

**OPINION
67-270**

June 15, 1967 (OPINION)

Mr. Walter Christensen

State Treasurer

RE: Taxation - Highway Tax Distribution fund - Time of Distribution

This is in response to your letter in which you call our attention to H.B. No. 580 as passed by the 40th Legislative Assembly, which creates a new formula for the distribution of motor vehicle registration fees for both passenger and transportation vehicles, fifty percent of the motor vehicle excise taxes, special fuel taxes under Chapter 57-52 and Chapter 57-53, and motor vehicle fuel tax under Chapter 57-54. The revenues derived under the aforementioned provisions of law under H.B. No. 580 are all credited to the highway tax distribution fund and are distributed in a manner and under a formula substantially different from the previous distribution formula as provided for under Section 39-04-39, 39-04-39.1 and 57-54-15. Both the prior law and the law under H.B. No. 580, which amends and reenacts Sections 39-04A-02, 39-04-39, 57-40.1-07, 57-52-11, and 57-03-09 and repeals Sections 39-04-39.1 and 57-54-15, provide that the distribution shall be on a calendar quarter basis. Both the prior law and law under H.B. No. 580 as it amends Section 39-04-39 provide that the amount necessary to pay salaries and other administrative expenses shall be first allocated to the motor vehicle registrar in the amount authorized by the legislative assembly appropriation for such purposes.

You also call to our attention that the funds allocated pursuant to the 39th Legislative Assembly would not be effectively closed out until July 1, 1967. In addition to this, some time would have to be allowed to clear certain expenditures. In addition to this, you also state that the revenues received under the present law prior to the amendment could not be accurately determined until shortly after June 30, 1967. You then ask for an opinion whether or not, because of the foregoing provisions, and specifically because of the change of formula employed to make distribution, your department may make the distribution during the month of August, but not later than August 31, 1967.

The various fees and taxes derived under the provisions of law cited earlier herein are distributed under H.B. No. 580 to the counties and municipalities by using a formula which is substantially different from the formula employed under the prior law. Consequently the amounts to the counties and municipalities would differ substantially. The provisions of H.B. No. 580 do not go into effect until July 1, 1967, and as a result thereof, the distribution as provided for under said bill would apply only to the revenues produced after July 1, 1967. The funds which are presently in the appropriation account for administrative purposes were derived from the revenues produced prior to July 1, 1967. Any unexpended portion of such funds would have to be distributed pursuant to provisions of the prior law - i.e., existing prior to the effective date of H.B.

NO. 580. We have consistently advised that appropriated funds must be committed or expended prior to July first of the close of the biennium, otherwise they would be considered as an unexpended balance.

Under the provisions of Section 54-44.1-11 the unexpended balance of the appropriated funds are to be cancelled thirty days after the close of the biennial period. This, in effect, allows thirty days after July first for the clearing of payments for funds expended, obligated or firmly committed prior to July-1, 1967. It is thus recognized that the unexpended portion which would be cancelled, and which would be subject to the distribution formula prior to the effective date of H.B. No. 580, could not be accomplished until the exact amount is determined. This leaves two alternatives - one to make a distribution of the revenues received prior to July first and then a separate distribution of the unexpended appropriation which is cancelled after the said amount has been determined. The other alternative is to hold up the distribution until both figures and amounts are known and then make one single distribution of all funds involved.

It is recognized that both the prior law and the present law provide that distribution is to be made on a calendar basis. However, in this instance, it is physically impossible to adhere to the technical provisions as pertaining to the time when the distribution is to be made. The law has always recognized that it will not require the impossible, and that if the next best thing is done, it will constitute substantial compliance with the law.

We believe that the unexpended portion, which will be subject to cancellation, should be determined shortly after July first if the bookkeeping procedure of the department involved is adequately maintained. It would thus appear that the distribution can be made on or immediately after August first. In any event, it should not take much additional time to accomplish this. For the most part the formula and amounts can be worked out prior to August first and confirmed as of that date and distribution made promptly thereafter.

As to funds to operate and maintain the Motor Vehicle Registrar's Office, the amendments continue to provide that, before distribution is made, a sum of money necessary and within the appropriation made by the legislature shall be placed in the administration fund for salaries and expenses to maintain the operation of the office. We are informed that the revenues produced during the month of July, 1967, would exceed the amount necessary to maintain the department. It is not suggested that all such funds to maintain the office be taken out at one time.

It seems to be settled law in this state that revenue is to be distributed in accordance with the law in effect at the time the tax or levy was imposed. This principle would apply to the motor vehicle registration fees and to the fuel taxes. It therefore follows that all revenues produced under the law prior to July 1, 1967 are to be distributed pursuant to the formula and law in effect at the time the tax was imposed. To accomplish this, it will be necessary to allow time for a full accounting of the revenues produced prior to July 1, 1967 and a closing out of such accounts.

It is therefore our opinion that, because of the particular circumstances, the distribution of the motor vehicle registration fees which are normally distributed on or shortly after July 1, 1967 may be distributed as soon as possible thereafter and, if need be, on or about August 1, 1967, or as soon as possible thereafter.

We recognize that the Act specifies that the distribution is to be made on a quarterly basis, but in instances where it is physically impossible to accomplish this, the next best thing will constitute substantial compliance with the law.

As to distribution of the fuel taxes, we are confronted with another problem. The report and taxes as required by law of the fuel sold are not due in the Auditor's Office pursuant to Section 57-52-10 until the 25th day of the next succeeding calendar quarter. Under such provisions, the taxes imposed after July 1, 1967 would technically not be due until August 25, 1967. It thus appears that the department (State Auditor) would not have any funds to maintain the program which comes from the taxes imposed after July 1, 1967 until August 25, 1967. It would also seem necessary and proper to maintain the program on funds produced prior to July 1, 1967, with the understanding that such funds would be replaced upon the receipt of funds produced after July 1, 1967.

To properly account for and clear the amount, including the appropriation for administration, it could well take forty-five or more days after July 1, 1967. Because the time interval is equivalent to a half or more of a quarter, it is not deemed advisable to hold up all distributions until the entire amounts have been determined. Under such circumstances, it would seem more appropriate to make the normal distribution of funds available for distribution on or after July 1, 1967, and then after the accounts are properly accounted for and reconciled, the remaining funds could be distributed on the happening of such event.

It is our opinion that, under these circumstances, a normal distribution of the fuel taxes and revenues should be made on or about July 1, 1967, and that the remaining revenues and taxes which were produced prior to July 1, 1967, be distributed as soon as the amounts have been properly determined by making a special distribution in accordance with the law under which the tax was imposed, even though the tax or revenue was received after July 1, 1967. It was not intended to specify in minute detail the manner in which the distribution is to be made, but merely to state that the distribution should be made as soon as possible and yet make the distribution so that all of the revenues and taxes produced prior to July 1, 1967, be distributed in accordance with the formula in effect at that time, even though the revenue was not received until after July 1, 1967.

HELGI JOHANNESON

Attorney General