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ATTORNEY GENERAL OPINION NO. 89-8

TO: Idaho Transportation Board
Department of Transportation
Statehouse Mail

Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Is it lawful to credit the general fund with interest accrued upon dedicated highway funds in light of Idaho Const. art. 7, § 17?

CONCLUSION:

Interest earnings upon funds dedicated to highway purposes by Idaho Const. art. 7, § 17, should be credited to the highway distribution account.

ANALYSIS:

Idaho Const. art. 7, § 17, provides:

On and after July 1, 1941 the proceeds from the imposition of any tax on gasoline and like motor vehicle fuels sold or used to propel motor vehicles upon the highways of this state and from any tax or fee from the registration of motor vehicles, in excess of the necessary costs of collection and administration and any refund or credits authorized by law, shall be used exclusively for the construction, repair, maintenance and traffic supervision of the public highways of this state and the payment of the interest and principal of obligations incurred for said purposes; and no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purposes whatsoever. (Emphasis added.)

Pursuant to this section, taxes upon motor fuels sold or used to propel motor vehicles on the highways and motor vehicle

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registration fees can only be used for administrative costs and for construction, repair, maintenance and traffic supervision of the state highways or for repayment of debts incurred for these purposes. The emphasized portion of the section prohibits diversion of these revenues to any other purpose. Thus, this opinion focuses upon the question whether investment of these revenues for non-highway purposes prior to their use for highway purposes amounts to a diversion of the revenues for non-highway purposes.

While the Idaho courts have not considered this question, the Idaho Supreme Court has required a strict application of highway revenues for the purposes enumerated in the constitution. For example, in State ex rel. Moon v. Jonasson, 78 Idaho 205, 299 P.2d 755 (1956), the court held unconstitutional an appropriation of \$50,000 from the highway fund for the purpose of advertising the highways and the State of Idaho. The court rejected the argument that the expenditure came within the meaning of "administration" or "maintenance" of the state highway system. The court required motor fuel taxes and vehicle registration fees to be strictly applied for the purposes enumerated in Idaho Const. art. 7, § 17:

The people desire by the Constitution to prohibit the use of certain revenues for any purpose except as therein provided; to preserve and protect such revenue and fund, and make certain the money so collected from sources therein enumerated shall be used for the purposes specified therein and for no other purpose.

78 Idaho at 210.

The Idaho Supreme Court has not yet considered whether it is an improper diversion of highway revenues to invest them for the benefit of the general fund pending their use for highway purposes. However, the court has recently considered a very similar question in relation to investment of revenues from endowment lands. In Moon v. State Board of Land Commissioners, 111 Idaho 389, 724 P.2d 125 (1986), the court considered whether it was proper to credit the general fund with interest earnings from a state account used for the management of school endowment lands. The funds in the account came from a portion of the revenues from endowment lands. Idaho Const. art. 9, § 8, required the legislature to provide for:

the faithful application of the proceeds thereof in accordance with the terms of said grants. . .

The state treasurer argued that she was statutorily required to credit the general account with the interest earnings from the land board's account. The court disagreed holding:

We hold in accordance with the position of the Land Board that the interest earned on the agency asset accounts is an integral part of the total monies received from school lands and must be used for the protection of the lands constituting the trust res or for school purposes in accordance with the terms of the trust established by our Constitution. Crediting such interest generated by the agency asset accounts to the general fund is a violation of the terms of the school endowment grant and our Constitution.

111 Idaho at 394. Thus, where the constitution required certain revenues to be faithfully applied in accordance with the terms of the school land grants, it was unconstitutional to invest the revenues for the benefit of the general account prior to expenditure of the revenues for land grant purposes.

The issue presented by the case was strikingly similar to the question you have asked with respect to highway funds. Both highway revenues and school endowment land revenues are constitutionally dedicated for specific purposes. Neither constitutional section says what is to be done with investment income upon the dedicated revenues prior to use of the revenues for dedicated purposes. Nevertheless, the court in Moon, supra, held it was unconstitutional to credit the general fund with interest earnings from the dedicated revenues. Likewise, we would expect the court to hold it unconstitutional to credit the general account with interest upon constitutionally dedicated highway revenues.

This conclusion is also supported by the judicial decisions of other jurisdictions which have considered the question in relation to dedicated highway revenues. For example, in State v. Straub, 400 P.2d 229 (1965), the Oregon Supreme Court considered whether interest earned on highway funds was constitutionally required to be credited to the highway fund. Oregon Const. art. 9, § 3a, provided in pertinent part:

(1) Except as provided in subsection (2) of this section, revenue from the following shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of

public highways, roads, streets and roadside rest areas in this state:

(a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and

(b) Any tax or excise levied on the ownership, operation or use of motor vehicles. (Emphasis added.)

The Oregon Supreme Court held:

It is apparent that the intent of the people when they adopted the amendment was to guarantee that none of the "proceeds" of the taxes and fees listed in the amendment would be diverted to any other purpose.

. . . .

It is recognized that the people's approval of the amendment to Article IX Section 3 provides no actual expression of a will and intent that interest that may be earned by the accumulated revenues controlled by the amendment should accrue to the highway fund. There is a strong inference, however, that the clear intent of the people to compel the specific revenues to be used for one purpose implies that it would include all of the interest that would accrue during the State Treasurer's holding of the revenues for their eventual use. We so hold.

400 P.2d at 233.

Idaho's constitutional provision is very similar to Oregon's in its pertinent provisions. Idaho's constitution, like Oregon's, requires the "proceeds" of certain motor fuel taxes and certain other revenue to be used exclusively for enumerated highway purposes. Idaho's Const. art. 7, § 17, specifically provides that "no part of such revenues shall, by transfer of funds or otherwise, be diverted to any other purpose whatsoever." Idaho Const. art. 7, § 17, was ratified as a constitutional amendment at the general election held November 5, 1940. As in Oregon, Idaho's ballot proposition does not address the voters' intent with respect to disposition of interest earnings upon the dedicated revenues. Nevertheless, we agree with the Oregon Supreme Court's

conclusion that the mandate of the people that specific revenues be used for one purpose implies that all the interest accrued during the treasurers' holding of the revenues likewise be dedicated to that purpose.

The Supreme Court of Missouri also considered the issue in relation to a similar constitutional provision in State Highway Commission v. Spainhower, 504 S.W.2d 121 (1973). Missouri Const. art. 4, § 30(b) provided:

For the purpose of constructing and maintaining an adequate system of connected state highways all state revenue derived from highway users as an incident to their use or right to use the highways of the state, including all state license fees and taxes upon motor vehicles, trailers and motor vehicle fuels, * * * shall be credited to a special fund and stand appropriated without legislative action for the following purposes, and no other. (All the enumerated purposes are road purposes.)

The Missouri Supreme Court found:

This problem has not been considered in Missouri. It is clear, however, that the people of Missouri, by Article IV, Section 30(b), and the General Assembly, by its enactment of Section 226.220, supra, in interpretation of Article IV, Section 30(b), intended that no money be diverted from the state road fund and no other use be permitted of the fund except for the enumerated state highway purposes.

504 S.W.2d at 125.

Based upon this finding and another constitutional provision requiring the state treasurer to hold all revenues for the benefit of the respective funds to which they belong, the Missouri court held it improper to credit the state's general account with interest income received from the state road fund. Thus, the decision was based in part upon constitutional language similar to Idaho Const. art. 7, § 17. We are aware of no cases from other jurisdictions reaching a contrary result with respect to dedicated highway funds.

In summary, the Idaho Supreme Court has construed Idaho Const. art. 7, § 17, to require dedicated highway revenues to be used solely for enumerated highway purposes. In the parallel context

of dedicated revenues from endowment lands, the Idaho Supreme Court held it was improper to credit the general account with interest income derived from the dedicated revenues. The only cases from other jurisdictions considering the question have held that constitutionally dedicated highway revenues cannot be invested for the benefit of the states' general accounts. Consequently, we conclude that investment earnings upon funds dedicated to highway purposes by Idaho Const. art. 7, § 17, should be credited to the highway distribution account established by Idaho Code § 40-701. Such interest income should not be credited to the state general account.

We recommend that the accounts of the state be adjusted to give effect to the above conclusion, effective July 1, 1989. Adjustments beyond the current fiscal year cannot be made without a legislative appropriation, pursuant to Idaho Const. art. 7, § 13, which provides:

No money shall be drawn from the treasury, but in pursuance of appropriations made by law.

In State v. Adams, 90 Idaho 195, 409 P.2d 415 (1965), the Idaho Supreme Court construed this provision as prohibiting the state from refunding to the county the state's pro-rata share of a court ordered refund of taxes collected wrongfully in prior years without a legislative appropriation.

Since appropriations are made on a fiscal year basis, it is not a violation of Idaho Const. art. 7, § 13, to make necessary correction in accounts within a fiscal year. By making corrections within a fiscal year, each account merely receives the correct amount of revenue for the fiscal year and the correct amount of revenue is available for the legislative appropriations made from each account. Accordingly, we recommend that the accounts of the state be adjusted effective July 1, 1989.

AUTHORITIES CONSIDERED:

Constitutions:

Idaho Constitution, art. 7, § 13.

Idaho Constitution, art. 7, § 17.

Idaho Constitution, art. 9, § 8.

Missouri Constitution, art. 4, § 30(b).

Oregon Constitution, art. 9, § 3a.

Cases

Moon v. State Board of Land Commissioners, 111 Idaho 389, 724 P.2d 125 (1986).

State v. Adams, 90 Idaho 195, 409 P.2d 415 (1965).

State v. Straub, 400 P.2d 229 (1965).

State ex rel. Moon v. Jonasson, 78 Idaho 205, 299, P.2d 755 (1956).

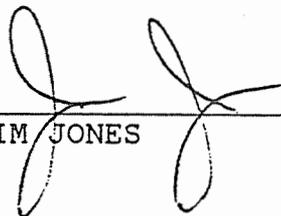
State Highway Commission v. Spainhower, 504 S.W.2d 121 (Mo. 1973).

Statutes

Idaho Code § 40-701.

DATED this 20th day of September, 1989.

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Analysis by:

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cc: Idaho Supreme Court
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