

RFD.
March 15, 1954
Letter Opinion
No. 54-62-L

The Honorable Harold C. Giss
State Senator, Yuma County
State Capitol
Phoenix, Arizona

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Re: Article 9, Section 14 of
the Arizona Constitution.

Question: Whether certain revenue
collected by the Motor
Vehicle Department may be
used for purposes other
than those set forth in
Article 9, Section 14, supra.

Dear Senator Giss:

The sources of the revenue referred to in the question above are as follows: peddler's license; new car dealer's license; used car dealer's license; wrecker's license; motor dealer's license; lamp approval fees; fees when making service upon superintendent; inquiries and miscellaneous.

In order to determine what disposition may be made from the revenue derived from the above sources, it is necessary to keep in mind the provisions of Article 9, Section 14, supra, limiting the use of certain funds collected by the Motor Vehicle Department which reads as follows:

"§ 14. (Use of highway taxes.)--No moneys 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 cost of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, cost of construction, reconstruction, maintenance and repair of public highways and bridges, county, city and town roads and

streets, and for distribution to counties, incorporated cities and towns in an amount not less than that as provided by law on July 1, 1952, to be used by them only for the purposes permitted by law on that date, expense of state enforcement of traffic laws, and payment of costs for publication and distribution of Arizona Highway Magazine, provided, however, that this section shall not apply to moneys derived from the automobile license tax imposed under section 11 of Article 9 of the Constitution of Arizona."

Traveling merchants, peddlers and itinerant vendors are required to pay a license tax under the provisions of Section 17-1605, A.C.A. 1939, said taxes to be paid to the sheriff in each county in which the person carries on his business and all such taxes when collected are required to be paid into the State Highway Fund. This license tax does not relate to the registration, operation or use of motor vehicles upon the public highways. Furthermore, it is to be noted that no expense is incurred by the Highway Department in enforcing the provisions of Section 17-1605, supra, or in collecting the license tax provided therein.

I conclude that the expenditure of the funds received from this license tax for purposes outside the Highway Department would not constitute a diversion of funds under the terms of Article 9, Section 14.

The remainder of the sources mentioned above appear to have nothing in common with the license tax imposed upon peddlers, but do have something in common with one another. In each instance certain duties are imposed by law on services rendered by the department in connection with the collection of the revenue. For instance, Section 66-1104, A.C.A. 1939, as amended, providing for the method of applying for a motor vehicle dealer's license, motor dealer's license or wrecker's license, directs the motor vehicle superintendent to make an investigation concerning the matters and things set forth in the application and inspect the place where the applicant proposes to transact business. We also find that certain duties are imposed upon the department by Section 66-174u, A.C.A. 1939, as amended, which section authorizes the department to approve or disapprove lighting devices, and for which approval, the laws of 1953, Chapter 121, Section 1 require the payment of \$5.00.

Furthermore, under Section 66-227, A.C.A. 1939, providing that service may be made upon a nonresident by making service of process upon the motor vehicle superintendent, the motor vehicle superintendent is required to keep a record of all processes

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served upon him under that section and he is required to charge a fee of \$2.00 whenever he is served under the provisions of that section. The department charges a flat fee of 25 cents for inquiries made concerning information the department has in its files, which fee is to compensate the department for the expense of mailing and miscellaneous expenses incurred in connection therewith. The miscellaneous item consists partly of refund checks which have been returned to the department unclaimed by the payee and which, after a considerable length of time, are returned to the Highway Fund. I have been unable to determine the nature of the remaining sources contributing to the miscellaneous fund.

Undoubtedly, with the exception of the fee for lamp approval, the other fees listed above do not relate directly to the registration, operation or use of motor vehicles upon the public highways and, therefore, the funds derived therefrom are not limited to being used as provided under Article 9, Section 14, supra. However, by the very fact that Article 9, Section 14 does explicitly provide how the funds described therein shall be used, and there is no provision therein for expending said funds for the cost of carrying out the duties and rendering the services mentioned above, it would be a diversion of funds if the moneys 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 were to be used for such purpose. In the words "shall be expended for other than cost of administering such laws," the word "laws" refers to those laws pertaining to the registration, operation or use of vehicles on the public highways or to fuels used for the propulsion of such vehicles. Clearly, the other provisions pertaining to the use of said funds do not encompass the cost of carrying out the duties and rendering the services we are dealing with herein.

It is the opinion of this office that the fees and taxes which are paid into the funds listed herein are solely for the purpose of reimbursing the department for the expense of carrying out said duties and rendering any services in connection therewith. The one exception to this conclusion would necessarily be the peddler's license wherein the Highway Department has no duty of enforcing its provisions or rendering any services with regard thereto. Therefore, the funds derived from the peddler's license may be used for such purposes as the Legislature may see fit, but such other funds as are derived from new and used car dealers, wreckers, motor dealers, persons making service upon the superintendent, and inquiries can only be used as provided in the acts creating the licenses, fees, and so forth.

Very truly yours,

ROSS F. JONES
The Attorney General

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