Section 30(a), Article IV of the Missouri Constitution, that will not be used to propel vehicles on the state roads and streets. In your letter you refer to Section 142.230, RSMo Supp. 1967, which deals with refunds of such non-motor vehicle tax funds.

A tax on motor vehicle fuel is provided for by Article IV, Section 30(a), Missouri Constitution, reading in part as follows:

"1. On and after the first day of the month next following the adoption of this section, a tax upon or measured by fuel used for propelling highway motor vehicles shall be levied and collected as provided by law. Any amount of the tax collected with respect to fuel not used for propelling highway motor vehicles shall be refunded by the state in the manner provided by law. The remaining net proceeds of the tax, after deducting costs of collection, apportionment and making refunds shall be apportioned between the counties, cities and the state as hereinafter provided and shall stand appropriated without legislative action for the following purposes:

\* \* \* \*

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"3. \* \* \* All funds collected shall be used 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."

Section 30(b), Article IV, Missouri Constitution, provides:

"Source and application of state 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, 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;

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"(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 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 needed to facilitate and expedite the movement of through traffic.

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

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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."

The rule of construction to be followed here is that 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, 357 Mo. 167, 206 S.W.2d 979.

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. v. Hitchcock, 241 Mo.433, 146 S.W.40.

Thus, it is clear that any tax moneys collected pursuant to these constitutional provisions on fuel used for propelling highway motor vehicles must be used solely for roads and streets in Missouri and the General Assembly cannot authorize the use of any such funds for the acquisition, construction, repair and maintenance of boating and recreational facilities.

However, in the administration of this law some of the money collected is from fuel that is actually used for other purposes. Article IV, Section 30(a), Missouri Constitution, directs that this money be refunded.

" \* \* \* Any amount of the tax collected with respect to fuel not used for propelling highway motor vehicles shall be refunded by the state in the manner provided by law. \* \* \* "  
(Emphasis added)

The manner provided by law for refunding such money is Section 142.230, RSMo Supp. 1967. Subsection 1 creates a presumption of highway use and reads as follows:

"1. All motor fuels distributed or sold in this state by any person shall be presumed to have been sold for use in propelling motor vehicles upon the public highways of this state."

Thus, in the manner presently provided by law a person who pays the motor fuel tax on fuel not used in propelling motor vehicles on the highways must make proper and timely claim for refund or else the tax money goes for the use of the highways.

The question is whether this money which may be designated as

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tax on fuel which the purchaser declares at the time of purchase is not to be used on the highways, Section 142.230.5, supra, but is subsequently not applied for as a refund, may, instead of being used for the highways under the presumption section, be used for boating and recreational facilities.

It is our opinion that any tax moneys collected pursuant to Article IV, Section 30(a) and Chapter 142 is either money that must be used for the highways or money that must be refunded. Therefore, no such money collected under these provisions of law for purposes of the highways can be used for any other purpose, such as boating and recreational facilities.

Very truly yours,

JOHN C. DANFORTH  
Attorney General