

**OPINION
79-275**

February 8, 1979 (OPINION)

The Honorable Wayne G. Sanstead
Lieutenant Governor
State Capitol Building
Capitol Grounds
Bismarck, ND 58505

Dear Mr. Sanstead:

You have requested, on behalf of Senator I. E. Solberg, the opinion of this office on the following proposition.

"Article 56 of the Constitution prescribes the method of taxation and legislative spending of highway funds. Senate Bill 2382 provides a registration tax levy on all motor vehicles registered in North Dakota which revenue shall be deposited with the State Treasurer to be used exclusively on county highway and bridge construction and reconstruction.

Based on Article 56 of the Constitution can this be legally legislated for such specific use?"

Article 56 of North Dakota's Constitution originated by initiated petition and it was ultimately approved by the Electorate on June 25, 1940. Article 56 was subsequently amended to provide that it would not have application to aviation fuel. Article 56 presently reads:

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."

The two most significant cases offering an interpretation to Article 56 are McKenzie County v. Lamb, 298 N.W. 241, and State v. Jones, 23 N.W.2d. 54. In McKenzie County, supra, on page 243, the court in making its conclusions relative to Article 56 stated:

"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. It

leaves to the legislature the allocation of such revenues.

"The wording of Article 56 of the Amendments speaks so plainly for itself that there can be no doubt as to its meaning and effect. * * * It says that this revenue so derived shall be used for public highway purposes and makes no distinction between public highways and the State Highway System. * * * The purpose of the amendment was to prevent any use of the gas revenues for other than highway purposes. * * * These clearly show that the sole purpose of the amendment was to dedicate the revenue from the gas tax to public highway purposes. * * *"

and on page 244, the court concluded:

"* * * 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. * * *" (Emphasis supplied)

While in McKenzie County, supra, the Supreme Court was addressing itself primarily to a question dealing with gasoline taxes, the rationale expressed therein would have equal application to any registration fee imposed upon motor vehicles.

In State v. Jones, supra, on page 61, the Supreme Court made the following observation relative to Article 56.

"Article 56 is not wholly self-executing. The legislative department, which includes the people acting under the initiative, must specify the rate of taxation for the raising of the revenue provided for in the amendment; the legislative department can direct the state highway commission in the expenditures so long as there is no diversion of funds; and the legislative department, within the limitations provided, may specify how these funds may be expended. * * *"

Based on the foregoing court interpretation of Article 56, it is our opinion that the provisions of Senate Bill 2382, in its present form, would be determined to be constitutionally permissible by a court of competent jurisdiction.

Sincerely,

ALLEN I. OLSON

Attorney General