

OPINION NO. 75-088**Syllabus:**

Section 115.31, Revised Code, may not constitutionally be construed so as to permit transfers to the General Revenue Fund of any moneys in the Auto Registration Distribution Fund derived from fees or license taxes relating to the registration, operation or use of vehicles on public highways. In adopting Section 5a of Article XII of the Ohio Constitution, the voters required that such fees or license taxes could be used only for the highway and highway-related purposes enumerated in that amendment.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, December 12, 1975

You have asked my legal opinion as to whether Ohio can seek to overcome partially its immediate "cash-flow" problem by transferring moneys specifically earmarked by a vote of the people for expenditure for highway and highway-related purposes to the General Revenue Fund to pay the general operating expenses of the state. Future tax receipts would be used to repay the moneys transferred from the Auto Registration Distribution Fund (ARDF).

Your request for my opinion asks specifically:

"Can the Auditor of State lawfully invoke the provisions of R.C. 115.31 in order to effect a temporary transfer of funds into the General Revenue Fund from the Auto Registration Distribution Fund in the event that a deficit occurs in the General Revenue Fund?"

Earlier this week, on December 8, 1975, I advised you in 1975 Op. Atty. Gen. No. 087 that the Vietnam Conflict Compensation Fund was not available for such a transfer to overcome the "cash-flow" problem by reason of a limitation upon the uses of such fund contained in Section 2j of Article VIII of the Ohio Constitution. A full description of the State's financial crisis, engendered by the projected expenditure of \$300 million more from General Revenue Fund by July 1, 1977, than will have been received in revenues [by the General Revenue Fund], is set forth in that opinion. Later the same day that opinion was rendered, the Controlling Board approved your request under R.C. 115.31 for authority to make transfers from a number of other funds, but conditioned a transfer of \$45 million from the ARDF upon receiving a favorable legal opinion from this office, or court ruling.

I am advised by your office that ARDF is the name given to the fund in the state treasury receiving revenues, pursuant to R.C. 4501.03, which are held for distribution to local governments, although no fund name is employed in that section. Over \$300 million are appropriated from the ARDF in Section 8

of Amended Substitute House Bill No. 155, the general appropriation act, "to be administered and distributed in accordance with law."

Revised Code 4501.03 provides in part that moneys received by the Registrar of Motor Vehicles under R.C. 4503.02, 4503.12 and 4504.09 are to be paid to the Treasurer of State for distribution to counties, municipal corporations and townships as set forth in R.C. 4501.04, 4501.041 and 4501.042. The Treasurer of State is authorized to deposit such funds "not needed for immediate distribution" in the same manner as other active state funds, with interest accruing to the funds held for distribution. R.C. 4503.02 provides for an annual license tax upon the operation of motor vehicles, while R.C. 4504.09 pertains to the same type of license tax when imposed by counties or municipal corporations, as authorized in a specified amount by the General Assembly. R.C. 4503.12 provides for the payment of fees for transfer of automobile registration to a different automobile during a given registration year.

Section 5a of Article XII of the Ohio Constitution was adopted in 1947 and provides:

"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."

It is apparent that the revenues collected pursuant to R.C. 4503.02, 4503.12 and 4504.09 are subject to the purpose restrictions contained in this constitutional amendment since they are clearly moneys derived from fees and license taxes relating to the registration, operation and use of vehicles on public highways. Moneys subject to Section 5a may not be expended for any purposes other than those set forth in that section. State ex rel. Preston v. Ferguson, 170 Ohio St. 450, 461, 166 N.E.2d 365 (1960); Grandle v. Rhodes, 169 Ohio St. 77, 157 N.E.2d 336 (1959); State ex rel. Walter v. Vogel, 169 Ohio St. 368, 159 N.E.2d 892 (1959); Grandle v. Rhodes, 166 Ohio St. 197, 140 N.E.2d 897 (1957); State ex rel. Kauer v. Defenbacher, 153 Ohio St. 268, 276-7, 91 N.E. 2d 512 (1950). Section 5a does not include as one of its purposes the temporary transfer of funds under R.C. 115.31 to meet deficiencies in the General Revenue Fund.

As was the case with respect to the Vietnam Conflict Compensation Fund, Ohio court cases construing the purpose restrictions imposed by this constitutional amendment do not address themselves directly to the legality of a temporary transfer or "loan" of the restricted funds. However, for the reasons indicated in 1975 Op. Atty. Gen. No. 087, in the

absence of any Ohio court decisions otherwise construing R.C. 115.31, and in view of conflicting rulings in other jurisdictions, I believe a conservative construction of this statute is warranted, consistent with R.C. 1.47, so as to render it constitutional if possible. The ARDF should be used only for those special purposes specified in the constitutional amendment adopted by the people of Ohio to limit the use of fees and license taxes raised in connection with the operation of motor vehicles for highway purposes.

Based upon the foregoing, it is my opinion, and you are so advised, that R.C. 115.31 may not constitutionally be construed so as to permit transfers to the General Revenue Fund of any moneys in the Auto Registration Distribution Fund derived from fees or license taxes relating to the registration, operation, or use of vehicles on public highways. The voters required that such fees or license taxes be used only for the highway and highway-related purposes enumerated in that amendment.