

Constitutionality, of Senate Bill No. 117. Senate Bill No. 117, Constitutionality of. Senate Bill No. 135.

Senate Bill No. 117, being a bill for raising revenue for state purposes, having originated in the Senate, is unconstitutional and void. Senate Bill No. 135, although in part a revenue measure, is not unconstitutional as the Act does not raise revenue for state purposes; nor does it directly impose a tax.

April 23, 1913.

Montana State Highway Commission,
Helena, Montana.

Gentlemen:

I beg to acknowledge receipt of your request for my opinion upon the constitutionality of Senate Bill No. 117, being an act entitled "An Act to license motor vehicles, providing for the collection of said license, and fixing a penalty for the violation thereof." This act was passed in the last session of the Legislature and has been approved by the governor, and now constitutes Chap. 71, Session Laws of the Thirteenth Legislative Assembly. The act originated in the senate. The purpose of the act is declared in the first section, which opens with these words:

"For the purpose of raising revenue for the constructing, maintenance," etc.

It therefore appears by the express declaration of the act itself that the purpose thereof is to raise revenue. The provisions of the act show this to have been its only purpose. Since the bill originated in the senate, the question presented is: Does the bill contravene Sec. 32 of Art. V of the Constitution, providing as follows:

"All bills for raising revenue shall originate in the house of representatives, but the senate may propose amendments as in case of other bills."

This provision of the constitution has been held to apply only to bills, the purpose of which is to raise revenue for the state.

Evers v. Hudson, 36 Mont. 135 at pp. 146 to 148.

Furthermore, the act must itself levy the tax or impose the license.

Evers v. Hudson, *Supra*.

An examination of Senate Bill No. 117 discloses that one-half of the moneys collected thereunder shall be paid to the state treasurer, who shall pass the same to the credit of the state highway fund. It therefore appears that Senate Bill No. 117 is a bill for raising revenue for state purposes.

It further appears that the act itself directly imposes the license upon all persons coming within the provisions thereof without the intervention of any other board or officer. In my opinion, therefore, the act directly contravenes Sec. 32 of Art. V of the Constitution, and is therefore void.

I do not, however, wish this opinion to be construed as holding also that Senate Bill No. 135, being the "General Highway Act," is unconstitutional. It is true that Senate Bill No. 135, which now constitutes Chap. 72, Session Laws of the Thirteenth Legislative Assembly, is also in part a revenue measure. Certain provisions of the act expressly so provide (Sec. 2, Chap. 2 of Chap. 72, Laws of the Thirteenth Legislative Assembly). As above pointed out, however, Sec. 32, Art. V, of the Constitution has application only to bills, the purpose of which is to raise revenue for the state. In the General Highway Act we find the provision that

"All moneys collected under the provisions of this act shall belong to the general road fund of the county."

Since the act itself does not raise revenue for state purposes it does not conflict with the provisions of Sec. 32, Art. V, of the Constitution, and may therefore be upheld.

Evers v. Hudson, Supra.

Nor does the act of itself levy a tax, but simply authorizes or directs the county commissioners so to do. For these reasons there is no conflict with Sec. 32, Art. V, of the Constitution.

Evers v. Hudson, Supra.

Very truly yours,

D. M. KELLY,
Attorney General.