

No. 156

MOTOR VEHICLE LICENSE FUND—
COUNTIES—CITIES

Held: The only deductions from the motor vehicle license fund are:

1. The pro rata expense of the operation of the motor vehicle department of the State of Montana, by the registrar, to each county in proportion to the number of cars in each county.
2. 50% of net fees of owners residing within incorporated city having 35,000 population or more, according to 1930 federal census.
3. All the balance to be turned over to county treasurer to be used for construction, repair and maintenance of public highways in county, excluding federal and state highways, also city streets forming component parts of arterial highways within the incorporated cities of less than 35,000 population.

July 1, 1941.

Mr. Frank J. Roe
County Attorney
Silver Bow County
Butte, Montana

Dear Mr. Roe:

The question has been submitted:

"May a board of county commissioners legally honor claims made directly against the motor vehicle fund before the funds are distributed to the county and city funds?"

"These claims are for expenses incurred (such as salaries, printing, postage and stationery) in the issuing of license plates. Do these claims necessarily become an expenditure against the county general fund?"

To answer the foregoing question, it is necessary to examine Chapter 125, Laws of 1939.

We find the legislature provided in section 1 that "all license or registration fees collected by the county treasurer of the county in which any motor vehicle is registered shall be credited to the motor vehicle license fund of said county. The cost of making and shipping license plates and identification marks, certificates and other expenses of operating the motor vehicles department of the State of Montana shall be pro rated by the registrar of motor vehicles among the counties of the state in proportion

to the number of cars registered in each county, and he shall bill each county therefor, by verified claim, and each county shall thereupon pay the amount so charged out of said motor vehicle license fund; provided, however, that each county shall receive credit for its pro rata share of any fees or license money paid to the registrar of motor vehicles. **The remainder of the funds in said motor vehicle license fund shall be used as follows:**

“(a) Fifty per cent (50%) of the net fees derived from the registration of motor vehicles, the owners of which reside within the boundaries of an incorporated city of the state of Montana, having a population of 35,000 or more . . . shall be held by the county treasurer segregated from other county funds and designated as ‘city road fund.’”

The balance of the funds from the registration of motor vehicles of a county shall be by the registrar of motor vehicles transmitted to and paid over to the county treasurer of the county from which the registration fee came, **such fees excepting apportionment to city road fund**, to be used by said county for the construction, repair and maintenance of all public highways, **except** state and federal highways, within the boundaries of said county, including city streets, forming component parts of arterial highways within the corporate cities of less population than 35,000, according to the federal census of 1930, within the boundaries of the said county.

Nowhere in the law is there any authority to use any of the motor vehicle license fund for any expense the county may be put to for salaries, printing, postage, stationery or any other expense in the handling of the registration of motor vehicles, and no such expense may be lawfully charged to this fund.

The only reason for establishing the motor vehicle license fund was the need to provide more revenue for county highways. Later, the provision for cities of 35,000 population was added.

“A county is merely a subdivision of the state for governmental purposes and as such is subject to legislative regulations and control.”

Franzke v. Fergus County, 76 Mont. 150, 245 Pac. 962.

“The power to act without authority does not exist.”

State ex rel. Bean v. Lyons et al., 37 Mont. 354, 364, 96 Pac. 922.

Where a public official exercises authority, he must be able to point to the statute granting such authority. The law requires this motor vehicle license fund be held intact without diminution and all used for the specific purpose designated by the statute.

Any and all costs of the county in handling the licensing of motor vehicles must be borne by the county out of its general fund.

It is therefore my opinion your first question must be answered in the negative and your second question in the affirmative.

Sincerely yours,

JOHN W. BONNER
Attorney General