

OPINION NO. 82-031**Syllabus:**

Ohio Const. art. XII, §5a requires that interest earned on moneys derived from fees, excises and taxes relating to the use, operation or registration of motor vehicles or to fuels for propelling such vehicles be credited to the special fund to which the principal belongs. Such interest may not, therefore, be paid into the general fund of the state or a political subdivision notwithstanding R.C. 135.21, R.C. 135.35(A), or R.C. 5705.10.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, May 4, 1982

I have before me your request for my opinion in response to the following question:

Notwithstanding the requirements of Amended Substitute House Bill No. 230 of the Ohio General Assembly, effective March 15, 1982, does Article XII, Section 5 a of the Ohio Constitution require that interest on fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways or to fuels used for propelling such vehicles be credited to the fund to which the principal belongs?

The purposes for which the funds specified in your letter may be used are restricted by Ohio Const. art. XII, §5a which reads as follows:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

Thus, art. XII, §5a requires that all moneys derived from the specified fees, excises and license or fuel taxes be expended only for statutory highway purposes, the state enforcement of traffic laws and the hospitalization of certain persons injured in motor vehicle accidents. The phrase "moneys derived from" as used in art. XII, §5a has been interpreted to include the interest generated by such revenue. In Armstrong v. Donahey, No. 74CV-09-3570 (C.P. Franklin County April 22, 1977), the court held that the interest earned on moneys derived from fees, excises or taxes relating to motor vehicles and their operation should be credited to the special funds which hold such highway revenues. See also Glass v. Donahey, No. 75CV-05-1966 (C.P. Franklin County August 17, 1978) ("the word 'derived' found in Ohio Revised Code Sections 1533.15 and 1533.33 [was] intended to include both funds received from the sale of licenses and interest funds generated from the monies received"). Art. XII, §5a, as interpreted by the court in Armstrong, therefore, clearly requires that the interest earned on the types of revenue specified in that provision be placed in the fund to which the principal belongs and used only for those purposes enumerated in art. XII, §5a.

The General Assembly has enacted several statutes imposing or authorizing fees or taxes to which the limitation imposed by art. XII, §5a applies. See, e.g., R.C. Chapter 4504 (local motor vehicle license tax); R.C. 4503.02 (motor vehicle license tax); R.C. Chapter 5728 (highway use tax; gasoline tax); R.C. Chapter 5735 (motor vehicle fuel tax). These taxes or fees are generally levied by the state, but in certain instances the tax may be levied by, or a portion of the revenue may be distributed to, a county, municipality or township. See, e.g., R.C. 4504.02, R.C. 4504.06; R.C. 5735.27. The requirements of art. XII, §5a are, therefore, implemented in part by R.C. 131.32, R.C. 5705.09 and R.C. 5705.10. R.C. 131.32 establishes special funds within the state treasury into which the revenue restricted by art. XII, §5a must be paid. R.C. 5705.09, which sets forth the funds required to be established by a political subdivision, provides, in part, that "[e]ach subdivision shall establish. . . [a] special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose. . . ." R.C. 5705.10 then provides that "[a]ll revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose." A political subdivision which receives money restricted by art. XII, §5a would, therefore, be required to place such money in a special fund.

The legislative enactment which is the subject of your request, Am. Sub. H.B. 230, 114th Gen. A. (1981) (eff. March 15, 1982), has altered the way in which the interest earned from the investment of public money is allocated. The relevant provisions of Am. Sub. H.B. 230 are as follows.

R.C. 135.21, which deals with the apportionment of interest earned on money deposited by the state treasurer or the treasurer of a subdivision other than a county, now provides:

All interest earned on money included within a public deposit and belonging to undivided tax funds shall, except as otherwise expressly provided by law, be apportioned by the auditor pro rata among the separate funds or taxing districts in the proportions in which they are entitled to receive distribution of such undivided tax funds, due

allowance being made for sums transferred in advance of settlements. All interest earned from other moneys deposited by a treasurer, which by reason of being custodial funds, or funds belonging in the treasury of a taxing, assessment, or other district of which he is acting as ex officio treasurer, or for any other reason, do not belong in the treasury of the state or subdivision, shall, except as provided in section 135.351 of the Revised Code, be apportioned among and credited to the funds to which the principal sums of such deposits or investments belong.

All other interest earned shall, except as provided in section 135.351 of the Revised Code, be credited to the general fund of the state or the county, municipal corporation, township, taxing district, assessment district, or other local authority to which the principal sum thereof belongs. The auditor shall inform the treasurer in writing of the amount apportioned by him to each fund, district, or account.

R.C. 135.351(A), which specifically deals with the allocation of interest earned on money included within the county treasury provides that "[a]ll interest earned on money included within the county treasury shall be credited to the general fund of the county." R.C. 5705.10 was also amended in Am. Sub. H.B. 230 to expressly provide, in part, that:

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose. All revenue derived from a source other than the general property tax, for which the law does not prescribe use for a particular purpose, including interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund.

Thus, under these statutes the interest earned on moneys invested or deposited by the state or a political subdivision will, in most instances, be credited to the general fund rather than to the fund to which the principal belongs.

With respect to your specific question, money derived from motor vehicle fees, excises or license or fuel taxes is neither money belonging to undivided tax funds nor custodial funds. See 1980 Op. Att'y Gen. No. 80-003 (term "undivided tax funds" refers to the aggregate of tax proceeds collected by a county treasurer but not yet distributed to the subdivisions which levied the taxes). Accordingly, under the procedure set forth in Am. Sub. H.B. 230, any interest earned on such money would be credited to the general fund of the state, municipality or township, pursuant to R.C. 135.21, or to the general fund of the county pursuant to R.C. 135.351. R.C. 5705.10 would, in these circumstances, necessitate a similar result. R.C. 5705.10 now provides that "interest earned on the principal of any special fund, regardless of the source or purpose of the principal, shall be paid into the general fund." R.C. 5705.10, therefore, requires that interest earned by a political subdivision on the types of funds specified in art. XII, §5a be credited to the general fund. Consequently, there exists a conflict between the provisions of art. XII, §5a and R.C. 135.21, R.C. 135.351 and R.C. 5705.10. Thus, further inquiry into the proper interpretation of these statutes is required.

It is a basic premise of our law that the authority to interpret the Constitution of this state is vested in the judicial rather than the legislative branch of government. State ex rel. Davis v. Hildebrant, 94 Ohio St. 154, 113 N.E. 55 (1916). Thus, the interpretation of art. XII, §5a adopted by the court in Armstrong must be viewed as having precedence over any alternate interpretation adopted by the legislature. "Another universal principle applied in considering constitutional questions is that a law will be so construed, if possible, as to avoid a conflict with the Constitution, although such a construction may not be the most obvious or natural one." Hopkins v. Kissinger, 31 Ohio App. 229, 233, 166 N.E. 916, 917 (1928). See also State v. Sinito, 43 Ohio St. 2d 98, 101, 330 N.E.2d 896, 898 (1975) ("[E]nactments of the General Assembly are presumed to be constitutional"). If

R.C. 135.21, R.C. 135.351 and R.C. 5705.10, as amended in Am. Sub. H.B. 230, are interpreted so as to require that the interest earned on revenue derived from fees, excises or taxes relating to motor vehicles or their operation be credited to the general fund, a conflict between these statutes and art. XII, §5a would arise. Yet, it must be presumed that in enacting these statutes the General Assembly intended a constitutional result. R.C. 1.47(A). Consequently, R.C. 135.21, R.C. 5705.10 and R.C. 135.351 must be read so as to exclude interest earned on money derived from the sources specified in art. XII, §5a from the requirement that interest earned be credited to the general fund. See also 1975 Op. Att'y Gen. No. 75-087 (statute permitting transfer of money to state's general fund, whenever there is a deficit in that fund, from any other fund available for state purposes may not constitutionally be construed so as to permit a transfer from the Vietnam conflict compensation fund); 1969 Op. Att'y Gen. No. 69-121 (statute permitting county official to deduct from any revenues or funds credited to the state the amount necessary to pay tax delinquencies must be construed as including only those revenues or funds that are not limited to a purpose or use by the Ohio Constitution).

Therefore, it is my opinion, and you are advised, that Ohio Const. art. XII, §5a requires that interest earned on moneys derived from fees, excises and taxes relating to the use, operation or registration of motor vehicles or to fuels for propelling such vehicles be credited to the special fund to which the principal belongs. Such interest may not, therefore, be paid into the general funds of the state or a political subdivision notwithstanding R.C. 135.21, R.C. 135.351(A) or R.C. 5705.10.