

August 27, 1946.

Mr. George P. Porter
State Treasurer
State Capitol
Helena, Montana

Dear Mr. Porter:

You have requested an opinion of this office pertaining to the disposition of revenue derived from gasoline license tax. You state that pursuant to Section 5 of Chapter 39, Laws of 1945, your office has been issuing the official receipt for gasoline taxes, credits being to said debenture sinking fund, gasoline drawback fund and highway fund. You have now been informed credits should have been to the drawback fund and the highway fund, and thereafter a crediting journal entry should be made to reduce the credit to the highway fund for the sinking fund requirement, the reduction to be credited to the fund created by said Chapter 39.

In answering your request, Section 5 of Chapter 39, Laws of 1945, is most significant. It is to be noted it is directly provided in said section the sale of said debenture shall constitute an irrevocable contract between the state and the legal owners of any of said debentures or coupons attached thereto that the license tax of five cents per gallon of gasoline on dealers as provided in the act shall not be reduced nor any part thereof diverted to any other purpose than that provided in the act, and in Section 2381.22, Revised Codes of Montana, 1935, and Section 2396.4, Revised Codes of Montana, 1935, as amended, so long as any of said debentures or said coupons remain outstanding and unpaid. Thus the gasoline tax is pledged to the payment of the debentures.

After providing the pledge, the said section gives specific and explicit directions as to how the Treasurer shall handle the funds derived from the gasoline tax. Said section directs the State of Montana to collect the tax promptly, and after the redemption and payment of all outstanding state highway treasury anticipation debentures issued under the authority of Initiative Measure No. 41, as amended; and after the payment of drawbacks or refunds pursuant to the provisions of Section 2381.22 and Section 2396.4, Revised Codes of Montana, as amended by

Opinion No. 199.

**Gasoline License Tax—Highway
Debenture—State Treasurer, Duties,
Gasoline License Tax.**

Held: The State Treasurer shall deposit to the credit of the State Highway Fund any balance remaining from the gasoline license tax collections after deducting therefrom drawbacks or refunds (Sections 2381.22 and 2396.49, as amended) and an amount sufficient for payment of principal and interest of debentures.

Chapter 96, Laws of 1937, and Chapter 67, Laws of 1939, the State Treasurer shall set aside monthly from the proceeds of said license tax and pay into a fund to be known as the State Highway Treasury Anticipation Debenture Interest and Redemption Fund of 1945 an amount of money collected sufficient for the payment of the interest on said debentures as the same mature, and an amount sufficient to create an adequate sinking fund for the prompt payment of the principal amount of all such debentures at maturity of each thereof, and the interest accrued thereon.

Thus, after redemption of debentures issued under Initiative Measure No. 41, the Treasurer must first provide for the payment of drawbacks or refunds, and then from the balance of the money must set aside in the State Highway Treasury Anticipation Debenture Interest and Redemption Fund of 1945 an amount of money collected sufficient for the payment of interest, et cetera. These directions do not tend to support the Treasurer's placing this tax money in any other fund, and then withdrawing the same or any portion thereof.

The specific statement "the state treasurer shall set aside monthly from the proceeds of said license tax and pay into a fund to be known as . . . an amount of money collected sufficient for the payment of interest upon said debentures . . ." directs the Treasurer to take the sinking fund money directly from the tax collected and authorizes him to place in this fund such amount of the money collected as he shall deem necessary to meet the obligation of the debentures. The Treasurer, by the tenor of the chapter, is charged with the responsibility of seeing all the outstanding debentures are redeemed from the license tax collected.

The debentures themselves, in accordance with the form set forth in Section 3 of Chapter 39, specifically provide:

" . . . and this debenture, and all other debentures of this series and of other series issued or to be issued under the terms and provisions of said act, are secured by the moneys derived from the license tax of five cents per gallon of gasoline provided for in the said act and not otherwise."

Chapter 39 charges the Treasurer with assisting in selling, registering, calling and paying the debentures issued under that chapter. In light of the responsibility with which he is charged in connection with these debentures, it is in line to hold the legislature intended by stating he "shall set aside monthly from the proceeds of said license tax and pay into a fund known as . . . an amount of money collected sufficient for the payment of interest . . ." the Treasurer should pay directly from the tax collected, and he should have authority to determine the portion of the tax which should be placed in the sinking fund so that his obligation for the payment of these debentures will be assured.

Any balance of the tax money left after deducting the drawbacks or refunds, and the depositing of an amount sufficient for the payment of interest upon said debentures as the same mature, and an amount sufficient to create an adequate sinking fund for the prompt payment of the principal amount of all such debentures at the maturity of each thereof, and the interest accrued thereon, should be deposited in the state highway fund. There is no direct mandate upon the Treasurer to pay any such balances to the state highway fund in said Chapter 39. Section 2381.22, Revised Codes of Montana, 1935, has never been directly amended or repealed, and from the wording of Chapter 74, Laws of 1945, it seems the legislature intended any balance remaining after deducting the drawbacks and providing for the payment of the debentures should continue to go to the state highway fund.

It is therefore my opinion, under the provisions of Chapter 39, Laws of 1945, the State Treasurer shall, after the redemption of all debentures issued under Initiative Measure No. 41, as amended by Chapter 30, Laws of 1939, upon receiving money from the five cents per gallon tax on gasoline paid by gasoline dealers, first provide for the payment of drawbacks or refunds pursuant to the provisions of Section 2381.22 and Section 2396.4, Revised Codes of Montana, 1935, as amended by Chapter 96, Laws of 1937, and by Chapter 67, Laws of 1939. Second, the State Treasurer shall set aside from such tax monthly and pay directly therefrom to a fund to be known as the State Highway Treasury Anticipation Debenture In-

terest and Redemption Fund of 1945 an amount which he shall determine to be sufficient for the payment of the interest upon said debentures as the same mature, and an amount sufficient to create an adequate sinking fund for the prompt payment of the principal amount of all such debentures at the maturity of each thereof, and the interest accrued thereon. Third, the State Treasurer shall deposit to the credit of the state highway fund any balance left after making the foregoing deductions.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General