

Gasoline Dealers License Taxes—Drawback Fund—State Highway Commission—State Highway Trust Fund—State Highway Fund—Warrants—Registration—Transfers.

Under House Bill 337, Laws of 1929, warrants may be registered against the state highway fund so long as the \$5,000,000 appropriation therein mentioned is unexhausted by the issue of warrants or transfers to the state highway trust fund.

After such appropriation has been exhausted only such moneys as are actually paid into said fund by law in excess of said \$5,000,000 and what is needed for the appropriation contained in House Bill 340 and for deficiency transfers to the gasoline license drawback fund provided in Chapter 178, Laws of 1929, can be used by the highway commission.

Warrants may be issued against the state highway trust fund to the extent of any previously made and unexhausted

transfer to that fund from the \$5,000,000 authorized by House Bill 337 for any purpose for which moneys transferred to match federal aid for construction and reconstruction may be lawfully used. No transfers may be made to state highway trust fund when the amount of warrants issued against the said \$5,000,000 appropriation drawn on the state highway fund and transfers from that fund to the state highway trust fund equal said \$5,000,000 appropriation.

F. E. Williams, Esq.,
State Treasurer,
Helena, Montana.

October 31, 1929.

My dear Mr. Williams:

You have requested an opinion on the subject of whether warrants may be issued and registered against the highway trust fund when there are not sufficient moneys actually in the fund with which to pay said warrants.

Under date of January 23, 1929, this office rendered an opinion to the state highway commission, a copy of which is herewith enclosed. A reading of this opinion will disclose that it was therein held that warrants could not be issued and registered against the state highway fund for work in carrying out the provisions of Initiative Measure No. 31 and acts supplemental thereto when the moneys were not in the fund with which to pay said warrants upon their presentation. The reason, briefly stated, was that the appropriation for that purpose was contingent upon the moneys actually being paid into the treasury, and then only such as remain that were not required for other purposes which by law were given preference in payment out of said fund were appropriated. To correct this the last legislature made an appropriation out of the highway fund (House Bill 337) of \$5,000,000, together with all additional moneys which may be deposited by law to the credit of the highway fund during the period from July 1, 1929 to June 30, 1931, not otherwise appropriated, and also the unexpended balance in said fund on June 30, 1929, for expenditure by the highway commission during the period from June 1, 1929 to June 30, 1931, for the purposes provided by law. The said appropriation measure also contains the provision that the state treasurer is required to transfer to the state highway trust fund from time to time such parts of the moneys so appropriated as are necessary to match federal aid for construction and reconstruction purposes when requested so to do by the state highway commission and such request is approved by the board of examiners.

In my opinion, this appropriation to the extent of the \$5,000,000 therein mentioned, meets the objections stated in the opinion above referred to, and that under it warrants may be issued against the highway fund for legal expenditures by the highway commission and be registered, so long as the appropriation of said sum of \$5,000,000 remains unexhausted.

When, however, the warrants issued against the said highway fund, both paid and registered, together with the amount of all transfers that have been made to the state highway trust fund, equal the said sum of \$5,000,000 plus said unexpended balance, no further warrants can be issued and registered. Thereafter, only the moneys that are actually deposited by law to the credit of said highway fund in excess of \$5,000,000 and which are not needed to meet the appropriation contained in House Bill No. 340 and to make transfers to the gasoline license drawback fund in case of deficiency, as provided in Chapter 178, Laws of 1929, can be used by the highway commission, and then only when and if they are actually paid into the state highway fund and are available for the payment of the warrants when issued.

As to the state highway trust fund, it is my opinion that for the reasons that are stated in the opinion hereinabove referred to, which denied the right of issuance and registration of warrants on the state highway fund for expenditures by the state highway commission when the money was not in the fund for their payment at the time of their issuance, warrants may not be issued and registered against the highway trust fund except within the limits hereinafter mentioned. The moneys that are required by law to be credited to the highway trust fund may only be expended when and as they are actually deposited to the credit of said fund. However, the appropriation measure (House Bill 337) provides that there may be transferred to the highway trust fund from the highway fund any part of the appropriation therein made.

As to the \$5,000,000 appropriated to the use of the highway commission by said House Bill 337, it is my opinion that by this appropriation the legislature made this sum available for registration of warrants drawn on the highway fund for expenditures by the highway commission as in theory of law the appropriation constitutes moneys in the treasury though not actually collected, and this is the theory upon which registration is permitted. When, therefore, any part of this \$5,000,000 is transferred to the state highway trust fund in theory of law there is a transfer of the money and it is my opinion that to the extent that transfers are made from the highway fund to the state highway trust fund from the appropriation of \$5,000,000 warrants may be issued and registered against the said highway trust fund for any purpose for which moneys transferred to match federal aid for construction and reconstruction may be lawfully used. Once registered, however, these warrants drawn on the highway trust fund would be subject to payment in the order of their registration from all funds that accrue to the state highway trust fund by law or from the transfers aforesaid. No warrants may be issued and registered against said highway trust fund, however, in anticipation of any revenue to accrue to said fund other than by a previously made and unexpended transfer from the highway fund within the \$5,000,000 that was appropriated by House Bill 337. All transfers from the said \$5,000,000 appropriation must cease when the amount of the warrants previously issued against it in the highway trust fund (both paid and unpaid registered) and the

amount of transfers to the highway trust fund added together equal the sum of \$5,000,000.

Very truly yours,

L. A. FOOT,
Attorney General.