

### Question Presented

You have asked for an opinion on whether counties may expend highway user revenue funds for traffic safety and law enforcement purposes.

### Summary Answer

The explicit restrictions in Article IX, § 14 of the Arizona Constitution preclude counties, incorporated cities, and towns from expending highway user revenue funds for traffic safety and law enforcement purposes.

### Background

All revenues that the State receives from licenses, taxes, penalties, and fees for vehicle registration, drivers licenses, and fuel taxes are deposited into a highway user revenue fund. Arizona Revised Statutes Annotated ("A.R.S.") § 28-6501. Revenues in the fund may be spent only for the purposes prescribed in Article IX, § 14 of the Arizona Constitution. A.R.S. § 28-6533. The pertinent portion of Article IX, § 14 provides as follows:

*No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on the public highways or streets or to fuels or any other energy source used for the propulsion of vehicles on the public highways or streets, shall be expended for other than highway and street purposes including the cost of administering the State highway system and the laws creating such fees, excises, or license taxes, statutory refunds and adjustments provided by law, payment of principal and interest on highway and street bonds and obligations, expenses of State enforcement of traffic laws and State administration of traffic safety programs, payment of costs of publication and distribution of Arizona Highways magazine, State costs of construction, reconstruction, maintenance or repair of public highways, streets or bridges, costs of rights of way acquisitions and expenses related thereto, roadside development, and for distribution to counties, incorporated cities and towns to be used by them solely for highway and street purposes including costs of*

rights of way acquisitions and expenses related thereto, construction, reconstruction, maintenance, repair, roadside development, of county, city and town roads, streets, and bridges and payment of principal and interest on highway and street bonds.<sup>(1)</sup>

(Emphasis added.)

### Analysis

Your question requires an interpretation of Article IX, § 14 of the Arizona Constitution. When interpreting a constitutional provision, the focus is the intent of the framers who adopted the provision or, in the case of an amendment, the intent of the electorate that adopted it. *See Soto v. Superior Court*, 190 Ariz. 450, 454-55, 949 P.2d 539, 543-44 (App. 1997) (quoting *Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994)). When the language is clear and unambiguous, the text as written is followed. *Id.* The plain language controls if the provision is clear. *See State v. Roscoe*, 185 Ariz. 68, 71, 912 P.2d 1297, 1300 (1996).

Article IX, § 14 is divided into two parts. The first part establishes the purposes for which the State can spend highway user revenue funds. It specifically includes "expenses of State enforcement of traffic laws and State administration of traffic safety programs . . . ." The second part identifies the purposes for which counties, incorporated cities, and towns may expend these funds. Unlike the State, counties, incorporated cities, and towns may not expend highway user revenue funds for traffic safety and law enforcement purposes. The language of Article IX, § 14 clearly limits a county's expenditure of highway user revenue funds "solely for **highway and street purposes** including costs of rights of way acquisition and expenses related thereto, construction, reconstruction, maintenance, repair, roadside development of county, city and town roads, streets and bridges and payment of principal and interest on highway and street bonds."

It is true that the Legislature's examples of permissible highway and street purposes are not exclusive.<sup>(2)</sup> There is no legal basis, however, to augment the purposes for which counties, incorporated cities, and towns may spend highway user revenue funds. The electorate has opted to provide only the State with discretion to spend these funds for traffic safety and law enforcement purposes. *See Pima County Industrial Development Authority v. Maricopa County*, 189 Ariz. 558, 560, 944 P.2d 73, 75 (App. 1997) ("[e]very word of a statute or constitutional provision is to be given meaning"); *see also Bohannan v. Corporation Comm'n*, 82 Ariz. 299, 302, 313 P.2d 379, 381 (1957) (it is self evident that courts do not have the right to add something to the Constitution which is not expressed or cannot be fairly implied). Indeed, given that the same sentence of the constitutional provision defines "highway and street purposes" differently for the

State (specifically allowing "enforcement of traffic laws and administration of traffic safety programs") than for counties or cities (limiting use to actual road work projects) shows that the electorate intended the entities to have different limits. *Cf. Fields v. Capitol Indemnity Corp.*, 180 Ariz. 312, 313, 884 P.2d 198, 199 (1994) ("[w]hen the legislature expressly includes an item for coverage in one section of a statute but not in another, the legislature intends to exclude from coverage those items not mentioned").

When the language in a constitutional provision is clear and unambiguous it must be followed. *See Jett v. City of Tucson*, 180 Ariz. 115, 119, 882 P.2d 426, 430 (1994). Nevertheless, a constitutional analysis that looks beyond the plain language leads to the same conclusion. Principles of constitutional construction require consideration of the history behind the provision, the purpose sought to be accomplished, and the evil sought to be remedied. *See McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 290, 645 P.2d 801, 805 (1982). Both the 1952 and 1970 Publicity Pamphlets evaluating Article IX, § 14 explain that the highway user revenue funds are to be used by counties for street and highway acquisition, construction, and maintenance. The 1952 Publicity Pamphlet described the proposal as "The Better Roads Amendment" and noted as follows:

THE VERY SORT OF PEOPLE who, years, ago, did not want to pay for needed highways out of general funds of the state, and so devised the gas tax, now look longingly at the highway fund and all too often bring pressure in the legislature to appropriate these revenues to other than highways.

INITIATIVE AND REFERENDUM PUBLICITY PAMPHLETS, 1951-1970, Arizona Secretary of State (1973) (1952 Publicity Pamphlet).

Attorney General Opinion I89-85 pointed out that the League of Arizona Cities and Towns, in the 1970 Publicity Pamphlet, stressed that the 1970 proposal would not alter the protections of the 1952 amendment because "gasoline and diesel tax moneys must continue to be used solely for street and highway purposes." *Id.*, 1970 Publicity Pamphlet at 20. In that same pamphlet, the Phoenix Chamber of Commerce stated that there was no desire to deprive the counties in Arizona of revenues necessary to properly maintain their roads. Thus, the purposes articulated in the pamphlets, along with an absence of discussion of contemplated county traffic safety or law enforcement, reflects the public's intent to retain the constitutional highway user revenue fund protections adopted in 1952.

The language, history, and purpose of Article IX, § 14 authorize only the State to spend highway user revenue funds for traffic safety and law enforcement purposes. There is no legal basis to expand that specific and limited authorization to counties, cities, and

towns.

## Conclusion

The express language in Article IX, §14 of the Arizona Constitution, as well as the history and purpose of the enactment and its amendment, compels the conclusion that highway user revenue funds may not be used for traffic safety or law enforcement expenses of counties, incorporated cities, and towns. While that type of use may be laudable, it is not lawful.

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<sup>1</sup> The voters approved Article IX, § 14 in 1952, and later amended it in 1970 to provide for distribution of highway funds pursuant to statute. *See* Historical Note, ARIZ. CONST. art IX, §14, Vol. 1A Arizona Revised Statutes Annotated (West 1984).

<sup>2</sup> Attorney General Opinions I84-087 and I92-004 stated that the controlling limitation on counties in Article IX, § 14 is that they spend highway user revenue funds on *highway or street purposes*, and that if an activity in question is for such a purpose, the funds may be used even if the activity does not fall within one of the enumerated categories. This reasoning, however, does not create new authorized expenditure purposes for counties when the framers have specifically limited their expenditures to highway and street purposes.

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