

Hon. Mark Hickey
Commissioner
Dep't of Transportation and
Public Facilities

January 12, 1990

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Legislative proposal to
reenact statutory
dedications of vehicle,
aviation, and marine fuel
tax

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At your request we have reviewed the advice given in our memorandum of September 11, 1989. You asked whether, under any theory, AS 43.40.010 could be amended to revive dedications of motor fuel taxes in effect before statehood. Chapter 20, SLA 1960, amended the motor fuel tax levy by deleting a mandatory dedication of revenue for transportation-related purposes. The amendment inserted a new provision that made it discretionary whether the legislature appropriated the motor tax receipts for transportation purposes. Chapter 20 also added ferries as an item of expenditure for which motor fuel tax receipts may be expended. In pre-statehood dedication, only highway projects were listed as objects of expenditure. There was no mention of ferries because the ferry system was not established until shortly after statehood.

We have researched the legislative history of chapter 20, SLA 1960, to determine why the legislature changed the mandatory dedication provision to the discretionary provision now appearing in AS 43.40.010(g). We believe that this amendment was probably made in response to advice given by this office. On March 11, 1959, Attorney General Williams advised Governor Wade as follows:

A dedication must be continued, if at all, in exactly the same form. Any attempted alteration short of repeal is nullity. A dedication encompasses (1) proceeds or part of the proceeds of a tax or license (2) set aside at a certain rate (3) for a particular purpose. The legislature has no power to raise or lower the dedication by increasing or decreasing the tax or license fee or the rate thereof which is set aside. Also there is no power to broaden or reduce the purposes for which an existing dedication is made, for to do so

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is to alter the dedication itself.

1959 Op. Att'y Gen. No. 7, at 5 (Mar. 26). Chapter 20 changed the purpose for which motor fuel taxes are dedicated. That enactment added ferries to the list of transportation-related items of expenditure for which the tax receipts were dedicated. The legislature probably considered the amendment to constitute a change in purpose which effectively destroyed the dedication. Perhaps it could have been argued that the addition of ferries was not actually a change in purpose but merely a more specific way of describing the term "highway projects." In recent times, it is common to refer to the ferry system as the "marine highway system." However, that does not change the fact that the legislature materially changed the dedication in a manner that effectively repealed it. There can be no question that the legislature has the power to repeal a dedication. The repeal remains effective even though the legislature may have been mistaken as to the effect of the amendment made in chapter 20, SLA 1960.

Another possible construction would be that it is not correct to interpret the words set out in AS 43.40.010(g) in a manner that destroys the dedication. The operative phrase reads as follows: "The legislature may appropriate funds from [the highway fuel tax account] for expenditure" Before amendment, the phrase used the mandatory "shall" in the place of the directory "may." A creative interpretation may leave an account dedicated for highway purposes that may or may not be expended. However, it may only be expended for highway purposes. It is unlikely such an interpretation is valid. This type of amendment appears in other statutes establishing distinct funds and accounts and has been consistently used to state nonbinding preference for the use of certain funds. This achieves the legislature's purpose of paying lip service to an intent to spend the money to benefit those from whom tax revenues are collected while not requiring it to do so if other expenditures have a higher priority.

In summary, we believe that the legislature's intent in enacting chapter 60, SLA 1960, was to destroy the dedication of motor fuel tax receipts. This was done in order to expand the purposes for which the fund could be used to include expenditures for the ferry system. We have never wavered from our opinion that a change in the purpose of a dedication works to destroy it.

Let me know if this answers your questions.

JLB:tg

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cc: Jack McGee