

"(4) *The amount of the permissible deficit for 1975-76 and future fiscal years may not exceed the amount of state aid reduced by an executive order during that fiscal year.*" (emphasis added)

A plain reading of the above quoted statutory provisions makes it clear that the legislature has prohibited school districts from adopting a deficit budget for the 1975-76 fiscal year. Similarly the legislature has prohibited school districts from operating on a deficit budget during the 1975-76 fiscal year. The legislature has not provided an exception from either prohibition to cover the result of an arbitration award establishing the economic terms of a collective bargaining contract with the school district's employees.

Therefore, I am constrained to rule that a board of education may not, despite an arbitration award establishing the economic terms of a collective bargaining agreement, incur an operating deficit for the fiscal year 1975-1976 under 1972 PA 258, § 102, as last amended by 1975 PA 335, *supra*.

FRANK J. KELLEY,
Attorney General.

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MOTOR VEHICLE HIGHWAY FUND: Administration and Use

CORRECTIONAL INSTITUTIONS: Prison industries

Moneys received and collected for gasoline tax, license registration fees and under the motor carrier act are to be deposited in the state treasury to the credit of the motor vehicle highway fund after deduction of necessary expenses incurred in the administration of these acts.

Correctional institutions may not make a profit from the manufacture of products by correctional industries.

1¼% of state taxes collected on the sale of a propellant used in internal combustion engines, with the exception of use for airplane and diesel engines, are to be credited to state waterways fund.

Opinion No. 4948

February 23, 1976.

Mr. John P. Woodford, Director
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This is in response to your recent letter wherein you ask the following questions:

1. What is the extent of the State Highway Commission's authority and responsibility over the use of the motor vehicle highway fund for collection and administrative costs?
2. Is the Department of Corrections (Michigan State Industries) authorized to generate a profit from the sale of license plates?

3. Is the state general fund or the motor vehicle highway fund authorized to be credited with receipts collected under provisions of Section 802 of Act No. 300, Public Acts of 1949?

4. Should taxes collected from the sale of liquefied petroleum gas be prorated to the waterways fund?

5. Is the waterways fund share of receipts from the motor vehicle highway fund to be deducted from net revenue before computing the general transportation fund share?

Relevant to the first question is the following language at page 71 of the Auditor General's Report for July 1, 1970, through June 30, 1973:

"Act 51, P.A. 1951 (Section 247.664, C.L. 1970), imposes on the State Highway Commission the responsibility for administration of payments to local units of government from the Motor Vehicle Highway Fund. However, Act 51 does not clearly and specifically delegate responsibility to the State Highway Commission for overseeing the use of the Motor Vehicle Highway Fund for collection and administrative costs.

"We recommend that the State Highway Commission request an Attorney General opinion as to the extent of its responsibility over the use of the Motor Vehicle Highway Fund for collection and administrative costs."

In answering the first question, it is to be noted that 1951 PA 51, § 10; MCLA 247.660, MSA 9.1097(10) provides that all moneys received and collected under the provisions of 1927 PA 150; MCLA 207.101, *et seq.*, MSA 7.291, *et seq.*; 1949 PA 300, §§ 801-810; MCLA 257.801-257.810, MSA 9.2501-9.2510; and 1933 PA 254; MCLA 475.1, *et seq.*, MSA 22.531, *et seq.*, are to be deposited in the State Treasury to the credit of the motor vehicle highway fund *after* deducting necessary expenses incurred in the administration and enforcement of these acts.

A review of these statutes reveals that the responsibility for collecting the taxes and fees imposed by 1951 PA 51, *supra*, has been delegated by the legislature to the Department of State, with respect to 1949 PA 300, *supra*, the Department of Treasury with respect to 1927 PA 150, *supra*, and to the Public Service Commission with respect to 1933 PA 254, *supra*.

Under Const 1963, art 4, § 53, which I have previously interpreted in OAG, 1964, No 4284, p 278, the legislative auditor general is given the power and duty to make investigations and conduct audits to review the legitimacy and reasonableness of administrative expenses incurred by state agencies. If any of the collecting agencies charge excessive amounts for collection costs, the auditor general should call this to the attention of the concerned agencies.

Pertinent to the second question is the following language at page 71 of the Auditor General's Report for July 1, 1972, through June 30, 1973:

"Vehicle license plates are manufactured by inmates at the State Prison of Southern Michigan (Michigan State Industries). The Department of State purchases the license plates and recovers the cost from the Motor Vehicle Highway Fund.

"We interpret Section 800.331, C.L. 1970, as authorizing Michigan State Industries to recover only the cost of goods sold. We found that Michigan State Industries makes a profit on license plates, which results in supplementation of the State general fund at the expense of the local units of government and the State road building program.

* * *

"We recommend that the Department of State Highways and Transportation request an Attorney General opinion as to whether the Department of Corrections (Michigan State Industries) is authorized to generate a profit from the sale of license plates."

With respect to the second question, attention is directed to Section 11(d)(ii) of the Correctional Industries Act, 1968 PA 15, as amended, which addresses the question of prices to be charged for products manufactured by correctional industries and provides that the intent of the Act is:

"(d) To effect the requisitioning and disbursement of inmate labor and correctional industries products directly through established state authorities with no possibility of private profits therefrom and with the minimum of intermediating financial considerations, appropriations or expenditures, and to these ends the governor shall require the director of the department of administration to establish suitable methods of purchasing and of accounting which shall provide as may be necessary or advisable:

* * *

"(ii) for crediting corrections industries accounts and debiting accounts of consuming institutions or departments for products requisitioned and disbursed, at *prices fixed as nearly as practicable to recapture direct and indirect costs* exclusive of supervisory costs and to indicate fairly the true costs of maintenance and efficiency of the management of correctional institutions, provided that the prices or the requisitioning or disbursement of correctional industries products shall in no case be determined by or contingent upon competitive bidding from other sources." (emphasis supplied)

Therefore, it is clear from the above-noted statutory provision that the legislature did not contemplate a profit since the prices charged for products manufactured by correctional industries must as nearly as practicable be related to direct and indirect costs incurred.

The third question is based upon the following language at page 74 of the Auditor General's Report for July 1, 1972, through June 30, 1973:

"We were not able to determine which fund is to be credited with revenue from special plates authorized under Section 802, Act 300, PA 1949 (Section 257.802, CL 1970).

"Section 802 of Act 300 states that the fees are to be credited to the State general fund; however, Section 810 of the same act states that all fees collected under Sections 801 to 809, inclusive, shall be credited to the Motor Vehicle Highway Fund.

"The Constitution of the State of Michigan of 1963 (Article 9, Section 9) specifies that all specific taxes imposed on motor vehicle

fuels and on registered motor vehicles shall be used exclusively for highway purposes.

* * *

"We recommend that the Department of State Highways and Transportation request an Attorney General opinion as to which fund is authorized to be credited with receipts collected under provisions of Section 802, Act 300, PA 1949 (Section 257.802, CL 1970)."

With respect to the third question, reference must be had to 1951 PA 51, § 10, *supra*, which provides that all moneys collected under the provisions of 1949 PA 300, §§ 801-810, *supra*, shall be credited to the motor vehicle highway fund, *with the exception of amounts necessary for the administration* of those provisions. Section 802(a) which imposes a tax on special plates also provides for a fee of \$2.00 which is to be deposited in the general fund and used solely to defray administrative expenses involved. The possible conflict raised by the auditor general between Sections 802 and 810 (which provides that all receipts under Section 802 are to be credited to the motor vehicle highway fund) is illusory since Section 810 is not applicable to any portion of the receipts allocated to defray administrative expenses.

Consequently, it is my opinion that the taxes collected under 1949 PA 300, § 802, *supra*, should be credited to the motor vehicle highway fund and the \$2.00 fee collected to defray administrative expenses should be credited to the general fund. This interpretation is in harmony with Const 1963, art 9, § 9, which mandates that all taxes on fuels and motor vehicles shall, *after* the payment of necessary collection expenses, be used exclusively for highway purposes.

The fourth question stems from the Auditor General's Report for July 1, 1972, through June 30, 1973. The following language appears at page 76 of that Report:

"The amount of taxes transferred from the Motor Vehicle Highway Fund to the Waterways Fund is computed by the Department of Management and Budget accounting division.

"The accounting division does not distribute to the Waterways Fund a pro rata share of the taxes collected on liquefied petroleum gas (LPG) used in vehicles. We conclude that Section 281.509, CL 1970, amended by Act 328, PA 1972, provides for proration of taxes on all motor fuels except those specifically excluded. The statute states: ' . . . Effective February 1, 1973, 1.25% of all state-imposed taxes collected on the sale of gasoline, fuel, oil, naphthene or any other propellant used in internal combustion engines, except fuel consumed in airplanes or diesel engines, shall be credited to the state waterways fund . . .' After discussing the situation with employees involved with the computation, we conclude that taxes on liquefied petroleum gas were first eliminated from distribution to the Waterways Fund several years ago and before liquefied petroleum gas was introduced as a fuel for moving vehicles.

* * *

"We recommend that the highway administration request an Attorney General opinion as to whether taxes collected from the sale of liquefied petroleum gas should be prorated to the Waterways Fund."

In answering the fourth question, attention is directed to 1947 PA 320, § 9(2), as amended by 1972 PA 328, which provides in pertinent part, as follows:

"... Effective February 1, 1973, 1.25% of all state-imposed taxes collected on the sale of gasoline, fuel, oil, naphthene or any other propellant used in internal combustion engines, except fuel consumed in airplanes or diesel engines, shall be credited to the state waterways fund after deducting collection costs and refunds, to be disbursed by legislative action..." (emphasis supplied)

It is evident from the above-noted statutory provision that 1.25% of all state taxes on the sale of any propellant used in internal combustion engines, with the exception of airplane and diesel engines, should be credited to the state waterways fund. Consequently, it is my opinion that if liquefied petroleum gas falls within the definition of "propellant used in internal combustion engines," 1.25% of the taxes imposed upon its sale should be prorated and credited to the state waterways fund.

The fifth question is based upon the following language at page 77 of the Auditor General's Report for July 1, 1972, through June 30, 1973:

"Act 327, PA 1972, provides for proration of receipts to the General Transportation Fund for mass transportation purposes. The Department of Management and Budget accounting division computes the amount of receipts to be credited from the Motor Vehicle Highway Fund to the General Transportation Fund.

"We do not concur with the accounting division's method of computation. We interpret the law differently. Section 10b, Act 327, PA 1972, states that the General Transportation Fund is to be credited for '... an amount equal to the net revenues, after deducting a proportionate share of refunds and collection costs authorized by law, from ½ cent per gallon of the tax on gasoline and liquefied petroleum gas...' The accounting division complies with this provision, but also deducts from net revenue the share (1.25%) of receipts which belong to the Waterways Fund. Under our interpretation of Act 327, PA 1972, the General Transportation Fund share should be computed on net revenue, before subtracting the Waterways Fund share.

* * *

"We recommend that the highway administration request an Attorney General opinion as to whether the Waterways Fund share of receipts is to be deducted from net revenue before computing the General Transportation Fund share."

With respect to the fifth question, attention is directed to the Michigan State Waterways Commission Act, 1947 PA 320, § 9(2) and (3), as amended by 1972 PA 328, which provides, as follows:

"(2) The legislature finds that of all the gasoline sold in this state for consumption in internal combustion engines, not less than

1.25% thereof is used for marine purposes to propel vessels on the inland and surrounding waterways of this state. The legislature declares that it is the policy of this state to use the funds derived from the sale of marine gasoline to improve boating facilities throughout this state. Effective February 1, 1973, 1.25% of all state-imposed taxes collected on the sale of gasoline, fuel, oil, naphthene or any other propellant used in internal combustion engines, except fuel consumed in airplanes or diesel engines, shall be credited to the state waterways fund after deducting collection costs and refunds, to be disbursed by legislative action.

"(3) The revenue division, department of treasury shall annually present to the commission an accurate total of all such gasoline taxes collected and determine the revenue derived therefrom. The revenue division, department of treasury shall then determine what portion of these revenues were derived from the sale of marine gasoline by multiplying *this total* by 1.25% and shall then credit this amount *to the state waterways fund.*" (emphasis supplied)

It is clear from the above-noted statutory provision that the legislature intended that the state waterways fund receive 1.25% of the total gasoline taxes collected in the State of Michigan. If the general transportation fund share were deducted prior to the deduction of the waterways fund share, the waterways fund would receive something less than 1.25% of all gasoline taxes thereby thwarting the clear intent of the legislature. Therefore, it is my opinion that the state waterways fund's share of receipts is to be deducted from net revenue before computing the general transportation fund's share.

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VETERANS: Eligibility for assistance from Veterans Trust Fund.

A person separated from military service as a result of a physical or mental disability incurred in line of duty during peace time prior to completion of 180 days service is eligible for assistance from the Veterans Trust Fund if he or she was in active service at any time during period of conflict defined in the act.

A person prevented from serving 180 days of military service because of aggravation of a pre-existing disability satisfies the "reason of physical or mental disability incurred in line of duty" requirement for eligibility for assistance from the Veterans Trust Fund.

Opinion No. 4937

February 25, 1976.

Mr. Frank A. Schmidt, Jr.
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Veterans Trust Fund Board of Trustees
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You have requested an opinion relating to the requirements for eligibility