



DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

(R76-134)

BRUCE E. BABBITT
ATTORNEY GENERAL

76-83

March 16, 1976

Honorable Jo Cauthorn
Arizona State Representative
House Wing - State Capitol
Phoenix, Arizona 85007

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ARIZONA ATTORNEY GENERAL

Dear Representative Cauthorn:

By your letter of March 10, 1976, you have requested our opinion whether the operating expenses incurred in the administration of the Motor Vehicle Emissions Inspection Program created by Ariz. Rev. Stat. Ann. § 36-1771 et seq. (Supp. 1975-76) may be paid out of the fund created by Article 9, Section 14, of the Arizona Constitution. For the reasons set forth below, it is our opinion that such funds could, with appropriate legislation, be utilized for the current operating expenses of the Motor Vehicle Emissions Inspection Program.

The Highway Fund created by Article 9, Section 14, is, of course, a "special fund", see, e.g., Arizona State Highway Commission v. Nelson, 105 Ariz. 76, 449 P.2d 509 (1969); Switzer v. City of Phoenix, 86 Ariz. 121, 341 P.2d 427 (1959). As such, and with certain narrow exceptions not applicable here, the moneys in the special fund may only be utilized for the purposes for which the special fund was created. Article 9, Section 14, sets forth the purposes for which the Highway Fund was created and describes the uses to which the money in that fund may be put:

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



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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. As long as the total highway user revenues derived equals or exceeds the total derived in the fiscal year ending June 30, 1970, the state and any county shall not receive from such revenues for the use of each and for distribution to cities and towns, fewer dollars than were received and distributed in such fiscal year. This section shall not apply to moneys derived from the automobile license tax imposed under section 11 of article IX of the Constitution of Arizona. All moneys collected in accordance with this section shall be distributed as provided by law. Ariz. Const. Art. 9, § 13.

The principal language of limitation, restricting expenditures to "highway and street purposes" is followed by specific illustrations of such highway and street purposes. Since the specific illustrations are prefaced by the word "including" we do not believe them to be necessarily all inclusive of permitted uses.

However, for the purposes of this opinion, analysis is confined to that part of Section 14 permitting expenditures for "expenses of state enforcement of traffic laws . . .". The question then is whether the auto emission standards set by the Department of Health Services pursuant to the auto emissions law may be reasonably characterized as traffic laws and the testing program as part of a scheme of enforcement.

The Emissions Inspection Law relates directly to the registration and use of motor vehicles on public highways. A.R.S. § 36-1771.7. defines motor vehicles subject to the inspection program as "any automobile, truck, truck tractor, motor bus or any self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state

for the purpose of transporting persons or property, except implements of husbandry, road-rollers or road machinery temporarily operated upon the highway." [emphasis supplied] Further, the Emissions Inspection Law is tied directly to annual registration of motor vehicles. Id., § 36-1772. Moreover, highway patrolmen and other peace officers of this state are specifically authorized to enforce the laws by means of random tests conducted on state highways. A.R.S. § 36-1777(B), provides:

. . . To facilitate such random investigative tests, any highway patrolman, any police officer or any peace officer may require the driver of any vehicle to stop and submit such vehicle to a test to check its compliance with any of the standards adopted pursuant to § 36-1717.^{1/}

By virtue of the foregoing provisions, the control of auto emissions is a requisite to auto registration, is directly related to the use of vehicles on highways, and is tied to enforcement by the highway patrol. In these narrow circumstances, therefore, we conclude that the Legislature could reasonably consider the motor vehicle emissions inspection program as part of a plan for enforcement of traffic laws within the meaning of Article 9, Section 14.^{2/} In re Lewkowitz, 69 Ariz. 347, 213 P.2d 690, vacated 70 Ariz. 325, 220 P.2d 229 (1950) ("[T]he court must give full weight to the law making power of the legislative branch of government . . . and no court should declare legislation invalid if there can be found a legal basis for its validity.") See, e.g., State ex rel. Szodomka v. Gruber, 201 La. 1068, 10 So.2d 899; Commonwealth v. Sargeant, 331 Mass. 759, 117 N.E.2d 154; Anderson v. Commissioner of Highways, 267 Minn. 308, 126 N.W.2d 778. We need not consider, therefore, whether there is any other basis under which moneys from the Highway Fund might constitutionally be utilized to fund the Motor Vehicle Inspection Law.

^{1/} Compare, A.R.S. § 28-982 conferring similar authority upon the highway patrol for enforcement of Title 28 traffic laws.

^{2/} The control of emissions is also the subject of other related Arizona laws. See, A.R.S. § 28-955, which provides: "A. Every motor vehicle shall at all times be equipped with a muffler in good working order and in constant operation to prevent excessive or unusual noise and annoying smoke, and no person shall use a muffler cut-out, bypass or similar device upon a motor vehicle on a highway. B. The engine and power mechanism of every motor vehicle shall be so equipped and adjusted as to prevent the escape of excessive fumes or smoke."

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Please let us know if we can be of further assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce E. Babbitt".

Bruce E. Babbitt
Attorney General

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