



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

July 30, 1976

ATTORNEY GENERAL OPINION NO. 76- 238

Mr. Lyell D. Ocobock
Special Assistant State Treasurer
535 Kansas Avenue
Topeka, Kansas 66603

Re: State Funds--State Freeway Fund--Transfer

Synopsis: Under the 1974 amendment to K.S.A. 1973 Supp. 79-3425, upon receiving the required certification from the Secretary of Transportation, the State Treasurer is required to transfer from the state freeway fund to the state highway fund an amount equal to sixty-nine and twenty-three hundredths percent (69.23%) of all moneys deposited in the state freeway fund on the preceding day, and not merely 69.23% of moneys deposited in the state freeway fund on the preceding day derived from the motor-vehicle fuel tax.

* * *

Dear Mr. Ocobock:

The antecedent of K.S.A. 1975 Supp. 79-3425 was first enacted in 1933, as section 25 of the Kansas Motor-Fuel Tax Law, ch. 317, L. 1933, which imposes a tax on the use, sale or delivery of motor-vehicle fuels. It has been amended numerous times since then, each amendment relating to the distribution of the proceeds of the motor-vehicle fuels tax. In 1974, it was amended to provide that after apportionment of certain of the proceeds to the state general fund, the motor vehicle fuel tax refund fund, the county equalization fund, sixty-four percent of the remainder would be credited to the state freeway fund, and thirty-five percent to the special city and county highway fund. Also in 1974, by ch. 441, § 1, L. 1974, an additional paragraph was added to this section, which provides, after amendment by 1976 House Bill No. 3248, as follows:

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"On July 2, 1974, and on each day thereafter, after the state treasurer has received certification from the secretary of transportation that provisions have been made for the payment of the pro rata share of the amount required to be paid on the next ensuing payment date of either the principal of or the interest on the outstanding highway bonds issued pursuant to K.S.A. 1975 Supp. 68-2304, *the state treasurer shall transfer from the state freeway fund to the state highway fund an amount equal to sixty-nine and twenty-three hundredths percent (69.23%) of the moneys deposited in the state freeway fund on the preceding day.*" [Emphasis supplied.]

You inquire whether, in making the transfer required by the underscored language, the state treasurer shall transfer an amount equal to 69.23% of *all* moneys deposited in the state freeway fund on the preceding day, or an amount equal to 69.23% of only the proceeds of the motor-vehicle fuel tax deposited in the state freeway fund on the preceding day.

The state freeway fund was created in 1969, by ch. 462, § 3, L. 1969, a provision which amended K.S.A. 79-3425, which, in turn was originally enacted as a part of the Kansas Motor-Fuel Tax Law, as pointed out above. The same section which created the fund provided that a designated portion of the proceeds from the motor-vehicle fuels tax were to be credited to the state freeway fund. Section 15 of the same 1969 enactment provided that a designated portion of the proceeds from the special fuels tax were to be credited to the state freeway fund. In 1970, K.S.A. 79-34,104 was amended to provide that a designated portion of the proceeds from the LP gas tax were to be credited to the state freeway fund.

In the 1969 enactment establishing the state freeway fund, its use was directed by section 18 of that act, which became K.S.A. 68-2301(d). In 1974, at the same time K.S.A. 1973 Supp. 79-3425 was amended to provide for transfers from the state freeway fund to the state highway fund, K.S.A. 68-2301 was also amended to conform to that transfer direction, with the addition of the following:

"(b) All of the moneys deposited in the state freeway fund created in K.S.A. 1973 Supp. 79-3425, and any amendments thereto, except moneys accruing to said fund as a result of the interest or earnings from the investment of moneys in said freeway fund or in the state

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freeway construction fund, as provided in subsection (d) of K.S.A. 68-2311, shall be subject to transfer to the state highway fund, as provided by said K.S.A. 1973 Supp. 79-3425. After any such transfer, and subject to the provisions of K.S.A. 68-2311, the moneys remaining in the state freeway fund shall be expended by the state highway commission"

Whereas prior to this amendment, all moneys in the state freeway fund except interest earnings were required to be expended for construction of the state system of highways and freeways and for certain other uses, the 1974 amendment of this provision excepted those funds authorized to be transferred from the state freeway fund to the state highway fund pursuant to K.S.A. 1973 Supp. 79-3425 as amended.

Because K.S.A. 1975 Supp. 79-3425 was initially enacted in 1933 as a part of the Kansas Motor Fuel Tax Act, the 1974 addition of the second paragraph, authorizing transfers from the state freeway fund to the state highway fund may on casual reading be construed to apply only to moneys in the state freeway fund derived from the Kansas Motor Fuel Tax Law, K.S.A. 79-3401 *et seq.* However, a review of the amendments to K.S.A. 79-3425 since 1969 clearly indicates, in my judgment, that the 1974 transfer authority is not so restricted.

In that year, although prior to that time it had related only to distribution of the proceeds of the motor-vehicle fuel tax, K.S.A. 79-3425 was amended to create the state freeway fund, and to direct that a portion of the proceeds from the motor-vehicle fuel tax be credited to that fund. In the same 1969 act, a portion of the proceeds from a separate motor fuels tax, the special fuel tax, was also directed to be credited to the state freeway fund. And in 1970, a portion of the proceeds of yet another motor fuels tax, the LP gas tax, was assigned to the state freeway fund. The 1974 amendment to K.S.A. 1973 Supp. 79-3425 must be considered in light of this history. The language of the second paragraph which was added to that provision in 1974 is not all ambiguous, considered in and of itself, for it clearly directs a transfer of 69.23% of "the moneys deposited in the state freeway fund on the preceding day" without distinguishing among the three motor fuel taxes which contributed to that fund, *i.e.*, the motor-vehicle fuel tax, the special fuels tax, and the LP gas tax. If the 1974 amendment is deemed to be ambiguous as to the moneys in the state freeway fund subject to transfer, it is not because of any language in the amendment itself, but because the amendment was added to K.S.A. 1973 Supp. 79-3425, which historically dealt only with motor-vehicle fuel taxes. Any

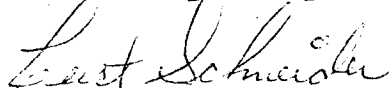
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ambiguity on this score must be resolved by resort to contemporaneous legislation, *i.e.*, the 1974 amendment to K.S.A. 68-2301, respecting precisely the same funds, described above, which again provided that [a]ll of the moneys deposited in the state freeway fund . . . [with exceptions not pertinent here] shall be subject to transfer to the state highway fund, as provided by said K.S.A. 1973 Supp. 79-3425." [Emphasis supplied.]

Moreover, the title of the 1974 act amending K.S.A. 1973 Supp. 79-3425 clearly reflects that it dealt not with motor-vehicle fuel taxes, but with all three motor fuel taxes. The act is described as "AN ACT relating to the distribution of motor-fuel taxes," *i.e.*, the proceeds from not the motor-vehicle fuel tax alone, but the proceeds from all motor fuel taxes, including the special fuels tax and the LP gas tax.

On the basis of the foregoing, it is clear, in my judgment, that transfers made by the state treasurer pursuant to the second paragraph of K.S.A. 1975 Supp. 79-3425 as amended from the state freeway fund to the state highway fund must be in an amount equal to 69.23% of *all* moneys deposited in the state freeway fund on the preceding day, and that the moneys in the state freeway fund subject to such transfer are not restricted to proceeds credited thereto from proceeds of the motor-vehicle fuel tax.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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