

**License Fees of Motor Vehicles—County's Share of—  
Whether They May be Applied to the Payment of Bond Issues.**

The county's share of motor vehicle license tax may not be diverted directly to a "bond interest and sinking fund," but must first be deposited to the credit of the general road fund of the county. If there is a surplus in that fund, such surplus may be transferred and used to pay off the outstanding indebtedness of the county resulting from a bond issue.

E. E. Collins, Esq.,  
County Attorney,  
Billings, Montana.

My dear Mr. Collins:

You have asked my opinion relative to the legality of applying the county's share of the State auto license fees to the payment of a road bond issue should one be voted in Yellowstone County.

I assume that your plan is to pay these automobile license fees into the bond interest and sinking fund and thereby reduce the amount of the tax necessarily levied for such purpose by that amount.

Section 1760, Revised Codes of 1921, which provides for the collection of motor vehicles license fees and the distribution thereof, provides:

“The registrar of motor vehicles shall first deduct from all fees paid under the provisions of this Act, the actual cost of making and mailing all licenses, certificates, license plates, and identification marks; of the remainder of the fees so paid he shall transmit fifty per cent thereof to the county from which the registration fee came, *for deposit to the credit of the general road fund of said county.* The remaining fifty per cent he shall transmit to the state treasurer, to be deposited to the credit of the state highway fund.”

The general road fund of the county consists, in addition to the proceeds of the motor vehicle license tax, of the general road tax of not less than two nor more than five mills levied upon all the taxable property of the county, and the two dollar road poll tax levied upon all male persons between the ages of twenty-one and fifty years, resident in the county. (Sec. 1617, Rev. Codes of 1921.)

Funds raised by tax levy to pay the interest and principal of a bond issue for highway purposes do not become a part of the general road fund of the county, but become a trust fund for the purpose of retiring the bonds and can be used for no other purpose.

Section 4631, Revised Codes of 1921, authorizes the Board of County Commissioners to transfer all surplus money that may be on hand in any of the several county funds, except the school fund, to such fund or funds as they may deem for the best interest of the county, or to appropriate said surplus moneys to the payment of the outstanding indebtedness of the county.

Should the general road fund of the county contain surplus money at any time, over and above what is required for the construction, maintenance and repair of the public highways of the county, then under the authority of Section 4631, above, the Board of County Commissioners might transfer such surplus to the bond interest and sinking fund, and thus use the same for the payment of the outstanding indebtedness of the county.

It is, therefore, my opinion that the county's share of the motor vehicle license tax may not be diverted directly to a bond interest and sinking fund, but must first be deposited to the credit of the general road fund of the county. If after such deposit there is a surplus in that fund, such surplus may be transferred and used to pay off the outstanding indebtedness of the county resulting from a bond issue.

Very truly yours,

WELLINGTON D. RANKIN,  
Attorney General.