

OPINION NO. 91-043**Syllabus:**

Moneys derived from motor vehicle fuel taxes levied by R.C. 5735.05 may not be used by the Department of Agriculture to establish a motor vehicle fuel testing program.

To: Fred Dailey, Director, Department of Agriculture, Columbus, Ohio
By: Lee Fisher, Attorney General, September 27, 1991

I have before me your predecessor's opinion request asking whether funds collected through the motor vehicle fuel excise tax may be used to finance a program within the Ohio Department of Agriculture's division of weights and measures for motor fuel testing.

Ohio Const. art. XII, §5a restricts the use of funds derived from motor vehicle license and fuel taxes, 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.

It is well settled that: "Section 5a, Article XII of the Constitution of Ohio, closely restricts the expenditure of the fees and taxes received in relation to vehicles using the public highways to purposes *directly connected* with the construction, maintenance and repair of highways and the enforcement of traffic laws...." *Grandle v. Rhodes*, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph one) (emphasis added). In keeping with this constitutional restriction, the

General Assembly has enacted statutes levying motor vehicle fuel and license taxes, carefully specifying the purposes for which such moneys may be used.

Your predecessor's request specifically focuses on the fuel tax imposed by R.C. 5735.05. R.C. 5735.05 imposes an excise tax "on all dealers in motor vehicle fuel upon the use, distribution, or sale within the state by them of motor vehicle fuel." The purposes for which the moneys derived from this tax may be used are expressly set forth in R.C. 5735.05; they are primarily for the maintenance and repair of the state highway system. Also included among the permitted uses of the tax imposed by R.C. 5735.05 are the payment of certain bonds, particular uses by the Ohio Turnpike Commission, and various county and municipal uses. R.C. 5735.05(A) further authorizes the moneys derived from that tax to be used:

to maintain and repair bridges and viaducts; to purchase, erect, and maintain street and traffic signs and markers; to purchase, erect, and maintain traffic lights and signals; to pay the costs apportioned to the public under [R.C. 4907.47 (protective devices at public railroad highway grade crossings) and R.C. 4907.471 (survey by Public Utilities Commission of public crossings of railroads at grade)] and to supplement revenue already available for such purposes; to pay the costs incurred by the public utilities commission in administering [R.C. 4907.47-.476]; to distribute equitably among those persons using the privilege of driving motor vehicles upon such highways and streets the cost of maintaining and repairing them;...and to provide revenue for the purposes of [R.C. 1547.71-.78 (harbor projects and the waterways safety council)]....

R.C. 5735.05(B) further specifies that the money collected under that section may be used "for the purpose of paying the expenses of administering and enforcing the state law relating to the registration and operation of motor vehicles."

Since the testing of motor vehicle fuel bears no direct relationship to any of the purposes enumerated in R.C. 5735.05 and does not appear to be "directly connected" to the construction, maintenance and repair of highways or the enforcement of traffic, funds derived from the motor vehicle fuel tax imposed by R.C. 5735.05 may not be used to fund a program to test motor vehicle fuels.

Since I have concluded that moneys derived from motor vehicle fuel taxes as specified in R.C. 5735.05 are not available for the purpose described in the opinion request, it is not necessary to address the second question, concerning possible restrictions on the use of such funds in the event that they were available for motor vehicle fuel testing.

Based on the foregoing, it is my opinion, and you are hereby advised that moneys derived from motor vehicle fuel taxes levied by R.C. 5735.05 may not be used by the Department of Agriculture to establish a motor vehicle fuel testing program.