

whether the statute also covers all construction funds made available for use by this department including not only State Funds, but also Federal Aid, Federal Construction Grants and other funds. That is to say, in using the percentages set forth in Section 3 of the Act under discussion, should we apply those percentages only to State Funds available for construction or should we also apply them to all other funds made available to us for construction including Federal Funds?"

Said Chapter 18, according to its title, is an Act "prescribing the manner and place in which the moneys of the State Highway Fund shall be expended by the State Highway Commission for road construction purposes." (See also Section 13, Chapter 19, Laws of Montana 1927, as amended by Chapter 17, Laws of Montana 1929.)

The State Highway Fund was created by the legislature in 1921, Section 1799, R. C. M. 1921, providing: "For the purpose of carrying out the provisions of this act, there is hereby created a state highway fund and a state highway trust fund. The state highway fund shall be credited with all moneys received for the use and purpose of the state highway commission from the receipt or transfer of motor vehicle license fees, as provided by law, or from other sources except as herein provided. The state highway trust fund shall be credited with all moneys received from the counties, and from the federal government or other agencies for expenditure by the commission in connection with the actual construction of specific projects. All moneys in the hands of any state officer on the first day of April, 1921, shall be segregated by such state officer and credited to the respective fund to which it properly belongs as above defined. Hereafter all moneys collected for the state highway fund or the state highway trust fund as authorized by law shall be credited to such fund or funds by the state treasurer; provided, however, that nothing herein contained shall prevent the state highway commission from recovering from the state highway trust fund moneys deposited or paid into such trust fund

Opinion No. 101.

State Highway Commission—Highway Funds—Funds.

HELD: Chapter 18, Laws of 1927, applies only to expenditure of funds credited to the State Highway Fund and does not control the expenditure of moneys deposited in the State Highway Trust Fund.

May 15, 1935.

State Highway Commission
The Capitol

We have your letter of May 14, requesting the opinion of this office:

"As to whether the provisions of Chapter 18, Laws of Montana 1927, apply only to State revenue accruing to the State Highway Fund, or

by counties and the federal government or other agencies, to defray the cost of engineering incident to the construction, supervision and inspection of projects carried on under the direction of the commission."

In considering Section 1799, *supra*, the Supreme Court of this state has held: "Section 1799, Revised Codes 1921, provides that for the purpose of carrying the provisions of the State Highway Commission Act into effect, two separate and distinct funds are created, one of which is designated as a 'state highway fund' and the other as a 'state highway trust fund.' The latter fund is credited 'with all moneys received from counties, and from the federal government or other agencies for expenditure by the commission in connection with the actual construction of specific projects'; but the 'state highway fund' now receives all moneys collected by the state under the provisions of initiative measure No. 31, adopted by the people at the general election of 1926 (Session Laws, 20th Session, 1927, p. 604). This Act provides that all moneys collected and deposited in the state highway fund shall be expended by the commission in the construction, reconstruction, betterment, maintenance, administration and engineering of the federal highway system of highways in this state, selected and designated under the provisions of the federal aid acts and amendments thereto."

And again: "By the provisions of section 1799, *supra*, the moneys received from the federal government, which may be used by the state highway commission for the purpose of carrying the state highway act into effect, are placed in a fund separate and distinct from the funds derived from the sources specified in the initiative measure, and the latter may be used for the purpose of carrying the state highway act into effect, unhampered by the restrictive definition contained in the federal act." (State ex rel. McMaster v. District Court, 80 Mont. 228, 260 Pac. 134. See also State ex rel. Mineral County v. State Highway Commission, 82 Mont. 63, 265 Pac. 1.)

Now, it will be noted that there is no reference of any sort in Chapter 18, *supra*, in regard to the expendi-

ture or disposition of funds credited to the "State Highway Trust Fund." In order, then, to construe this act to apply to said fund it would be necessary to add the words "and the State Highway Trust Fund" to the express language used in the title of the act as well as the language used in Sections 1 and 2. This the courts will refuse to do. (State ex rel. Mineral County v. State Highway Commission, *supra*.)

Therefore, it is my opinion that Chapter 18, Laws of Montana 1927, by its express language applies only to the expenditure of funds credited to the State Highway Fund and does not control the expenditure of moneys deposited in the State Highway Trust Fund. (See Opinion No. 87.)