

LEGAL SERVICES

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MEMORANDUM

February 25, 2011

SUBJECT: Effect of federal laws regarding aviation fuel tax changes in CSHB 30() (Work Order No. 27-LS0198\D)

TO: Representative Peggy Wilson
Attn: Becky Rooney

FROM: Brian J. Kane *BJK*
Legislative Counsel

You have asked the following regarding CSHB 30(): Is there a problem with sec. 7 of the bill placing a portion of the aviation fuel tax into the transportation infrastructure fund in that it violates 49 U.S.C. 47133?

The pertinent part of sec. 7 of the bill reads as follows:

All other proceeds of the taxes on aviation fuel shall be paid into **the transportation infrastructure fund established in art. IX, sec. 18, Constitution of the State of Alaska** [A SPECIAL AVIATION FUEL TAX ACCOUNT IN THE STATE GENERAL FUND. THE LEGISLATURE MAY APPROPRIATE FUNDS FROM THIS ACCOUNT FOR AVIATION FACILITIES].

The concern that has been brought to your attention involves a federal statute dealing with aviation fuel, 49 U.S.C. 47133, which, in part, reads as follows:

- (a) Prohibition. - Local taxes on aviation fuel (except taxes in effect on December 30, 1987) or the revenues generated by an airport that is the subject of Federal assistance may not be expended for any purpose other than the capital or operating costs of -
- (1) the airport;
 - (2) the local airport system; or
 - (3) any other local facility that is owned or operated by the person or entity that owns or operates the airport that is directly and substantially related to the air transportation of passengers or property.

The state tax on aviation fuel was in place well before December 30, 1987, so it would seem that the state aviation tax is exempted from the requirements of this federal statute. Thus, the money can be used in any manner the state chooses, not just on airport-related

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projects. Under the current AS 43.40.010(e), money in the special aviation fuel tax account *may* be appropriated by the legislature for aviation facilities. Thus, even in current statute there is no requirement for the money to be spent on airport-related projects. The change being made in sec. 7 of the bill is simply replacing the "special aviation fuel tax account" with the transportation infrastructure fund as the place where the tax revenue will be deposited.

If I may be of further assistance, please advise.

BJK:ljw

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