ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672 1150
6746 SENATE TRANSPORTATION

Overview of Highway User Fee Protection

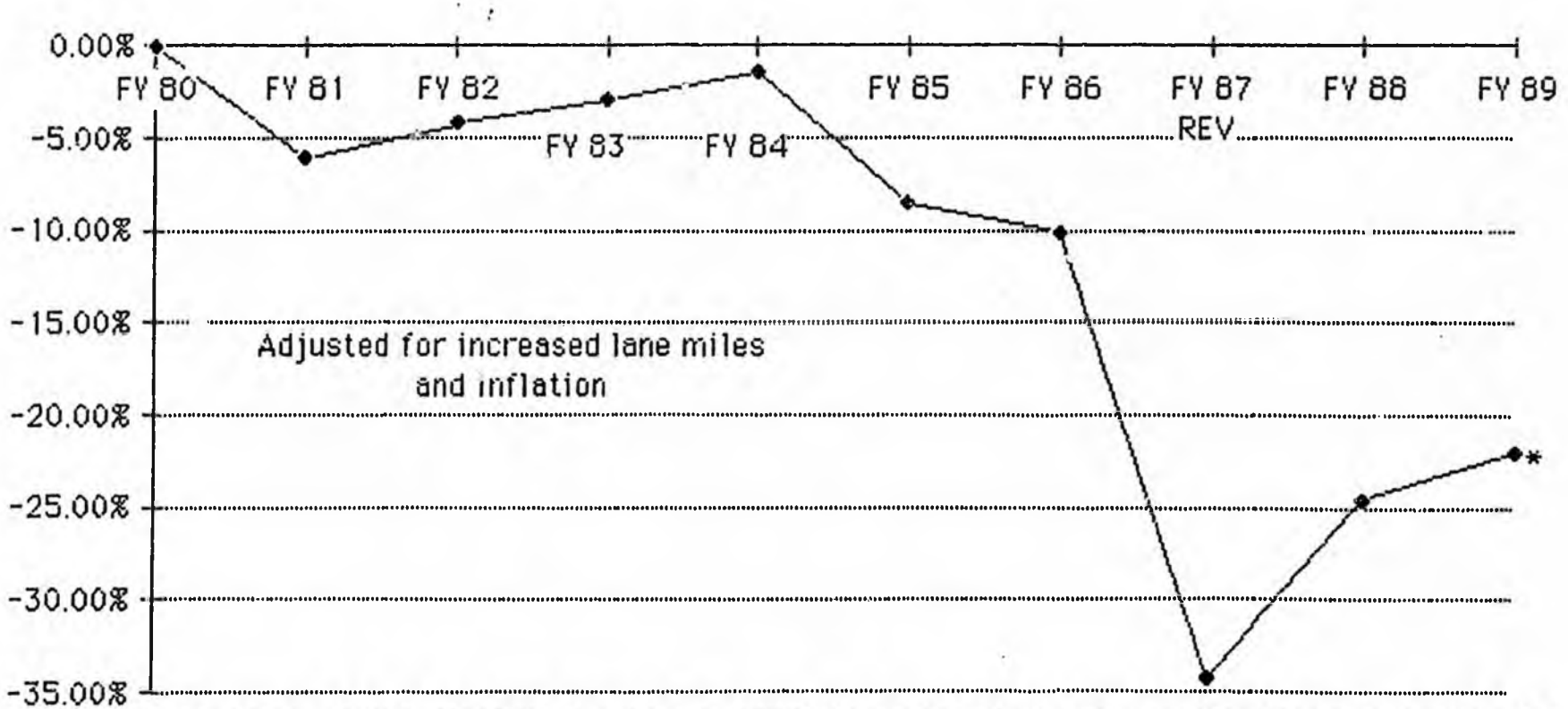
In assessing the overall status of highway user fee protection, it is important to understand that only a clear and comprehensive constitutional anti-diversion provision can provide any real protection. That point cannot be too strongly emphasized.

The kind of constitutional provision needed does not have to be long or complicated. The following language would serve quite well, for example:

> No monies derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways, or to fuels used for the propulsion of such vehicles, shall be expended for other than the cost of administering the laws under which such monies are derived, statutory refunds and adjustments provided therein, payment of highway obligations, the cost of construction, reconstruction, maintenance, and repair of public highways and bridges, and the expense of state enforcement of traffic laws.

Seventeen states currently have language in their constitutions which affords that kind of excellent protection for highway user revenue. These states are shown in column A of the table on the next two pages. Another seven states have constitutional provisions which afford some protection for highway user revenue, but the protection is not complete. These states are shown in column B of the table.

MAINTENANCE AND OPERATIONS
COMPARATIVE EFFORT AVAILABLE
1980 THROUGH 1989 REQUEST



* increase of $18,684,300 required in 1989 over present budget to bring the level back to the FY 1980 comparative funding level

S4

2/ /88

MAINTENANCE AND OPERATIONS COMPARATIVE EFFORTS AVAIALBLE (1980 AS BASE)

		HIGHWAYS ONLY				1980 AS THE BASE	
FISCAL YEAR	AUTHOR. $000'S	LANE MILES	% CHANGE 1980 BASE	CPI ANCH.	% CHANGE 1980 BASE	ADJUSTED AUTHOR.	PERCENT CHANGE
80	$ 52,863.0	11177	100.00%	207	100.00%	$ 52,863.0	0.00%
81	$ 55,425.0	11325	101.32%	228	110.14%	$ 49,662.5	-6.05%
82	$ 62,980.0	11692	104.61%	246	118.84%	$ 50,661.1	-4.17%
83	$ 68,216.0	11830	105.84%	260	125.60%	$ 51,312.6	-2.93%
84	$ 72,242.0	11966	107.06%	268	129.47%	$ 52,119.7	-1.41%
85	$ 69,278.2	12050	107.81%	275	132.85%	$ 48,369.6	-8.50%
86	$ 71,685.1	12200	109.15%	286	138.16%	$ 47,533.4	-10.08%
REV. 87	$ 53,532.6	12375	110.72%	288	139.13%	$ 34,751.7	-34.26%
88	$ 62,721.0	12530	112.11%	291	140.58%	$ 39,798.3	-24.71%
89	$ 66,331.6	12656	113.23%	294	142.03%	$ 41,245.1	-21.98%
TARGET	$ 85,015.9	12656	113.23%	294	142.03%	$ 52,863.0	0.00%

AMOUNTS ADJUSTED TO ADD SNOW AND ICE AND TRAFFIC SIGNAL COMPONENTS

TARGET 0% REDUCTION	$ 85,015.9
1989 BUDGET	$ 66,331.6
INCREASE REQUIRED	$ 18,684.3

12X5280

S5

2/29/88

Federal Highway Mileage

1976

(miles)	
2128.15	Primary
1740.50	Secondary
105.33	Urban
3973.98	

1982

1091.10	Interstate		
1060.23	Primary		
1765.60	Secondary		
98.69	Urban		
4015.62			

1985

1091.10	Interstate		
1074.88	Primary	increase	14.65 miles
1713.56	Secondary	decrease	37.39 miles
206.70	Urban	increase	108.01 miles
4086.24			

1988

1089.00	Interstate		
1075.35	Primary		
1725.81	Secondary	increase	12.25 miles
217.82	Urban	increase	11.20 miles
4107.98			

Since 1976, 134 miles have been added to the federal highway system. In that period, the urban routes have increased by an increment of 112.49.

MEMORANDUM

TO: Senate Transportation Committee

FROM: Senator Lloyd Jones

DATE: February 28, 1988

SUBJECT: SJR 66, proposing a constitutional amendment dedicating the proceeds from the motor fuel tax

This resolution would give the voters of Alaska the opportunity to dedicate proceeds from the highway fuel tax to a highway fund. The fund would be available for appropriation by the legislature for expenditure for construction and maintenance of roads and highways in the state. Twenty-four states presently have constitutional provisions in place which protect highway user revenue through anti-diversion language.[1]

The fund would receive an approximate annual revenue stream of an estimated $23,235,888 million[2] in proceeds from the highway motor fuel tax both highway and off-highway after the six cents per gallon off-highway rebate.

The purpose of this proposed constitutional amendment is to dedicate the proceeds of the motor fuel tax, thus making it a direct user fee. There is a direct correlation between the use of fuel and the use of roads and highways. In the case of off-highway use six cents of the eight cent tax is refundable and would remain so.

---

[1]. According to the June 1, 1987, STATUS ON HIGHWAY USER FEE PROTECTION, by Highway Users Federation for Safety and Mobility, this fund would be available for appropriation by the legislature for the construction and maintenance of highways and roads in the State.

[2]. Source: Department of Revenue FY 87

The highways and roads of our state have not been adequately maintained over the past few years. This has been the result of a combination of factors, among them; an expansion of the state's road system during the high growth years and an inflated DOT/PF administrative budget which resulted in less money into the maintenance of roads when the budget was reduced.

As a result of an overall shrinking state budget, DOT/PF has taken its share of budget reductions. This, combined with a more extensive state road system has created a funding shortfall for the maintenance of roads. This constitutional amendment would assure, with a diminishing state budget, these fuel tax funds would not be diverted to other uses.

I am offering this proposal to ensure all funds received from the fuel tax will continue to be utilized for the construction, and maintenance of state roads and highways. I believe dedicating theses funds will give the citizens of Alaska confidence that expenditures from these user taxes will be used for highways into the future.

Attached for your consideration and information is a portion of the Highway Users Federation for Safety and Mobility report on user fee protection. Please note that page 12 is what the federation suggests as model language. The balance of the information contains information on Alaska's current law and on the constitutional protection provisions provided by various states.

STATE OF ALASKA

DEPARTMENT OF REVENUE

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

P.O. BOX S
JUNEAU, ALASKA 99811-0400
PHONE: (907) 465-2300
TELEFAX: (907) 465-2389

APR 11 1989

April 10, 1989

The Honorable Jan Faiks
Alaska State Legislature
P.O. Box V
Juneau, Alaska 99811

Dear Senator Faiks:

Your committee has before it CS for SJR 20 (Transportation) - "Proposing Amendments to the Constitution of the State of Alaska creating a dedicated fund for projects, facilities, and services related to transportation." The Department of Revenue would like to submit one clarifying amendment.

Proposed Amendment

Pg 1, line 22:

"derived from State [taxes,] licenses, and fees..."

The purpose of this amendment is to delete the reference to "taxes" as they relate to the "registration, operation, or use of vehicles, aircraft, watercraft..." Taken literally, current language would require the Department to identify and dedicate that portion of the Corporate Income Tax, Oil and Gas Property Tax, and possibly the Fisheries Business Tax (floating processor portion) that are derived from the "registration, operation, or use of vehicles, aircraft, watercraft..."

In my discussions with Sponsor staff, this was not the intention of the Sponsor.

Your consideration of this request is appreciated.

Sincerely,

Royce Weller
Assistant Commissioner

RW:sp

89-108

cc: Senator Lloyd Jones
Senator Jack Coghill

04-D2LH

Offered: 3/28/89 6-0463H
Referred: Judiciary and Finance

Original sponsor: Transportation Committee

IN THE SENATE BY THE TRANSPORTATION COMMITTEE

CS FOR SENATE JOINT RESOLUTION NO. 20 (Transportation)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

Proposing amendments to the Constitution of the State of Alaska creating a dedicated fund for projects, facilities, and services related to transportation.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. Article IX, sec. 7, Constitution of the State of Alaska, is repealed and readopted to read:

SECTION 7. DEDICATED FUNDS PROHIBITED. The proceeds of any State tax or license shall not be dedicated to any special purpose. This provision shall not prohibit the continuance of any dedication for special purposes existing on April 24, 1956, and shall not prohibit the dedication of revenue under Sections 15 and 17 of this article or when required by the federal government for State participation in federal programs.

* Sec. 2. Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

SECTION 17. TRANSPORTATION FUND. Effective July 1, 1991, money derived from State [taxes,] licenses, and fees related to registration, operation, or use of vehicles, aircraft, watercraft, the Alaska marine highway system, and the use of other State transportation facilities, and from taxes on fuel used for the propulsion of vehicles, aircraft, and watercraft, less refunds and credits as provided by law, shall be placed in a transportation fund, the principal and income of which shall be appropriated by the legislature for facilities and operations related to transportation and for enforcing laws applicable to

transportation facilities and services. The provisions of this section do not apply to a tax, license, or fee levied and collected by the State on behalf of a local government, or to revenue derived from the use or operation of a facility constructed with bond proceeds to the extent that it is necessary to satisfy the debt obligation or to maintain the facility so that the facility continues to generate revenues for that purpose. The legislature shall implement this section.

* Sec. 3. The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Department of Transportation & Public Facilities

POSITION PAPER

BILL NO: SJR 20 APPROVED: Mark A. Hughes

TITLE: Dedicated Fund - Transportation DATE: February 17, 1989

As a general matter, the Administration endorses the utilization of user fees to support specific government activities. However, without taking a position on the substantive merits, the administration does not support this proposal at this time because it may diminish the Governor's ability to receive a fair hearing on his constitutional amendment priority, the Education Endowment Fund.

The Department of Transportation and Public Facilities has the statutory responsibility for the development and preservation of the Alaska's transportation system. The department believes that developing and maintaining the state's transportation system in a responsible manner is of vital importance to the economic well-being of all Alaskans. Consequently, the department is concerned that the volatility of current revenue sources make it increasingly difficult to insure that the necessary funds are available to develop and maintain the system in a responsible manner. The department believes that user fees are one of the more equitable and appropriate methods of attaining a stable funding source for transportation services. The department also recognizes that a direct linkage between the expenditure of a fee and the services provided, raises the credibility of the user fee concept and may make increasing those fees more acceptable to system users.

For further information call Catherine A. McHugh at 465-3900

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SJR 20
PUBLISH DATE: 2/1/89

FISCAL NOTE

Revision Date: None
Title: Proposed amendments to the Constitution of the State of Alaska creating dedicated funds for revenue related to aircraft, watercraft, vehicles, and the Alaska marine highway system and from related sources, and relating to accounting and expenditure of that revenue.
Sponsor: Senate Transportation Committee
Requestor: Senate Transportation Committee

Agency Affected: DOT&PF
BRU:

Components: Highway, Harbors, Aviation

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTURAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER*	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: M. Clyde Stoltzfus, Special Assistant to the Commissioner
Division: Commissioner Office
Phone: 465-3900
Date: 2/17/89

Approved by Commissioner: Mark S. Hickey MSH
Date: 2/17/89
Agency: Department of Transportation and Public Facilities

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

POSITION PAPER

A.G.C. OF ALASKA

TO THE

SENTATE TRANSPORTATION COMMITTEE

ON

SJR 20

PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF ALASKA CREATING DEDICATED FUNDS FROM FUEL TAXES ON AIRCRAFT, WATERCRAFT, AND MOTOR VEHICLES, AND FROM RELATED SOURCES, AND CREATING A DEDICATED FUND FROM REVENUE EARNED BY THE ALASKA MARINE HIGHWAY SYSTEM FOR USE BY THAT SYSTEM.

AGC Position paper

THANK YOU MR. CHAIRMAN. FOR THE RECORD, MY NAME IS RESA JERREL AND I AM THE DIRECTOR OF GOVERNMENTAL RELATIONS FOR THE ASSOCIATED GENERAL CONTRACTORS OF ALASKA. ON BEHALF OF OUR OVER 700 MEMBER FIRMS WE APPRECIATE THE OPPORTUNITY TO TESTIFY IN FAVOR OF SJR 20.

LAST WEEK YOU HEARD FROM THE GOVERNOR'S TASK FORCE ON TRANSPORTATION FACILITIES THEIR REPORT ON THE DELIVERY OF TRANSPORTATION SERVICES. IN THE PREFACE COMMISSIONER HICKEY POINTS OUT:

> "FOR ALL FACETS OF THE PROBLEMS RELATED TO THE DELIVERY OF TRANSPORTATION SERVICES, ADEQUATE FUNDING AND THE ONGOING STABILITY OF FUNDING ARE THE CRITICAL ISSUES. IN THIS REGARD, THE TASK FORCE IS UNANIMOUS IN RECOMMENDING THAT THE MAINTENANCE OF THE TRANSPORTATION SYSTEM SHOULD BE SUPPORTED TO THE EXTENT PRACTICAL WITH DEDICATED USER FEES."

WE ALSO BELIEVE IN USER FEES BEING DEDICATED TO OUR TRANSPORTATION SYSTEM AND AGREE WITH THE TASK FORCES CONCLUSION AND RECOMMENDATION. I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

VEHICLE-MILES TRAVELED ON ALASKA ROADS,
1970 - 1987

Year	Vehicle-miles Traveled, millions	% difference, 1980 base
1970	1360	51%
1975	2460	92%
1980	2680	100%
1981	2930	109%
1982	3720	139%
1983	4370	176%
1984	4400	164%
1985	4820	180%
1986	4740	177%
1987	4030*	150%*

Compiled April 19,1988
* Estimated

ALASKA STATE CHAMBER OF COMMERCE
310 Second Street
Juneau, Alaska 99801
(907) 586-2323

FEB 28 1989

February 24, 1989

Senator Lloyd Jones
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Jcnes:

The Board of Directors of the Alaska State Chamber of Commerce considered SJR 20 dealing with the dedication of funds from fuel taxes and have asked me to express the following concern to you and the other members on the Transportation Committee.

The Board is concerned about the maintenance of the transportation system in Alaska and are appreciative of the efforts you have expended in attempting to deal with this matter. Our objection to the adoption of SJR 20 is largely centered on a grave concern over the precedent that would be set with a constitutional amendment creating a dedicated fund.

Please call if you have any questions about our position of if we can be of assistance to you and the other members of your Committee.

Cordially,

George Krusz, President

GK:ly/jonesSJR20

REVENUE(1)

FUEL TAX REVENUE

	Revenue Collected	Refunds and Credits
Aviation gas	727,310	*9,915*
Aviation jet	8,570,896	*3,091,522*
Marine gas	539,102	*2,057*
Marine diesel	5,169,309	*133,187*
Other gas	16,450,463	*298,969*
Other diesel	21,688,460	*14,100,253*
	$53,145,540	*$17,635,903*

ACCOUNT SUB-TOTAL	53,145,540
Refunds and Credits	*17,635,903*
FUEL TAX REVENUE	**$35,509,637**

FACILITIES REVENUE

DOT/PF Program Receipts:	
Airport Revenue (Other than AIAS)(2)	1,800,000
Ferry System(3)	35,700,000
FACILITIES REVENUE	**$37,500,000**

OTHER REVENUE

Non-business taxes:	
Vehicle Instruction permits	
Title transfers	
Registration fees	
Drivers licenses	
OTHER REVENUE (2)	**$19,700,000**

TOTAL REVENUE $92,709,637

(1) Prepared as back-up for SJR 20 (16th Legislative Session). (2) Source: Revenue Sources, Fall 1988, Alaska Department of Revenue. (3) AMHS estimate for FY 89 during preparation for FY 90 budget (September, 1988)

EXPENDITURES(1)

State Match for Highway Construction (2)	$14,350,000
State Match for Aviation Construction (2)	$3,750,000
Facilities Design and Construction Services (2)	$6,964,300
Administration of Transportation Services (2)(3)	$9,590,400
Plans, Programs, Budget and Research (2)	$2,118,000
Highway Maintenance and Operations (2)	$54,000,000
Aviation Maintenance and Operations (2)	$12,300,000
Harbors Maintenance and Operations (2)	$400,000
Maintenance and Operations Administration (2)	$1,797,300
Division of Motor Vehicles	$6,600,000
Highway Patrol (troopers)	$24,500,000
Alaska Marine Highway System (2)	$62,600,000
TOTAL EXPENDITURES	**$198,970,000**

(1) Prepared as back-up for SJR 20 (16th Legislative Session). Gross estimates based on FY 89 authorized budget (NOT actual expenditures). (2) Shows only current portent funded by general fund revenues. (3) Includes some support for AIAS and SEF, which would not be authorized to spend against the fund created by SJR 20.

Collected Fuel Tax and M&O expenditures

FUEL RECEIPTS

The figures in the right column represent the amount of fuel taxes collected on total highway fuel sales:

	Gas $	Diesel $	Total $
FY 85	17,082,919	20,407,779	37,490,698
FY 86	17,553,500	22,436,609	39,990,109
FY 87	16,586,596	19,840,411	36,427,007

The figures in the right column this of this table represent the funds in the highway fuel account after refunds:

	Gas & diesel $	Rebate $	Available funds $
FY 85	37,490,698	14,385,607	23,105,091
FY 86	39,990,109	17,977,841	22,012,268
FY 87	36,427,007	13,191,119*	23,235,888

* No rebates for marine fuel taxes have been refunded as of FY 87. The Department of Revenue is no longer rebating marine fuel taxes. Prior to this change in policy all rebates, marine and others, were withdrawn from the highway motor fuel tax proceeds.

ROAD MAINTENANCE

FY 85	$56,000,000
FY 86	$58,000,000
FY 87	$44,305,000
FY 88	$51,000,000**

** Appropriated

Revenue figures from the Department of Revenue

Transportation numbers from DOT/PF

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES

P.O. BOX Z
JUNEAU, ALASKA 99811-2500
PHONE: (907) 465-3900

OFFICE OF THE COMMISSIONER

March 18, 1988

The Honorable Steve Cowper
Governor, State of Alaska
Post Office Box A
Juneau, AK 99811

Dear Governor Cowper:

In your Administrative Order creating the Task Force on Transportation Facilities, we were charged with, among other things, examining "reasonable and equitable funding sources for maintenance activities, including a review of the motor fuel tax..." Pursuant to this charge, the task force has closely examined issues related to using fuel taxes as a means of providing funding for the maintenance and operations of transportation facilities and has unanimously adopted two interim recommendations which are conveyed by this letter.

There are some underlying assumptions and positions which we feel deserve highlighting. First, in reviewing historical information related to the fuel tax issue in Alaska, it is clear that the tax was meant to be a user fee collected to recoup some of the funds necessary to maintain the particular transportation system from which it was collected. We believe that over the years this purpose has become clouded by legislative action. We are unanimous in our belief that the state should clarify and reaffirm the intended purpose of the fuel tax in Alaska as a user fee for the particular transportation system from which it was collected.

After considerable thought and debate, it is the position of the task force that a fuel tax is one of the reasonable and equitable funding sources for expenses, related to transportation systems, so long as it is treated as a user fee. In this regard, it is our unanimous recommendation that the best method of re-establishing the fuel tax as a user fee is to dedicate the revenues from the tax to the expenses related to the maintenance activities of the transportation system from which the revenue was generated.

In adopting the attached interim recommendations, the task force also debated at length what expenses should be included in maintenance activity costs. It is the unanimous consensus of the task force that all direct costs for improvement, maintenance and operation of the existing transportation systems should be included in the maintenance activity costs. This analysis would include such expenses as the operation of a maintenance station

camp facility as a maintenance expense, but would exclude indirect administrative costs as a maintenance expense. Similarly, reconstruction of an existing highway to comparable standards would be a direct maintenance expense, while construction of a new highway to a higher standard, even on an existing right-of-way, would not be a maintenance expense.

The task force continues to study issues related to the distribution of responsibility and equitable funding sources for transportation facilities as you directed. As this study continues, it is becoming increasingly clear that any realignment of responsibility also involves establishing a mechanism whereby adequate funding to support a transferred facility is consistently available. We have a full schedule during the next four months, and expect to have our final recommendations to you by the June 30th deadline.

Thank you for your consideration of our recommendations. If you have any questions or would like to discuss our recommendations with the members of the task force, please do not hesitate to call upon us.

Sincerely,

Mark S. Hickey
Chairman, Governor's Task Force on Transportation Facilities

cc: Senator Jan Faiks, President, Alaska State Senate
Representative Ben Grussendorf, Speaker, Alaska State House of Representatives
Members of the Governor's Task Force on Transportation Facilities

GOVERNOR'S TASK FORCE ON

TRANSPORTATION FACILITIES

INTERIM TASK FORCE RECOMMENDATION # 2

Whereas: This task force was created by the Governor's Administrative Order #105 and under intent language adopted by the 15th Alaska Legislature.

Whereas: The charge by the Governor and the Legislature to this task force was to evaluate and examine reasonable and equitable funding sources for expenses related to transportation facilities.

Whereas: The charge by the Governor and the Legislature to this task force specifically required a review of motor fuel taxes in Alaska.

Whereas: The task force, for purposes of this resolution, interpets expenses related to transportation facilities to mean expenses for the Alaska transportation systems excluding indirect costs.

Whereas: This task force has recommended with Interim Task Force Recommendation # 1, that revenue collected and retained by the State of Alaska for fuel taxes should be dedicated for direct costs related to the transportation system from which the revenue was generated.

And Whereas: It is the determination of this task force that the current status of the dedication of fuel taxes for the Alaska transportation systems found in article IX, section 7, of the Alaska Constitution is unclear.

NOW THEREFORE BE IT RESOLVED, that it is the recommendation of this task force that the Governor and the Legislature should seek a constitutional amendment which would unequivocally dedicate all fuel tax revenues collected and retained by the State of Alaska to the direct costs associated with the improvement, maintenance and operation of the existing transportation system from which the revenues were generated.

Adopted this 8th day of March, 1988.

Mark S. Hickey, Chairman

GOVERNOR'S TASK FORCE ON

TRANSPORTATION FACILITIES

INTERIM TASK FORCE RECOMMENDATION # 1

Whereas: This task force was created by the Governor's Administrative Order #105 and under intent language adopted by the 15th Alaska Legislature.

Whereas: The charge by the Governor and the Legislature to this task force was to evaluate and examine reasonable and equitable funding sources for expenses related to transportation facilities.

Whereas: The charge by the Governor and the Legislature to this task force specifically required a review of motor fuel taxes in Alaska.

Whereas: This task force has evaluated and examined historical, constitutional and statutory information regarding fuel taxes as a source of funding for transportation facilities in Alaska.

Whereas: The task force, for the purposes of this resolution, interpets expenses related to transportation facilities to mean expenses for the Alaska transportation systems excluding indirect costs.

Whereas: This task force has determined that fuel taxes are one reasonable source of funding for expenses related to the Alaska transportation systems.

Whereas: This task force has determined that fuel taxes are one equitable method of assessing costs for the use of the Alaska transportation systems.

And Whereas: This task force has further determined that funding for transportation systems is an important function of government; that the Alaska transportation systems are an investment in current and future economic development and stability; that funding for the Alaska transportation systems requires a predictable and stable source of revenue.

NOW THEREFORE BE IT RESOLVED, that it is the recommendation of this task force after careful review of all information put before us, and in response to the charge of the Governor and the Legislature of the State of Alaska, that revenue collected and retained by the State of Alaska for fuel taxes should be dedicated for direct costs related to the transportation system from which the revenue was generated.

Adopted this 8th day of March, 1988.

Mark S. Hickey, Chairman

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

POUCH K – STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

November 30, 1982

Gerald L. Wilkerson, C.P.A.
Legislative Auditor
Legislative Audit Division
Legislative Affairs Agency
Pouch W
Juneau, Alaska 99811

Honorable Carole J. Burger
Commissioner
Department of Administration
Pouch C
Juneau, Alaska 99811

Re: The dedicated funds prohibition applied to various funds and accounts. Our Files Nos. J66-785-81 and J66-649-80

Dear Mr. Wilkerson and Commissioner Burger:

You have both asked for a broad review of the application of the constitutional dedicated funds prohibition to various state funds and accounts. Alaska Const. art. IX, § 7. Because of the factual complexities presented by the various funds, accounts, and appropriations and because of the paucity of judicial precedent, we are not able to advise you with absolute certainty regarding the constitutionality of state practices. However, some of the issues raised by your request may be resolved in litigation which is now pending concerning the administration of

03.CSLH

certain appropriations and funds by the Alaska Power Authority. 1/

In response to your request, we have identified and analyzed several categories of funds, accounts, and transactions which raise dedication questions. Our approach in dealing with these questions will be to first discuss the purpose and meaning of the dedication prohibition. We will then focus on the implications of a recent Alaska Supreme Court case that deals specifically with the dedicated funds prohibition. Next we will consider the probable legal status of several general categories of funds, accounts, and appropriations which raise dedication questions. Lastly, we will consider the dedication prohibition in reference to specific funds and appropriations.

We should point out that the advice given in this opinion could have a significant effect upon the state budget. This results from the recent adoption of Article IX, section 16 of the Alaska Constitution (the spending limit). Under the reasoning of this opinion, it may be that income earned by a loan fund or public enterprise must be appropriated to that fund or

---

1/ The legal issues in this litigation are the validity of the deposit of interest and principal payments on loans in a revolving loan fund and of the appropriation to the Power Development Fund of interest to be received on specific amounts appropriated to that fund (§ 1 ch. 90, SLA 1981 as reenacted by § 69 ch. 69 SLA, 1981 and amended by § 236 ch. 141, SLA 1982.). Trustees for Alaska, et al. v. State of Alaska and Alaska Power Authority, No. 3AN-492-82 Civ. (Alaska Super., Jan. 21, 1982)

enterprise if that income is to be retained by it. If the Alaska Supreme Court adopts that reasoning, the necessity for these appropriations would have to be considered by the administration and the legislature in developing a state budget which conformed to the spending limit. This concern would also become important if independent authorities for operation of entities like the State Ferry System or the Alaska Railroad were to be considered.

I. THE PURPOSE OF THE PROHIBITION

Article IX, Section 7 provides:

> DEDICATED FUNDS. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in section 15 of this article [establishing the Permanent Fund] or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.

There are essentially two views of the meaning of this provision. Under the first interpretation the dedicated funds prohibition would require that every dollar received by the state be deposited and remain unrestricted in the general fund until it is withdrawn pursuant to an appropriation authorizing the expenditure of a specific dollar amount for a specific pur-

pose (absent a contrary federal requirement or a statutory dedication which existed prior to ratification of the Constitution). This is known as the strict interpretation view.

Under the strict view, the phrase "proceeds of any state tax or license" would encompass every dollar paid to the state (or to a public corporation or authority established by the state) for whatever purpose. State loan repayments (both principal and interest), enterprise receipts (e.g., airport lease revenues, parking garage receipts, etc.), program receipts (e.g., Ferry System ticket sales, University of Alaska tuition receipts, etc.), as well as all other revenues (e.g., taxes, natural resource revenues such as royalties, etc.), would be required to be deposited in the state treasury and retained there until the expenditure is authorized by appropriation of a specific dollar amount.

An argument can certainly be made that this is the proper interpretation of the dedicated funds prohibition. As set out in 1975 Op. Atty. Gen. No. 9 at 2 (Alaska May 2, 1974), "Section 7 of Article IX had two interrelated purposes: (1) to prevent any future dedication of revenues for special purposes [i.e., 'earmarking'] and (2) to prevent the creation of new special funds separate from the general fund." The rationale underlying each of these two purposes is "that the widespread existence of dedicated revenues lodged in special funds deprives

both the governor and the legislature of 'any real control over the finances of the state.'" Id. at 3 (citation omitted). Requiring all monies received by the state to be deposited into the general fund clearly would satisfy both interrelated purposes of the prohibition. The strict interpretation view of the dedication prohibition would preclude the use of public monies to establish a standing or revolving loan fund or any other program which would be self-sustaining. 2/

However, a second approach in interpreting the meaning of Article IX, section 7 is also very plausible. Under this view, the dedication prohibition is not to be construed to require a blanket prohibition of self-sustaining programs set up by the legislature. As noted in 1975 Op. Atty. Gen. No. 9 at 6-8 (Alaska, May 2, 1975), the constitutional framers substituted the phrase "[t]he proceeds of any state tax or license" for the phrase "[a]ll public revenues" to avoid having to state a number of intended exceptions to the prohibition on dedicated funds. Examples of these exceptions were pointed out in a January 4, 1956, 3/ memorandum by the Public Administration Service (PAS) to

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2/ Of course, even under the strict view, there would be some kinds of monies received by the state which it could not, for independent legal reasons, deposit into the general fund. These monies would include trust funds, restricted gifts, and funds subject to restrictions by contract.

3/ The actual date shown on the memorandum is "January 4, 1955". However, considering the timing of the constitutional convention, this was certainly a typographical error.

the Constitutional Convention: "pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units." 4/

Some of these examples were specifically mentioned by the court in State v. Alex, 646 P.2d 203 (Alaska 1982), which held that the phrase "proceeds of any state tax or license" was to be broadly construed to include all sources of public revenues. The court noted that the drafters intended to permit the establishment of certain special funds, (e.g., sinking funds for the repayment of bonds), but to prohibit the earmarking of any special tax to such a fund. Alex, supra at 210. The court did not elaborate on the application of the dedicated funds prohibition in these situations.

4/ The Public Administration Service prepared a publication entitled "Alaska Statehood Commission, Constitutional Studies (1955)" at the request of the Alaska Territorial Legislature for use at the constitutional convention. Ch 108 SLA 1949. This publication collected research papers on other state constitutions. Copies were mailed to all delegates, and it was often referred to in the convention proceedings. Alaska Statehood Committee, "Handbook for Delegates to the Alaska Constitutional Convention" 4 (1955). Referred to in State v. Alex, 646 P.2d 203, 209 n. 5 (Alaska 1982). The memorandum of January 4, 1956 contained comments by the PAS on the proposed draft of the Finance and Taxation article. Constitutional Convention Finance Committee minutes, Jan. 13, 1956.

II. MEANING OF THE PHRASE "PROCEEDS OF ANY STATE TAX OR LICENSE"

There has been continuing controversy over the proper construction of the phrase "proceeds of any state tax or license." In a number of earlier opinions, this office concluded that the dedicated fund prohibition did not reach all public revenues but, under its plain language, only the actual "proceeds of any state tax or license." See 1969 Op. Atty. Gen. Nos. 3 (Alaska, April 4, 1969) and 5 (Alaska, April 15, 1969); and 1959 Op. Atty. Gen No. 7 (Alaska, March 11, 1959). This conclusion also was reached by the Division of Legal Services in the Legislative Affairs Agency. See September 1, 1977 memorandum from Bill G. Berrier, Director, to Subcommittee on Alaska Renewable Resources Development Fund of Alaska Permanent Fund (House).

Those opinions all concluded that the prohibition did not reach revenues derived from t' disposal of state-owned natural resources. Given th. .usion, it followed that the legislature was free to dedicate all or a certain portion of such revenues to specific purposes. An example of this is found in AS 37.11.020, which requires that not less than five percent of state mineral lease receipts be deposited in the Alaska Renewable Resources Development Fund. (This statutory dedication was the subject of Mr. Berrier's September 1, 1977, memorandum).

On the other hand, 1975 Op. Atty. Gen. No. 9 at 24 (Alaska, May 2, 1975) reached the opposite conclusion:

> Section 7 of Article IX of the state Constitution can be given its intended effect and serve its repeatedly expressed purpose only if the words "proceeds of any tax or license" are interpreted to mean what their framers clearly intended, i.e., the sources of any public revenues.
>
> Accordingly, it is our conclusion that the dedication of any source of public revenue: tax, license, rental, sale, bonus-royalty, royalty, or whatever is limited by the state Constitution to those existing when the Constitution was ratified or required for participation in federal programs.

(Emphasis added.)

In State v. Alex, 646 P.2d at 210, the Alaska Supreme Court adopted the position set out in 1975 Op. Atty. Gen. No. 9 (Alaska, May 2, 1975). 5/ It now is clear that the term "proceeds of any state tax or license" is to be construed broadly to reach all public revenues, including public revenues from the development of state-owned natural resources, and not just the proceeds of taxes and license fees.

5/ Alex involved a challenge by commercial fishermen to the collection by a private aquaculture association of a special assessment authorized by statute and imposed on the sale of salmon. The court held that the statute improperly delegated the legislature's taxing authority, and that the assessment constituted "proceeds of a state tax or license" within the meaning of Article IX, section 7. State v. Alex, 646 P.2d at 210, 213.

After the decision in Alex we can now reach some definite conclusions regarding some of the funds and accounts you have asked us to review. The answers to other questions, however, are not as clear.

III. IMPLICATIONS OF THE ALEX DECISION

There is no question that the dedicated funds prohibition in Article IX, section 7 flatly prohibits the legislature from dedicating future unrestricted general revenues to any particular purpose unless the dedication is required for participation in a federal program or the dedication existed before ratification of the Constitution. Alex, supra at 208-210. This confirms the view expressed in our April 1, 1981 memorandum opinion to the legislative auditor that the requirement in AS 37.11.020 that not less than five percent of state mineral revenues be placed in the Alaska renewable resources development fund is unconstitutional. This would be true of any statutory requirement that a specified percentage of revenues derived from the development of state-owned resources be deposited in a fund or earmarked for a particular purpose.

The Alex decision, however, does not provide answers to a number of additional questions. For example, does the dedicated funds prohibition apply (1) to money received through the sale of bonds (either general obligation bonds of the state or

revenue bonds of a public corporation); (2) to receipts from operation of facilities constructed with bond proceeds; or (3) to interest or investment income earned on money appropriated for a specific purpose? In short, are there any exceptions to the prohibition beyond those expressly set out in the Constitution? The section immediately following discusses this question.

IV. POSSIBLE EXCEPTIONS TO THE DEDICATED FUND PROHIBITION

A. Implied Exceptions.

An early draft of what is now Article IX, section 7 (but which was at that time numbered section 8) read as follows: "All public revenues shall be deposited in the state treasury . . ." Subsequent to this early draft, the Committee on Finance and Taxation of the Constitutional Convention requested comments from the Public Administration Service on this wording. The PAS responded with the January 4, 1956 memorandum in which it warned that a strict interpretation of section 7 (then section 8) would prohibit the segregation of state money without regard to the source. The PAS then suggested that certain exceptions be identified in section 7. These exceptions included pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts

which the state might collect on behalf of local government units.

After considering the PAS memorandum, the committee deleted the phrase "all public revenues shall be deposited ..." and substituted the phrase "The proceeds of any state tax or license ...". 3 Alaska Const. Conv. Proceed. at 2361. The record of the committee debate makes it clear that the purpose of this change was to meet the problems raised by the PAS in its January 4 memorandum. See 1975 Op. Atty. Gen. No. 9 at 8 (Alaska, May 2, 1975).

Given this drafting history, a very good case can be made that the present language of Article IX, section 7 must be read to include certain implied exceptions, such as those that are set out in the January 4 PAS memorandum, i.e., pension contributions, proceeds from bond issues, sinking fund receipts, revolving fund receipts, contributions from local government units for state-local cooperative programs, and tax receipts which the state might collect on behalf of local government units. We believe this implied exception approach is the better interpretation of the dedicated fund prohibition and would be adopted by the Alaska Supreme Court if the question is presented to it.

B. Dedication of Money to Specific Purposes on a Continuing Basis When Appropriated

A question of the proper application of the dedicated funds prohibition arises when money is appropriated to a revolving loan fund or other special reserve fund or account. Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) 6/ which was loaned to them from the fund so that new loans can be made on a continuing basis. Special reserve funds involve essentially the setting aside of money for certain specified future needs or conditions which may or may not occur. 7/ When this is done, it might be argued that the legislature has made an impermissible dedication with respect to the future use of the money placed in those funds and accounts.

We believe the better view is that the dedication prohibition does not apply to money once appropriated by the legislature, regardless of whether the appropriation contemplates that the money will be expended. Usually appropriations authorize money to be spent. In other cases, however, the legis-

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6/ We discuss the dedication of interest earned by revolving loan funds and other separate funds and accounts in the next portion of this opinion which begins below at p. 14.

7/ The "Rainy Day Account," AS 37.05.179, is an example of such an account.

lature may prefer to establish by general law a continuing loan program and finance it through a one-time appropriation or to reserve money in a special fund or account for future use for limited purposes. A strong argument can be made that money once appropriated, regardless of the mechanism utilized, loses its character as revenue for the purpose of the dedicated funds prohibition because the purpose of the prohibition, i.e., that the legislature retain control over state revenues, has been satisfied.

Under this reasoning there would be no unlawful dedication involved in the return to a revolving loan fund of principal payments on loans. The initial appropriation would suffice to authorize the use of that money for other loans until the legislature reappropriates the unobligated assets of the fund or abolishes the fund.

Support for this position is found in the Alaska Supreme Court's analysis in the Alex case. In Alex, the court took note of the drafting change of Article IX, section 7 referred to earlier. This change, said the court, "did not seek to exempt some sources of revenue from the prohibition, but was intended instead to allow necessary dedication of funds once they were received and placed in the general fund." State v. Alex, supra at 210.

The Alaska Supreme Court has thus recognized that the dedication prohibition of Article IX, section 7 does not operate to prohibit all dedications whatever their nature. Rather, the court seems to be saying that Article IX, section 7 must be read to allow certain necessary dedications of money by the legislature after that money is received and placed in the state treasury (i.e., general fund). This analysis by the Supreme Court gives support to the argument that the dedication prohibition does not apply to money once it has been lawfully appropriated from the general fund and that the legislature can, without violating Article IX, section 7, create "necessary dedications" out of that money.

C. Income Generated by Specific Funds or Accounts

A question separate from that just discussed arises concerning the application of the dedicated fund prohibition to the interest or other income earned by money appropriated to revolving funds and other funds and accounts. Is that derivative income revenue which, under the prohibition, must be deposited in the general fund, or may it accrue directly to the fund or account which "earned" it, increasing the amount of money in that fund or account which may be spent without further appropriation?

We are advised by the Department of Administration that the National Committee on Governmental Accounting has defined a fund to be:

> A fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources, together with all related liabilities and residual equities or balances, and changes therein, which are segregated for the purpose of carrying on specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations.

Municipal Finance Officers Association of the United States and Canada, "Governmental Accounting, Auditing, and Financial Reporting," 1980, Appendix B.

From the point of view of generally accepted accounting principles, then, income generated by a fund accrues to that fund unless a transfer is authorized. Economic theory also leads to that result, arguing that the interest or investment income on a particular fund is simply an increase in the value of the fund which offsets inflation and reflects the gradual growth of our economy. Under either approach, such derivative income ought not to be considered revenue subject to the dedicated funds prohibition.

Derivative income such as interest and investment income is not a traditional source of public revenue. It is generated by public revenue which has been received and appropriated and would not be generated if the legislature had

simply spent the money rather than appropriated it to a separate fund. Thus, a statutory dedication of the interest or investment income of a separate fund would not impair the ability of future legislatures to control the spending of general revenues. Rather, it would create a new pool of resources to be used under the statutory guidelines applicable to a particular fund until a future legislature amended or repealed those guidelines. There is no indication in the minutes of the Constitutional Convention that the drafters considered the treatment of separate funds which are endowed in this manner.

A difficulty that arises from the view that the dedicated funds prohibition is not applicable to interest or investment income on separate funds is that it permits steadily increasing amounts of money to be received and used by state departments and agencies without legislative control through the annual budget process. This is precisely the problem posed by the dedication of revenue sources which the drafters sought to avoid. For this reason, while we are not certain about the likely outcome, we doubt that a blanket exception for derivative income would be approved by the courts.

After all, the Alaska Constitution was not written for accountants and economic theorists. Although not expressly addressed by them, the framers were very much aware of the boom-bust cycle of Alaska's economy. In fact, a driving force

behind statehood was the desire of Alaskans themselves to be able to manage the income derived from those brief periods -- as Prudhoe Bay bears witness -- when the state may receive enormous sums of money which are then immediately available for expenditure or placement, by appropriation, into a variety of funds and accounts for various permissible purposes. Depending on the number and size of those funds and accounts, the interest earned on the money placed in them could itself be substantial and would almost certainly be of a magnitude which is far greater than that likely envisioned by the National Committee on Government Accounting in the above-quoted standard. Moreover, the significance of that interest income in properly managing the state's budget leads us to the conclusion that our framers would have considered it to be within the dedicated fund prohibition. As we have indicated, however, the answer to this question is not free from doubt. Consequently, until the question is ruled on by the courts, we will defend legislative action dedicating, by general law, derivative income to the funds which "earned" them.

In the absence of valid general law dedications of derivative income, we believe there would still be a way to maintain legislative control over revenues through the budgetary process while achieving the efficient accounting organization provided by separate funds. This would be if the legislature appropriated to the separate fund for a fixed period the amount

of interest or investment income received by that fund. Since each legislature has implicit budgetary authority for a maximum period of only two years, this practice would not impair the ability of future legislatures to dispose of those derivative revenues. Under this line of reasoning, the interest on a loan fund or other separate fund is public revenue which must be transferred to the treasury, unless the fund is authorized by appropriation to retain it for a specific period. Although it may be possible to argue in favor of a longer period, our recommendation is that these appropriations of derivative income to the fund which "earns" them be made annually, for each fiscal year.

D. Appropriations Stated in General Terms, Rather than Specific Amounts.

The annual budget has traditionally included certain appropriations not stated in specific dollar amounts but rather in terms of money to be received from certain sources during the fiscal year. Such an appropriation, for example, would authorize the risk management division of the Department of Administration to spend the anticipated proceeds from any insurance settlement

or judgment arising from the damage or loss of state property. 8/ This practice ensures effective legislative control over state finances while, at the same time, it provides for budgeting flexibility which is especially useful for programs like risk management, the needs of which are necessarily unpredictable.

We have consistently advised that an appropriation is valid if it states a public purpose, has a source, states or implies a time period, and states an amount which is ascertainable by reference to specified information. Under this view a "revolving" loan fund could be established and operated, even if both principal and interest payments on loans are considered to be revenues which may not be dedicated, as long as there is an annual appropriation to the fund of all principal and interest payments received by the fund during the fiscal year. The fund would continue to revolve as long as it was included in the budget.

8/ See, for example, Sec. 7 ch. 113, SLA 1978 which provides:

> Amounts equivalent to the amounts to be received in settlement of insurance claims for property losses are appropriated from the general fund to the affected agency for the purpose of replacing the facility or service lost as a result of the incident giving rise to the insurance claim.

Under this language, the state could undertake immediate repair or reconstruction of a school, maintenance facility, or other property damaged by fire or other cause covered by insurance without having to wait for actual settlement and payment by the insurer.

The practice of appropriating to a separate fund an amount to be ascertained by reference to receipts from a specified source during a definite period accommodates the need and desire of each legislature for budgetary flexibility without impairing the ability of future legislatures to control and dispose of public revenues. In fact, since the legislature maintains control of the appropriation by means of the budget, it could be argued that this practice does not even create a dedication in the first place since a true dedication must function to take control away from the legislature. If legislative control is present, then a dedication does not exist.

We do not think that this practice violates the dedication prohibition.

V. APPLICATION OF DEDICATION PROHIBITION TO SPECIFIC FUNDS, ACCOUNTS AND APPROPRIATIONS

We have identified the following categories of funds, accounts, and appropriations which raise dedicated funds questions.

A. Allocation of a revenue source by statute to a fund or account from which it may be withdrawn only for limited purposes by appropriation.

1. Tobacco Tax (School) Fund (AS 43.50.140). This fund existed before ratification of the Alaska

Constitution and is therefore authorized to continue under Article IX, section 7. This tax and dedication have not been changed, but the legislature has imposed an additional tax on cigarettes which is deposited in the general fund. Although we have issued several opinions on the subject, there has been no judicial review, and it remains unclear to what extent the legislature may change the dedication or the underlying revenue source within the limit of "continuing" the dedication. 9/

2. Fish and Game Fund (AS 16.05.100 et seq.). The dedication of proceeds of fishing and hunting licenses to the operation of a Department of Fish and Game is required by federal law for participation in federal programs and is therefore authorized by Article IX, section 7. See 16 U.S.C. § 669. However, as discussed earlier, it is not clear whether a dedication of interest

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9/ See Atty. Gen. Op. Nos. 7, 9, and 14; inf. memo (Alaska, March 10, 1966); Atty. Gen. Op. No. 22 (Alaska, June 2, 1978); inf. memo (June 30, 1981).

earned on investments in a fund such as that made by AS 16.05.110(5) is constitutional.

3. Reserves for Capital Outlay (AS 37.05.157) and Energy Facilities Development (AS 37.05.158).

By statute there is allocated to each of these accounts a fixed percentage of annual receipts from minerals on state land. Both of these funds appear to be unconstitutional dedications to the extent that they restrict the purpose for which money may be spent. We are informed that the Department of Administration has recorded the amounts to be allocated to each account but has not retained that money for expenditures related to capital outlay or energy facilities development. We also understand that the legislature has not made any appropriations from these two accounts. We suggest that AS 37.05.157 and AS 37.05.158 be repealed.

4. Renewable Resources Fund (AS 37.11.010-090). As we advised in our 1975 Attorney General Opinion No. 9, this statutory dedication is unconstitutional. We understand that the Department of Administration has followed our advice and has disregarded AS 37.11.010-090. We suggest that these statutes be repealed.

B. Allocation by Statute of Revenue to a Fund or Account From Which it may be Spent or Used Without Further Appropriation

1. Public Employees Retirement System Fund (AS 39.35)

This fund receives money from employees and employers who participate in the system. State employer contributions are paid to the fund monthly. AS 39.35.280. State employee contributions are statutorily required to be withheld from wages and transferred to the funds. AS 39.39.170. Participating political subdivisions make similar contributions on behalf of their employees. Benefits are paid to members of the retirement systems according to statute AS 39.35.370 et seq. Expenses of administering the system are also paid from the fund but are specifically required by statute to be included in the annual operating budget. AS 39.35.100(b)(4). The Teacher's Retirement System is accounted for in the same manner.

Although this is clearly a dedication of money received by the state, we believe that it is permissible under the implied exception theory

discussed earlier. It is our opinion that there is an implied exception to the dedicated funds prohibition for pension fund contributions. 10/

2. International Airport Funds (AS 37.15.420, 430, 440)

The fund established under AS 37.15.420 contains money received from the sale of general obligation bonds for airport improvements and other grants or money provided for the same purpose for which the bonds were authorized. The fund established under AS 37.15.430 contains revenues received by the state from ownership and operation of its airports. The fund established under AS 37.15.440 contains ~~interest earned on money~~ in the ~~section 420 fund~~ and revenues transferred from the section 430 fund for the purpose of redeeming airport revenue bonds.

Although each fund provides for a dedication of state revenue, we believe that they are permissible under the implied exception theory discussed earlier at pp. 5 and 6. It is our opinion that there is an implied exception to the

10/ The constitutional provision for state employee retirement systems supports such an implied exception. Alaska Constitution, Article XII, section 7.

dedicated funds prohibition for revenue derived from bond issues and for revenue derived from facilities constructed with bond proceeds, at least to the extent that it is necessary to satisfy the debt obligation or maintain the facility so that it continues to generate revenues for that purpose. To the extent that revenues are dedicated for purposes which are not related to satisfying the debt or maintaining the facility 11/, we believe that dedication would

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11/ AS 37.15.430(a) authorizes use of funds dedicated to the International Airport Revenue Fund for six purposes providing, in pertinent part, as follows:

> The money in the revenue fund shall only be used for the purpose of paying or securing the payment of the principal of and interest on the bonds and of and on any other revenue bonds issued by authorization of the legislature to provide funds to acquire, equip, construct and install additions and improvements to, and extensions of and facilities for, the airports and to be payable out of the revenue fund, the purpose of paying the normal and necessary costs of maintaining and operating the airports and all of the improvements and facilities of them, the purpose of paying the costs of renewals, replacements and extraordinary repairs to the airports and all of the improvements and facilities of them, the purpose of redeeming before their fixed maturies any and all revenue bonds issued for the purposes of the airports, the purpose of providing funds to acquire, construct and install necessary additions and improvements to and extensions of and facilities for the airports and all of their facilities, and the purpose of providing funds to pay any and all other costs relating to the ownership, use and operation of the airports.

violate Article IX, section 7 unless it either existed prior to ratification of our Constitution or is required by federal law. 12/

3. Continuing Debt Service Appropriation (AS 37.15-.012)

This statute purports to create a continuing annual appropriation from the general fund of the amount necessary to pay debt service on all outstanding general obligation bonds. This may be a dedication of revenues for a specific purpose. 13/ Even if it is, it is our opinion that there would be an implied exception to the dedicated fund prohibition for bond obligations.

4. Rural Electrification Revolving Loan Fund (AS 44-.83.361)

This fund received an initial appropriation from which the Alaska Power Authority is authorized to make loans. Principal and interest

12/ A dedication of airport revenues did exist prior to ratification. § 32-3A-15 ACLA 1949. However, it was repealed in 1968 by § 2 ch. 14, SLA 1968. On the other hand, it may be that 49 U.S.C. § 1718, adopted in 1970 and amended in 1982 by Section 511 of the Tax Equity and Fiscal Responsibility Act of 1982, P.L. 97-760, would be interpreted to require dedication of all airport revenues to construction, maintenance and operation of airports.

13/ Our uncertainty on this point arises from the fact that the statute does not purport to dedicate a particular revenue source.

payments on loans made from the fund are required by law to return to the fund. As we pointed out above, at n. 1, the questions of whether the principal and/or interest payments are revenues which may not be dedicated in this manner is now a matter in litigation in a suit filed by the Trustees for Alaska.

We will be defending the legislature's action in making both these dedications. In doing so, we will present in more detail a number of the arguments discussed above in support of the legislature's action. In addition, we will discuss the presumption of constitutionality of statutes and the deference due to the administrative and legislative interpretation of the dedicated funds prohibition. As indicated above, we believe that the return of principal payments to a loan fund does not offend the Constitution and that the return of interest payments to the loan fund may be permissible. However, we cannot predict with certainty the position that the court will adopt.

C. Appropriation of an amount from a specific revenue source (e.g., program receipts).

From time to time the legislature, by means of an annual operating budget appropriation, authorizes an agency to spend money that is generated out of one of the agency's programs. The appropriation also sets an upper limit on the amount that can be spent. Although program receipts are clearly state revenues which may not be dedicated, the practice of identifying program receipts as an appropriation source does not in any way limit legislative control over the expenditure of revenues because the legislature maintains control of the appropriation by means of the budget. Therefore, we believe that this practice is not affected by the dedicated funds prohibition.

D. Appropriation of an amount which is ascertainable only by reference to specified information.

Appropriations are regularly made to the risk management division, Department of Administration, of all proceeds during a fiscal year from claims, settlements or judgments arising from damage to or loss of state property. As pointed out above, at 18, this permits the state to repair or replace damaged property without specific appropriations, which would probably be either more or less than the actual property damage in any fiscal year.

The only difference between this and a typical appropriation is in the determination of the amount appropriated. When a fixed amount is appropriated, obligations incurred against it may be honored as long as there is cash available in the treasury. When an appropriation is made for an amount to be received from a certain source during a specific period, obligations may be honored only if a sufficient amount of money has been received from that source and there is cash available in the treasury. However, the amount of the appropriation remains determinable. Consequently, it is our opinion that these kinds of appropriations do not violate the dedicated fund prohibition. 14/

14/ The pending litigation discussed earlier (Trustees for Alaska v. State, supra) also includes a claim that an appropriation to the Alaska Power Authority of the interest to be received on money separately appropriated to the Power Development Fund violates the dedicated funds prohibition. § 1 ch. 90, SLA 1980, as reenacted by § 69 ch. 92, SLA 1981 and amended by § 236 ch. 141, SLA 1982. The questioned appropriation does not state a specific time period during which the interest is to be accrued. Consideration by the court of this particular question might not occur since, by informal memo dated April 19, 1982, we advised the Treasury Division of the Department of Revenue that the interest must be returned to the general fund because of a specific statutory requirement, AS 44.83.388(b). We are informed that no interest has accrued to the Power Development Fund.

E. Other Miscellaneous Dedications

1. Appropriations to the Permanent Fund. Since the constitution (Article IX, section 15) specifically authorizes dedications to the Permanent Fund of "at least" 25 percent of certain revenues, we believe any additional dedication to the fund by statute 15/ or by appropriation is also permissible.

2. Rainy day account. AS 37.05 179 creates a reserve fund to which money is appropriated and authorizes it to be spent for certain necessary emergency operating expenses at some future time. It is our opinion that this practice is permissible under the theory discussed above beginning at p. 12 that money once it is appropriated loses its character as revenue for purposes of the dedicated funds prohibition. A contrary view would severely restrict flexibility in state budgeting and accounting, and we doubt that such a view would be adopted by the courts.

15/ In 1980, the legislature increased the percentage dedication applicable to most new mineral leases to 50 percent. AS 37.13.010(a)(2).

We hope you find this analysis helpful in determining the nature of the problems presented by the dedicated fund prohibition and the various statutory programs which may or may not run afoul of it. We expect to be able to advise you with greater certainty on some of these questions at the conclusion of the pending litigation described above.

Sincerely,

Wilson L. Condon
Attorney General

WLC:jf

cc: Ron Lehr, Director
Division of Budget and Management

Jay Hogan, Director
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Legislative Affairs Agency

STATUS OF HIGHWAY USER FEE PROTECTION

June 1, 1987

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Highway User Fees

Highway user fees are those taxes and fees which are imposed on the owners and operators of motor vehicles for the privilege of using the highways. Although such fees are imposed by the federal, state, and local governments, we are primarily concerned in this project with state highway user fees. State highway user fees include all of the following:

Vehicle registration fees. This is the first structure tax on highway users. It is a tax imposed directly on the owners of the vehicles which use the highways. Typically the fees are collected on an annual basis, and vary according to the weight and use of the vehicle. Heavier vehicles and commercial vehicles generally pay more.

Motor fuel taxes. This is the second structure tax on highway users. It is a tax on the fuel which is used in motor vehicles operated on the highways. The gasoline tax is the most common of this group of taxes, but taxes on diesel fuel and other special fuels are generally included.[1] The tax is typically imposed on a cents per gallon basis. It is generally assessed against distributors of the fuel, and then passed on to highway users in the price of the fuel. Most states also have some form of motor fuel use tax which is assessed directly against certain highway users such as commercial carriers. This is not really a separate tax. It is just a different means of collecting the regular motor fuel taxes. It is intended to prevent avoidance of the motor fuel taxes by out of state purchases.

Weight-distance taxes. This group of taxes, which constitutes a third structure tax on highway users, is the least well defined. Only about one-fifth of the states impose this

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1. The term "special fuel" typically refers to all combustible gases and liquids suitable for use to generate power in an internal combustion engine, except gasoline.

kind of tax, and it differs from state to state.[2] The tax is imposed only on commercial carriers, and typically only on vehicles which exceed a specified weight limit. In most cases, the tax is based on vehicle weight and the miles operated within the state during the tax year.

Other taxes and fees. There are, of course, myriad other state and local taxes and fees imposed on highway users which are in some way related to the use of their vehicles or the highways. Some of these obviously should be considered highway user fees, and some should not. Some examples:

Sales tax on vehicles, accessories, and fuels
Personal property tax on vehicles
Vehicle title fees
Driver license fees
Overweight permit fees and overweight fines
Traffic law fines
Motor carrier registration or permit fees
Highway tolls

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2. Examples of such taxes may be found in Arizona, Arkansas, Colorado, Idaho, Kentucky, New Mexico, New York, Ohio (based on number of axles rather than weight), Oregon, Utah (based on months of operation rather than mileage), and Wyoming. Several other states, Illinois and Nevada for example, have taxes which are similar to weight-distance taxes, but which are imposed only in lieu of some other kind of tax.

Not all of these taxes are discussed in the state summaries which make up the bulk of this report. In those states which have a protective constitutional anti-diversion provision, our research did not explore the statutory provisions relative to each highway user tax.

General sales taxes and personal property taxes are based on the value of the vehicle or other object of the tax. Such ad valorem taxes have generally not been considered highway user taxes, although a few states will include revenue from some such taxes as highway user revenue.[3]

Title fees, driver licensing fees, and other service fees charged by the motor vehicle administration are generally not large revenue producers. In most states, these fees are used to pay the administrative cost of providing the service, but there are exceptions.[4] Motor carrier registration and permit fees are also generally used to pay the cost of administering and enforcing the carrier regulations.

Highway tolls, overweight or oversize vehicle permit fees, and size-weight fines or penalties seem clearly to be highway user fees. It is somewhat surprising that few of the constitutional or statutory provisions which protect highway user revenue specifically mention these fees.[5] Revenue from all traffic law fines, often including size-weight violations, is often allocated to traffic safety programs or enforcement, or to the general education fund. Tolls are often collected and expended by a separate entity which owns and operates the toll roads.

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3. See, for example, the state summaries for Alabama (revenue from use tax in lieu of sales tax on vehicle is not highway user revenue), Arizona (constitutional license tax in lieu of ad valorem tax on vehicle is not protected highway user revenue), and Virginia (revenue from sales tax on vehicle is highway user revenue).

4. See, for example, the state summaries for Indiana and Pennsylvania (driver license fees); Kansas (title fees); and Maryland, New York, North Carolina, and Wisconsin (all DMV revenue).

5. See, for example, the state summaries for New Hampshire (tolls), Maryland and Vermont (overweight penalties), and Connecticut (all penalties).

Some states also impose other kinds of taxes on highway users which differ from the taxes imposed in most states.[6] Although they may clearly consitute highway user fees, it is difficult to compare one state with another on the basis of these taxes.

The goal of this project was to assess the overall status of highway user fee protection in the United States, and to identify states where that protection is particularly strong, or weak. In order to accomplish that, we have focused primarily on the first and second structure taxes -- the vehicle registration fees and the motor fuel taxes. Other highway user fees move in and out of the picture, from state to state, but the registration fees and fuel taxes are constants. Every state imposes these taxes on highway users, and they certainly constitute the largest component of state highway user revenue. Evaluation of the protection of revenue from these two user fees affords an excellent assessment of the overall status.

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6. Pennsylvania, for example, imposes an "axle tax" and a "gross receipts tax" on commercial carriers

Legitimate Use and Diversion

The purpose in assessing highway user fees is to create a fund to defray the expense of providing the highways being used, now and in the future. Some uses of highway funds are unquestionably legitimate. Using the funds for construction and maintenance of a highway, for example, is clearly legitimate. Highways cannot be built without right of way, so using the funds to purchase right of way is obviously legitimate. Highways are often funded through the sale of bonds. Where the proceeds of the bond sale are used entirely for highway purposes, highway funds can legitimately be used to pay off those bonds. These are easy conclusions.

There are some other uses of highway funds which are clearly not legitimate. Expending highway funds to build schools or pay teachers, for example, would clearly be a diversion. Spending highway money on a subway system or other forms of nonhighway transportation is also a diversion of the funds from their proper use.

Between these extremes, however, there are many potential uses for highway funds which are less clearly either legitimate or diversionary. This report will not attempt to determine which expenses are legitimate. It will list some of the potential uses for highway funds, along with references to identify the state summaries in which there is some discussion of the manner in which the issue has been addressed by the states. This listing follows in the tables on the next six pages.

NOTE: Keep in mind that the tables <u>do not</u> show whether a particular kind of expenditure is considered legitimate in a particular state. The tables only indicate that more information on that issue will be found in the state summary for the indicated state.

Highway User Fees

Highway user fees are those taxes and fees which are imposed on the owners and operators of motor vehicles for the privilege of using the highways. Although such fees are imposed by the federal, state, and local governments, we are primarily concerned in this project with state highway user fees. State highway user fees include all of the following:

Vehicle registration fees. This is the first structure tax on highway users. It is a tax imposed directly on the owners of the vehicles which use the highways. Typically the fees are collected on an annual basis, and vary according to the weight and use of the vehicle. Heavier vehicles and commercial vehicles generally pay more.

Motor fuel taxes. This is the second structure tax on highway users. It is a tax on the fuel which is used in motor vehicles operated on the highways. The gasoline tax is the most common of this group of taxes, but taxes on diesel fuel and other special fuels are generally included.[1] The tax is typically imposed on a cents per gallon basis. It is generally assessed against distributors of the fuel, and then passed on to highway users in the price of the fuel. Most states also have some form of motor fuel use tax which is assessed directly against certain highway users such as commercial carriers. This is not really a separate tax. It is just a different means of collecting the regular motor fuel taxes. It is intended to prevent avoidance of the motor fuel taxes by out of state purchases.

Weight-distance taxes. This group of taxes, which constitutes a third structure tax on highway users, is the least well defined. Only about one-fifth of the states impose this

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1. The term "special fuel" typically refers to all combustible gases and liquids suitable for use to generate power in an internal combustion engine, except gasoline.

kind of tax, and it differs from state to state.[2] The tax is imposed only on commercial carriers, and typically only on vehicles which exceed a specified weight limit. In most cases, the tax is based on vehicle weight and the miles operated within the state during the tax year.

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PROTECTION OF HIGHWAY FUNDS

A = Has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

B = Has a constitutional provision, but protection is incomplete.

C = Has a constitutional provision which specifically permits or requires diversion.

D = Has no relevant constitutional provision but current statutes generally apply highway user revenue to highway purposes.

E = Has no relevant constitutional provision and current statutes afford little or no protection for highway user revenue.

F = Has no relevant constitutional provision and current statutes provide for significant diversion of highway user revenue to nonhighway purposes.

Designated states are marked with an 'O'

	A	B	C	D	E	F
Alabama	-	O	-	-	-	-
Alaska	-	-	-	-	O	-
Arizona	O	-	-	-	-	-
Arkansas	-	O	-	-	-	-
California	-	-	O	-	-	-
Colorado	O	-	-	-	-	-
Connecticut	-	-	-	-	O	-
Delaware	-	-	-	-	O	-
D. of Columbia	-	-	-	-	O	-
Florida	-	-	-	-	-	O
Georgia	-	O	-	-	-	-
Hawaii	-	-	-	-	O	-
Idaho	O	-	-	-	-	-
Illinois	-	-	-	-	O	-
Indiana	-	-	-	O	-	-
Iowa	O	-	-	-	-	-
Kansas	-	O	-	-	-	-
Kentucky	O	-	-	-	-	-
Louisiana	-	-	-	-	-	O
Maine	O	-	-	-	-	-
Maryland	-	-	-	-	-	O

Designated states are marked with an 'O'

	A	B	C	D	E	F
Massachusetts	-	-	O	-	-	-
Michigan	-	-	O	-	-	-
Minnesota	O	-	-	-	-	-
Mississippi	-	-	-	O	-	-
Missouri	O	-	-	-	-	-
Montana	-	-	O	-	-	-
Nebraska	-	-	-	-	-	O
Nevada	O	-	-	-	-	-
New Hampshire	O	-	-	-	-	-
New Jersey	-	O	-	-	-	-
New Mexico	-	-	-	-	-	O
New York	-	-	-	-	O	-
North Carolina	-	-	-	O	-	-
North Dakota	O	-	-	-	-	-
Ohio	O	-	-	-	-	-
Oklahoma	-	-	-	-	-	O
Oregon	O	-	-	-	-	-
Pennsylvania	O	-	-	-	-	-
Rhode Island	-	-	-	-	O	-
South Carolina	-	-	-	O	-	-
South Dakota	O	-	-	-	-	-
Tennessee	-	-	-	-	-	O
Texas	-	-	O	-	-	-
Utah	-	O	-	-	-	-
Vermont	-	-	-	-	O	-
Virginia	-	-	-	-	-	O
Washington	O	-	-	-	-	-
West Virginia	O	-	-	-	-	-
Wisconsin	-	-	-	-	O	-
Wyoming	-	O	-	-	-	-

The situation in the remaining states is much worse. Four states are shown in column D as having no constitutional provision but having current statutes which apply highway user revenue to highway purposes. While the current application of the revenue in these states is laudable, that status could change at any time the legislature decided to change it. There is no real protection for highway user revenue in these states.[7] A statutory dedication cannot provide any real protection for highway user revenue.

The 18 states shown in columns E and F of the table have no constitutional provision, and current statutes do not allocate all of the revenue to highway purposes. In some cases, the statutes provide for diversion of the funds. Statutes in the eight column F states provide for significant diversions to nonhighway purposes.

The five states shown in column C have constitutional provisions which specifically permit or require a diversion of some highway user revenue to nonhighway purposes.

It is interesting to compare the status today with the status of constitutional anti-diversion provisions in 1965.[8] Today there are 17 states with excellent protection. In 1965 there were 22. One of the 22 has been repealed (Louisiana). The other four were not repealed but were amended to specifically permit or require some diversion of funds (California, Massachusetts, Michigan, and Montana). The total number of relevant constitutional provisions remains 29 today, just as it was in 1965. The one provision newly adopted since 1965 (New Jersey) affects only a portion of highway user revenue and dedicates it to general transportation purposes rather than specifically to highway purposes. We might conclude that there has not been a significant amount of change since 1965, but all the change has been negative.

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7. The point is well illustrated by the statutory laws of Illinois. One section attempts to dedicate highway user revenue to highway purposes, while other sections provide for extensive diversion. See the Illinois summary.

8. In 1965 the National Highway Users Conference published the text of the then-current constitutional anti-diversion provisions in a paper entitled, "Texts of Good Roads Amendments." That is the basis for this comparison.

ALASKA

Alaska lacks a constitutional anti-diversion provision. Current statutes afford protection for motor fuel tax revenue only. The constitution prohibits any new dedication of tax revenue to any particular purpose.

A statutory provision specifies that revenue from the tax on motor fuels used to propel vehicles on the highways must be deposited in a special highway fuel tax account.[1] These funds may be expended only for highway construction and maintenance, construction of ferries, right of way acquisition, and other highway costs, including surveys, administration, and related matters.[2]

The constitution prohibits dedication of the proceeds of any state tax or license fee to any special purpose except when such dedication is required by the federal government as a condition of participation in federal programs.[3] The provision also specifies that dedications existing at the time the provision was adopted (1956) may be continued. The statutory dedication of motor fuel tax revenue described above was in effect prior to the adoption of the constitution's prohibition of dedications.[4]

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1. Alaska Stat. § 43.40.010 (g) (1985).

2. The law also permits paying valid motor fuel tax refund claims from the highway fuel tax account. Alaska Stat. § 43.40.010 (h) (1985).

3. Alaska Const. art. 9, § 7 (1985).

4. This constitutional provision was ratified on April 24, 1956. This provision has been construed strictly against dedications. The state attorney general has concluded that the only power which the legislature retains with respect to existing dedications is to repeal them. Existing dedications may be continued but may not be revised in any way which would increase or decrease either the percentage or total amount of the proceeds which are dedicated. Op.Atty.Gen. No. 7, No. 14 (1959). If the tax is decreased, the entire dedication falls and all of the tax revenue goes to the general fund; if the tax is increased, all of the increased revenue goes to the general fund. Op.Atty.Gen. No. 14 (1959).

ARIZONA

Arizona has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution provides that revenue from taxes relating to the registration, operation, or use of vehicles on the highways, and revenue from taxes on fuels or other energy sources used to propel vehicles on the highways shall not be expended for other than highway purposes. The section also provides for distribution of the funds to local governments to use solely for highway purposes.[1]

The section specifies that highway purposes includes construction, reconstruction, maintenance, and repair of highways; right of way acquisition; principal and interest on highway bonds; highway department administration; highway safety program administration; roadside development; and the cost of publishing and distributing Arizona Highways magazine.[2] This last item constitutes a minor diversion from the traditional concept of "highway purposes."

The constitution also provides for a license tax, in lieu of all property taxes based on the value of the vehicle, on all vehicles registered for operation on the highways, and it specifically exempts the revenue derived from this tax from protection by the anti-diversion section described above.[3]

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1. Ariz. Const. art. 9, § 14 (1984). The Statutes identify a large number of taxes and fees which constitute "highway user revenues," and provide for the use of those revenues for highway purposes, consistent with the constitution. See Ariz. Rev. Stat. §§ 28-1595. -1598 (Supp. 1985).

2. The cost of utility relocation due to highway construction is not a legitimate use of these funds. Op.Att'y.Gen No. 60-27.

Construction of buildings for county highway officials is a legitimate use. Op.Att'y.Gen. No. I84-087. Where such a building is later sold to an agency whose function is not directly related to highway purpose, the highway users fund must be reimbursed. Op.Att'y.Gen. No. I79-319.

3. Ariz. Const. art. 9, §§ 11, 14 (1984). A large percentage of the revenue from this tax is used for non-highway purposes. See Ariz. Rev. Stat. § 1591 (Supp. 1985). Property taxes based upon the value of the vehicle have traditionally not been considered highway user taxes.

COLORADO

Colorado has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution provides that revenue from any license, registration fee, or other charge with respect to the operation of a motor vehicle on the highways, and revenue from the imposition of any excise tax on gasoline or other liquid motor fuel, except aviation fuel used for aviation purposes, must be used exclusively for the construction, maintenance, and supervision of the highways.[1]

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1. Colo. Const. art. 10, § 18 (1980). The provision also specifies that the revenue may be used for the cost of administration of the tax law.

Since this section sets aside the whole of the revenues from the specified taxes for highway purposes, no appropriation by the legislature is required. Johnson v. McDonald, 49 P.2d 1017 (Colo. 1935).

IDAHO

Idaho has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution specifies that revenue from any tax on gasoline and other fuels used to propel motor vehicles on the highways, and revenue from motor vehicle registration fees must be used exclusively for the construction, repair, maintenance, and traffic supervision of the highways; and for payment of the interest and principal on bond obligations incurred for such highway purposes.[1]

This provision has been interpreted to prohibit use of these funds to pay for relocation of utilities necessitated by highway construction.[2] Also, use of the funds to advertise the state and its highways for tourism development is illegal.[3]

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1. Idaho Const. art. 7, § 17 (1980).

2. State ex rel. Rich v. Idaho Power Co., 346 P.2d 596 (Idaho 1959).

3. State ex rel. Moon v. Jonasson, 299 P.2d 755 (Idaho 1956).

IOWA

Iowa has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution provides that revenue from motor vehicle registration fees and all taxes and license fees on motor vehicle fuel must be used exclusively for the construction, maintenance, and supervision of the highways, or for the payment of principal and interest on highway construction bonds.[1]

This provision has been interpreted to allow use of the funds to pay for relocation of utilities necessitated by highway construction;[2] to lease land in order to provide barriers to control wind erosion which interferes with highway maintenance and safety;[3] to pay the salaries of the highway patrol, since supervision of the highways is one of their primary duties;[4] to erect a garage to house and maintain highway construction and maintenance equipment;[5] and to provide rest areas along the highways.[6] On the other hand, the provision prohibits use of highway funds to pay for construction of a bridge when part of it would lie in another state;[7] to develop and operate a motor vehicle ferry service;[8] and to purchase billboards, signs, and

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1. Iowa Const. art. 7, § 8 (1949). Motor vehicle certificate of title fees and lien notation fees are not "registration fees" within the meaning of this provision. Op.Att'y.Gen. (Thompson) April 13, 1971. Also, revenue from tax on motor vehicle fuel used for non-highway purposes is not covered by this provision. Op.Att'y.Gen. (Tieden) March 13, 1970.

2. Edge v. Brice, 113 N.W.2d 755 (Iowa 1962).

3. Op.Att'y.Gen. (Scott) April 26, 1979.

4. Op.Att'y.Gen. (Walsh) May 3, 1971.

5. Op.Att'y.Gen. (Fenton) June 2, 1969.

6. Op.Att'y.Gen. Jan. 16, 1968.

7. Frost v. State, 172 N.W.2d 575 (Iowa 1969).

8. Op.Att'y.Gen. (Rigler) Oct. 12, 1977.

junk yards located adjacent to highways but outside the right of way.[9] The highway fund must be reimbursed for highway department manpower and equipment used in flood prevention activities.[10]

One statutory provision threatens some potentially significant diversion. It provides for an appropriation from protected highway funds of whatever amount is necessary in order to pay a judgement against the department of transportation under the state tort claims act, when the judgement cannot be charged to a current appropriation.[11] The constitutionality of this law is yet to be tested in the courts, but the Iowa Attorney General has upheld it.[12]

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9. Op.Att'y.Gen. (Holden) Feb. 16, 1972.

10. Op.Att'y.Gen. (Coupal) May 12, 1969. This ruling is due to a comingling of restricted and nonrestricted highway department funds. If the funds were not comingled, nonrestricted funds could be used without any reimbursement.

11. Iowa Code Ann. § 313.16 (Supp. 1985). The section actually applies to awards or judgements rendered under chapter 25, the Claims Against the State Act, or chapter 25A, the State Tort Claims Act. There is no limitation on the amount of a judgement which can be rendered against the state under the tort claims act. See Iowa Code Ann. §§ 25A.1 to 25A.23 (1978, Supp. 1985). The department has some protection in discretionary function immunity, and some design immunity. See § 25A.14 (1)(1978) and § 25A.14 (8) (Supp. 1985).

12. Op.Att'y.Gen. (Rodgers) Sept. 26, 1984. This appears to overrule an earlier opinion. 1946 Op.Att'y.Gen. 7. Courts in other states have frequently ruled that payment of tort claims is not a legitimate use of protected highway funds. See State ex rel. Varnado v. Louisiana Highway Comm., 147 So. 361 (La. 1933); Malard v. State, 194 So. 447 (La. App. 1939); State ex rel. Wharton v. Babcock, 232 N.W. 718 (1930); Automobile Club of Washington v. City of Seattle, 346 P.2d 695 (1959).

KENTUCKY

Kentucky has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitution provides that money derived from taxes related to gasoline and other motor fuels, and from taxes relating to registration, operation, or use of vehicles on the highways may be expended only for the payment of highway obligations; the costs of construction, reconstruction, maintenance, and repair of the highways and bridges; the cost of highway right-of-way; and the cost of enforcing the state traffic and motor vehicle laws.[1] Several judicial and attorney general's opinions have construed this section.[2]

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1. Ky. Const. § 230 (1973). The section also specifies that such money may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the money is derived.

2. The funds may be used for publication and distribution of highway information which results in increased revenue for use in the highway program. Keck v. Manning, 231 S.W.2d 604 (Ky. 1950). The funds may be used for necessary relocation of utilities belonging to a municipality. Op.Atty.Gen. 74-199. The funds may not be used for a transit authority. Op.Atty.Gen. 78-144. A municipality may not expend the funds for a parking lot. Op.Atty.Gen. 82-492. Where a municipality places road funds in an interest bearing account, the interest earned on the funds is subject to the same restrictions as the road funds. Op.Atty.Gen. 81-143.

MAINE

Maine has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitutional section provides that revenue derived from taxes relating to registration, operation, or use of vehicles on the highways, and revenue derived from taxes relating to fuels used for the propulsion of such vehicles may be expended only for the payment of debts and liabilities incurred in construction and reconstruction of highways and bridges; the costs of construction, reconstruction, maintenance, and repair of the highways and bridges under the direction and supervision of the state department having jurisdiction; and the cost of state enforcement of traffic laws.[1] The section specifically provides that it does not apply to revenue from any excise tax on motor vehicles imposed in lieu of a personal property tax. The section has been rather strictly construed.[2]

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1. Me. Const. art. 9, § 19 (1964). The section also specifies that such money may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the money is derived.

The section provides that only expenditures on highways under the jurisdiction of a "state department" are qualified. Because the Maine turnpike authority is not a state department, a law which would credit revenue from the tax on gasoline consumed on the turnpike to the turnpike authority would be unconstitutional. Opinion of the Justices, 80 A.2d 417 (Me. 1951); Nelson v. Maine Turnpike Authority, 170 A.2d 687 (Me. 1961).

2. The funds may not be expended for relocation of a utility facility necessitated by a change in a highway. Opinion of the Justices, 132 A.2d 440 (Me. 1957). A charge which is imposed as a prerequisite to the registration of a motor vehicle falls within the limitations of this section regardless of what the charge is called. Opinion of the Justices, 152 A.2d 494 (Me. 1959). The funds may be used for that portion of the state police budget which is used for enforcement of traffic laws, but may not be used for other portions of the state police budget. Op.Atty.Gen. (Feb. 11, 1981).

MINNESOTA

Minnesota has several constitutional provisions which together afford excellent protection for highway user revenue.

One section creates a highway user tax distribution fund to be used solely for highway purposes.[1] This fund is divided into three other funds, for use on state, county, and municipal highways. The sections which create these funds allow expenditures only to pay the principal or interest on highway bonds or for construction, improvement, and maintenance of highways.[2]

The highway user tax distribution fund consists of revenue from taxes authorized by two other sections. The first of these sections authorizes the legislature to tax motor vehicles using the highways, and specifies that this tax is in lieu of any other tax upon motor vehicles except wheelage taxes imposed by political subdivisions solely for highway purposes.[3] The second of the two sections authorizes an excise tax on any means or substance used for propelling vehicles on the highways, or on the business of selling such a substance.[4]

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1. Minn. Const. art. 14, § 5 (1976).

2. Minn. Const. art. 14, §§ 2, 6, 7, 8 (1976); art. 14, § 11 (Supp. 1985).

3. Minn. Const. art. 14, § 9 (1976).

4. Minn. Const. art. 14, § 10 (1976).

MISSOURI

Missouri has several extensive constitutional provisions which afford excellent protection for highway user revenue.

One section deals with the state road fund.[1] It covers all revenue derived from highway users as an incident to their use or right to use the highways. With some exceptions, this includes all taxes on the manufacture, receipt, storage, distribution, sale, or use of vehicles or motor vehicle fuels, and state license fees and taxes on vehicles.[2]

The same section specifies that expenditures may be made from these revenues only for the following purposes: for payment of principal and interest on state road bonds; to complete, widen, improve, or maintain existing state highways; to reimburse political subdivisions for highways taken over by the state or for cash advanced by the subdivision to expedite state highway construction or improvement; to locate, relocate, establish, acquire, construct, and maintain new highways and bridges; to acquire materials, equipment, and buildings necessary to carry out these purposes; to maintain the highway-related activities of the highway commission and the department, including workmen's compensation and retirement programs; for administering and enforcing state motor vehicle and traffic laws; and for such

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1. Mo. Const. art. 4, § 30(b) (Supp. 1986).

2. The exceptions are as follows: property taxes are not covered; twenty-five percent of the revenue from the tax on motor vehicle fuel is allocated to local governments for highway purposes (as described in the text above), and does not pass through the state road fund; and revenue from sales tax on vehicles is not covered, although one-half of that revenue is dedicated to highway use under another provision (also described in the text).

A section added to the constitution in 1979 provides that revenue from any increase in state license fees and taxes on vehicles adopted subsequent to adoption of the constitutional section must be distributed as follows: ten percent to the counties, fifteen percent to the cities, and seventy-five percent to the state road fund. The money distributed must be allocated as provided in section 30(a) of the constitution for highway and transportation purposes. Mo. Const. art. 4, § 30(b)3 (Supp. 1986).

other purposes and contingencies relating and appertaining to the construction and maintenance of highways and bridges as the commission may deem necessary and proper.[3]

Another constitutional provision specifies that one-half the revenue from the state sales tax on vehicles shall be dedicated to "highway and transportation use."[4] Most of this revenue goes to the state road fund described above.[5]

Another section deals with revenue from the motor vehicle fuel tax, and specifies how the portion of that revenue which does not go to the state road fund is to be spent. Ten percent of the fuel tax revenue goes to a county road fund, to be used by counties only for construction, reconstruction, maintenance, and repair or highways and bridges.[6] Fifteen percent of the fuel tax revenue goes to municipalities to be used only for construction, reconstruction, maintenance, repair, policing, signing, lighting, and cleaning highways.[7]

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3. The section specifically allows the payment of fuel tax refunds, and payment of costs of collecting all the taxes before the revenue is credited to the state road fund. Some of the expenses listed in the text are authorized before the revenue is credited to the state road fund; others are authorized from the road fund itself.

4. Mo. Const. art. 4, § 30(b)2 (Supp. 1986).

5. Seventy-four percent goes to the state road fund; twenty-five percent goes to political subdivisions for highway and transportation use; one percent goes to the state transportation fund to be used as provided by law.

6. Mo. Const. art. 4, § 30(a)1(1) (Supp. 1986).

7. Mo. Const. art. 4, § 30(a)1(2) (Supp. 1986). This provision also allows the money to be used for payment of principal and interest on indebtedness incurred prior to January 1, 1980 for highway purposes.

These provisions have been strictly construed. One interesting case holds that interest earned by the state road fund must remain in that fund and cannot be diverted to the general fund or for any other use.[8]

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8. State Highway Comm. v. Spainhower, 504 S.W.2d 121 (Mo. 1973). The attorney general has reached the same conclusion with respect to the county road fund. Op.Atty.Gen. No. 171 (Antonio, 8-15-80).

Another case holds that since fees paid for copies of driving records (and other similar fees) are obtained directly from highway users, they are covered fees and must be credited to the state highway fund. State Highway and Transp. Comm'r v. Mo. Dept. of Revenue, 672 S.W.2d 953 (Mo. 1984). Also, although the constitution specifically allows use of the funds to construct a highway in, to, and through a state park, this does not allow use of the funds to create a new park or highway rest area. State ex rel. State Highway Comm. v. Pinkley, 474 S.W.2d 46 (Mo.App. 1971).

The attorney general has ruled that the funds may not be used to defray the cost of administering a system of permits to regulate outdoor advertising. Op.Atty.Gen. No. 23 (Graham, 2-1-72). Also the funds may not be used to defray the cost of providing a driver education program in the schools. Op.Atty.Gen. No. 85 (Lang, 6-7-74).

NEW HAMPSHIRE

New Hampshire has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The constitutional section provides that revenue from registration fees, operators licenses, motor fuel road tolls, and any other special charges or taxes with respect to the operation of motor vehicles or the sale or consumption of motor vehicle fuels may be used only for the costs of construction, reconstruction, and maintenance of highways; for the payment of principal and interest of highway obligations; and for the costs of supervision of traffic on the highways.[1]

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1. N.H. Const. part 2, art. 6-a (1970). The section also specifies that such revenue may be expended for the cost of administration and collection of the tax or fee from which the revenue is derived.

NORTH DAKOTA

North Dakota has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The section specifies that revenue from gasoline and other motor fuel taxes, and from motor vehicle registration and license taxes may be used only for construction, reconstruction, repair, and maintenance of highways, and for payment of obligations incurred for those highway purposes.[1] Several judicial opinions have construed the section.[2]

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1. N.D. Const. art. 10, § 11 (1981). The section also specifies the revenue may be expended for the costs of administration and collection of the tax and for authorized tax refunds.

2. The funds may be used for necessary relocation of utility facilities on interstate highways. Northwestern Bell Telephone Co. v. Wentz, 103 N.W.2d 245 (N.D. 1960). The funds may be used to control advertising and billboard use both on the highway right of way and on land abutting the right of way, if such control is provided for by law. Newman v. Hjelle, 133 N.W.2d 549 (N.D. 1965). The funds may be used to pay the cost of a bridge or culvert on a highway, even where the drain being bridged is built after the highway. Brenna v. Hjelle, 161 N.W.2d 356 (N.D. 1968).

OHIO

Ohio has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The section provides that revenue derived from fees or taxes relating to the registration, operation, or use of vehicles on the highways, or to fuels used for propelling such vehicles may be used only for the payment of highway obligations; the costs of construction, reconstruction, maintenance, and repair of highways and bridges; other statutory highway purposes; expenses of state enforcement of traffic laws; and expenses authorized for hospitalization of indigent persons injured in motor vehicle accidents on the highways.[1]

This section has been held applicable only to state revenue; it does not restrict the use of revenue from taxes and fees imposed by municipal corporations.[2]

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1. Ohio Const. art. 12, § 5a (1979). The section also specifies that such revenue may be expended for the cost of administration and for refunds and adjustments relating to the tax from which the revenue is derived.

It has been held that the funds may be used for street lighting systems on urban portions of limited access highways. State ex rel. Walter v. Vogel, 159 N.E.2d 892 (Ohio 1959).

2. Garrett v. Cincinnati, 139 N.E.2d 35 (Ohio 1956).

OREGON

Oregon has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The section specifies that revenue from any tax on motor vehicle fuel or other product used for the propulsion of motor vehicles, and revenue from any tax on the ownership, operation, or use of a motor vehicle may only be used for construction, reconstruction, improvement, repair, maintenance, operation and use of the highways, including roadside rest areas.[1] The section specifies that the revenue "may also be used for retirement of bonds for which such revenues have been pledged." It further specifies that if the revenue is produced by application of a tax to a vehicle which is used for commercial purposes, the revenue may also be used for enforcement of commercial vehicle weight, size, load, conformation, and equipment regulations.[2]

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1. Ore. Const. art. 9, § 3a (1985). The section also specifies that the revenue may be used for the costs of administration of the tax, and for any refunds or credits authorized by law. The language used to describe the tax on motor vehicle fuels is as follows: "Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel . . . ."

2. The section also provides that if the revenue is produced by application of a tax on the ownership, operation, or use of recreational vehicles such as campers, mobile homes, motor homes, travel trailers, and snowmobiles, the revenue may also be used for acquisition, development, maintenance, and care of parks and recreation areas.

PENNSYLVANIA

Pennsylvania has a constitutional anti-diversion provision which affords excellent protection for highway user revenue.

The provision applies to revenue from gasoline and other motor fuel taxes, motor vehicle registration fees, drivers license fees, and other taxes on products used in motor transportation.[1] It specifies that these funds must be used solely for highway construction, reconstruction, maintenance, and repair; highway safety; expenses incident to those activities; or to pay bond obligations incurred for those purposes.[2] The section also provides for distribution of the funds to political subdivisions to use solely for the same purposes.

The provision also permits the state to borrow from the funds for a period not exceeding eight months. The loan must be repaid within one month after the beginning of a new fiscal year.

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1. Pa. Const. art. 8, § 11(a) (Supp. 1985). A tax on gross receipts of a motor carrier has been held not to be covered by this provision. Shirks Motor Express Corp. v. Messner, 100 A.2d 913 (Pa. 1954), appeal dismissed, 347 U.S. 941 (1954).

2. The language of this provision which would permit use of the funds for construction of a bridge does not permit use of the funds for purchase of an already constructed bridge. Peoples Bridge Co. v. Shroyer, 50 A.2d 499 (Pa. 1947). But see 1973 Op.Att'y.Gen. No. 19. Payment of that portion of a county engineer's salary attributable to the highway purposes specified in the section is a legitimate use of the funds. 1975 Op.Att'y.Gen. No. 10. Payment by the Dept. of Transportation to lease an aircraft for use in highway construction and maintenance is also a legitimate use. 1973 Op.Att'y.Gen. No. 40.