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Opinion No. 63-82-L
R-297
July 1, 1963

REQUESTED BY: THE HONORABLE T. C. RHODES
State Representative

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: May an incorporated city use a portion of the proceeds accruing to it from the Motor Vehicle Fuel Tax established by A.R.S. § 28-1501.01 for meeting annual service debt requirements for issue of highway and street improvement bonds when such bonds were issued for the sole purpose of securing money for the construction and reconstruction of arterial streets defined in A.R.S. § 28-1501.01(E) and when arterial street construction and reconstruction was completed and bonds were issued prior to the effective date of A.R.S. § 28-1501.01?

ANSWER No.

The principal and interest upon said bonds is payable from motor vehicle fuel tax receipts distributed to the city under A.R.S. § 28-1502(C). A.R.S. §§ 9-788 and 789.

Unlike A.R.S. § 28-1502(C), the motor vehicle tax revenues distributed to the cities under A.R.S. § 28-1501.01 are subject to reversion to the counties when not expended within the fiscal year on projects authorized by said section.

"§ 28-1501.01. Increase in tax; distribution

"F. If a city's arterial needs are completed insofar as any particular fiscal year is concerned, then it may use twenty-five per cent of the tax accruing to it for maintenance of streets and the balance of the tax shall revert to the county in which the city is located to be used by the county as herein provided."

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If the monies accruing under A.R.S. § 28-1501.01 are permitted to be used for meeting the service debt requirements of the street and highway improvement bonds, the city would be taking away monies which would otherwise accrue for the benefit of a county. The monies accruing under A.R.S. § 28-1502(C) which have been partially pledged to meet the service requirements of the bonds never revert to the county.

Gas tax revenues distributed to the cities which may not revert to the counties are different from gas tax revenues distributed to the cities which can revert to the counties and the latter may not be used to replace the former to the detriment of the county.

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