

OPINION
66-327

February 4, 1966 (OPINION)

Mr. Walter Hjelle

Highway Commissioner

RE: State - Public Moneys - Highway Funds

Recently you asked this office for an opinion relative to the following question: "Are the provisions of section 54-27-15.1, supra, and its companion statutes, valid as to highway department moneys, in view of the provisions of Article 56 of the Constitution?"

Article 56 of the North Dakota Constitution was enacted by initiative petition and approved by the voters on June 25, 1940. The gist of the provision remains the same today, with the exception that it has been amended to provide an exception as to aviation-gasoline taxes. Article 56 in its present form provides:

1. Revenue from gasoline and other motor fuel, excise and license taxation, motor vehicle registration and license taxes, except revenue from aviation, gasoline and unclaimed aviation motor fuel refunds and other aviation motor fuel excise and license taxation used by aircraft, after deduction of cost of administration and collection authorized by legislative appropriation only, and statutory refunds, shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways."

Section 54-27-15.1 provides:

STATE TREASURER'S CHECKS - CANCELLATION - DEPOSIT TO GENERAL FUND. The state treasurer, at the beginning of each fiscal year, shall prepare a list of the checks drawn on various depositories which are more than six years old which remain outstanding and unpaid and shall show the number, date, payee (with address of payee if available), amount, bank on which drawn and fund against which said check was drawn. A copy of such list shall then be used as an authority for writing a receipt of the total of such check or checks and shall credit such amount to the general fund. One copy of such receipt with list of checks affected shall be provided to the department of accounts and purchases."

This section has its source in the S.L. of 1941, and is found in Chapter 292 of that session.

Article 56 has been to our Supreme Court on at least two occasions where the court could give its specific attention to the

interpretation of this article.

In McKenzie County v. Lamb, 298 N.W. 241, p. 243, the court held:

Article 56 of the Amendments, supra, was submitted by initiative petition and adopted by the people at the election held in June, 1940. It 'freezes' all the revenues derived from gasoline and other motor fuel, excise and license taxation and from motor vehicle registration and license taxes for use for public highway purposes.* * * It dedicates the revenues in question to public highway purposes without any designation as to the particular highways on which they shall be used.

* * *

The wording of Article 56 of the Amendments speak so plainly for itself that there can be no doubt as to its meaning and effect. And of course it prevails as against any legislative enactment.* * *"

And on page 244, the court continues:

Having allocated the funds derived from the gas and motor vehicle taxes to the highway department, the legislature can also subsequently provide as to what shall be done (for highway purposes) with such funds and who shall carry out the legislative mandate.* * *"

The court's position in the McKenzie case, was affirmed, subsequently, by virtue of their opinion in the case of State v. Jones, 23 N.W.2d. 54, where on p. 61, the North Dakota Supreme Court said:

Article 56 does not prevent the legislative authority from supplying by constitutional means the state highway department with funds from other sources of revenues and those mentioned therein; but it does prevent the diversion from the highway department of any 'revenue (whatsoever) from gasoline and other motor fuel, excise and license taxation' and other sources mentioned therein."

And on p. 63, the court further states:

"* * *(B)ut there is the expressed exception in case of money allocated to the state highway department and this money is 'appropriated' by the constitutional provision. No further 'single appropriation' is necessary, nor may the legislative prevent it. Article 56 contains the provision that the moneys in this constitutional fund 'shall be appropriated and used solely' for highway construction work;* * *"

A further indication that such funds are not to be considered part of the general fund is found in the case of Langer v. State, 284 N.W. 238, p. 255:

It says: 'All public moneys, from whatever source derived, shall be paid over* * *to the state treasurer, and deposited by

him to the credit of the state, and shall be paid out and disbursed pursuant to appropriation first made by the legislature'. If moneys are collected for a special public purpose (as for instance premiums for the fire and tornado fund) they must be deposited by the state treasurer to the credit of the state; but it is not contemplated that they shall become part of the general revenue of the state and disbursed for general governmental purposes."

Section 54-27-15.1 was designed to provide for an orderly manner of disposing of and accounting for outstanding checks, but because of the provisions of Article 56 and as same has been construed by the North Dakota Supreme Court, the language of said section requiring crediting same to the "general fund" would not apply to the dedicated funds under Article 56. However, effect should be given to the overall purpose and design of section 54-27-15.1. The provision requiring that credit be given to the general fund would constitute a diversion of highway funds, which would be prohibited by Article 56.

It is therefore our opinion that the term "general fund" does not apply to the checks drawn against the state highway fund deriving its source from Article 56. However, in keeping with the general purpose and design of section 54-27-15.1, the credit should be made to the state highway fund.

HELGI JOHANNESON

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