

OPINION NO. 82-084**Syllabus:**

Ohio Const. art. XII, §5a does not require that interest earned on the principal of the Waterways Safety Fund be credited to that fund.

To: Robert W. Teater, Director, Department of Natural Resources, Columbus, Ohio
By: William J. Brown, Attorney General, October 26, 1982

I have before me your request for my advice concerning the applicability of Ohio Const. art. XII, §5a and 1982 Op. Att'y Gen. No. 82-031 to interest accruing on the Waterways Safety Fund.

Op. No. 82-031 dealt with the effect of art. XII, §5a on the distribution of interest earned on certain funds. Art. XII, §5a 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.

In Op. No. 82-031 I analyzed art. XII, §5a and the court decisions which have applied that provision. I concluded that art. XII, §5a requires that interest earned on revenue derived from fees, excises or license taxes relating to the "registration,

operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles" shall be credited to the fund to which the principal belongs. Thus, in order to address your question, it becomes necessary to determine whether the revenue in the Waterways Safety Fund is derived from one of the sources specified in art. XII, §5a.

It is clear that the revenue paid in to the Waterways Safety Fund is revenue derived from fees, excises, or license taxes relating to the registration, operation, or use of vehicles, or to fuels for propelling such vehicles. Your letter states that the principal of the Waterways Safety Fund is derived from two sources. The first source is the motor vehicle fuel tax. Pursuant to R.C. 5735.051, one-half of one percent of the revenue derived from the motor vehicle fuel tax is deemed to be "attributable to the operation of motor vehicles upon waters within the boundaries of this state" and is to be credited to the Waterways Safety Fund. The second source of revenue for the Waterways Safety Fund is the fees which are collected by the chief of the division of watercraft pursuant to R.C. 1547.54 for the registration of watercraft.

Art. XII, §5a is applicable, however, only to moneys derived from fees, excises, or license taxes relating to the registration, operation, or use of vehicles on "public highways." I appreciate that the term "public highways" as used in certain contexts has been held to include navigable waterways. See, e.g., State of Ohio v. Shannon, 36 Ohio St. 423 (1881). It does not appear, however, that that term as used in art. XII, §5a was intended to encompass navigable waterways.

At the time art. XII, §5a was submitted to the electors of this State for their approval, the Secretary of State prepared and published, in accordance with Ohio Const. art II, §1g and Gen. Code Section 4785-180b, an official publicity pamphlet, setting forth, inter alia, the argument in favor of, and the argument in opposition to, the proposed amendment. These arguments clarify that the term "public highways" as used in the amendment was intended to refer to only streets and roads. For example, the argument in favor of the amendment stated, in pertinent part:

This Amendment simply says you want your automobile license and gas tax money to go for better roads and streets.

Many Ohio highways are behind the times, and must be improved for post-war traffic.

Many streets are dangerous traffic bottle-necks.

We are disgusted with slow moving traffic in congested areas, dusty, winter mired-in roads in rural districts, and alarmed at the traffic toll on narrow roads and bridges with death inviting curves.

. . . .

Ohio originally promised that automobile license and gas tax funds would go for roads, streets and related purposes. But temptation was too great and millions of these special tax dollars have been and are being spent for other purposes. This is your chance to correct these conditions.

The same thing happened in other states, but nineteen states, including Michigan, Pennsylvania, Texas, Iowa, California, Minnesota, Oregon and Kentucky, have acted to protect their road funds by amending their constitutions. Ohio now has this opportunity.

. . . .

Road and street improvement costs have increased. Ohio needs road money to tie-in with the promised federal highway program which will include many city streets and rural roads. It is imperative that motor vehicle taxes be used exclusively for roads and streets.

Remember, this Amendment does not increase the rate of any tax nor place restrictions on the allocation of revenues by the Legislature. It is your insurance for better roads and streets.

Vote "YES" for the "Better Roads and Streets Amendment" and put Ohio on the honor roll of progressive states.

The argument in opposition to the amendment also clarifies that the term "public highways" as used in the amendment was intended to mean streets and roads. It states, in pertinent part:

NO TAX REDUCTION. This amendment holds no promise of a tax reduction. If revenues thus provided for road purposes without specific appropriations exceed the actual needs for the roads, unnecessary expenditures and misuse of the excess funds will be encouraged.

. . . .

BAD POLICY. This amendment places the Legislature in a strait-jacket and severely handicaps it in applying the revenue of the state to the needs of the state. The Legislature could not use highway revenues for emergency purposes and the revenues from such taxes will have to be spent for roads and streets and for no other purpose.

NOT NEEDED. Taxes levied upon automobile owners allocated by law for the construction and maintenance of roads and streets are the 3¢ motor vehicle fuel tax and motor vehicle license fees. The 1¢ per gallon liquid fuel tax is used to pay general governmental obligations. Liquid fuel tax revenues add approximately \$15,000,000 annually to the state general revenue fund. Appropriations are now made by the Legislature from this fund to the Department of Highways and political sub-divisions. Since the Legislature can and has appropriated this money for highway purposes, there is no need for this amendment.

. . . .

See also Ohio Constitutional Revision Commission 1970-1977 Proceedings Research, vol. 4, pp. 1755-1761 (anonymous memorandum submitted to the finance and taxation committee to provide it with supplemental information concerning art. XII, §5a, including a history and background of the so-called "good roads" or "anti-diversion" amendments enacted in twenty-eight states in response to the Hayden-Cartwright Act, 23 U.S.C. 126, which required that for a state to receive federal funds for highway projects after 1935, the state would have to apply the revenue it gained from highway-related taxes to highway related purposes).

On the basis of the official statements submitted to the electors voting on the amendment, I must conclude that the term "public highways" as used in art. XII, §5a does not include navigable waterways and, accordingly, that revenue derived from fees, excises, or license taxes relating to the registration, operation or use of vehicles on navigable waterways, or to fuels used for propelling such vehicles, is not subject to the restrictions set forth in art. XII, §5a.

It is, therefore, my opinion, and you are advised, that Ohio Const. art. XII, §5a does not require that interest earned on the principal of the Waterways Safety Fund be credited to that fund.