

Opinion No. 56-6375

February 2, 1956

BY: RICHARD H. ROBINSON, Attorney General

TO: John F. Simms, Governor, John Block, Jr., Commissioner, Jacob A. Barth, Director, Aeronautics Commission, Santa Fe, New Mexico

You recently requested an opinion in which you state that you desire to use motor fuel taxes which are paid in by pilots and which tax is subject to, but no application has been made, for refund of the same.

Your specific questions are: Can the Board of Finance divert such unrefunded taxes paid by the fliers to the Aeronautics Commission, and if not, can the Aeronautics Commission be construed to be an administrative agency for the purpose of collection of these funds and the diversion take place at that point? Both of these questions must be answered in the negative.

The pertinent section of the law is § 64-26-19, N.M.S.A., 1953 Compilation, which provides as follows:

"The proceeds of all taxes and all distributors', wholesale dealers' and retail dealers' license taxes (together with penalties and interest collected thereon) less three per centum (3%) thereof, which shall be set aside by the state treasurer for the use of the Bureau of Revenue in administering this act (64-26-1 to 64-26-5, 64-26-11 to 64-26-30), shall be credited to the state road fund to be used for maintenance, construction and improvement of the public highways and to meet federal allotments under the federal aid road laws; Provided, that sufficient of said road fund shall be set aside each year by the state treasurer to pay the principal and interest coupons of highway debentures issued to anticipate the collection of said fees and taxes as the same mature."

You will note that in this section the moneys of all motor fuel taxes are directed to the state road fund and, in that same section, the Bureau of Revenue is designated as the administrative agency for the purpose of distributing these funds to the road fund. Any diversion of these funds from the road fund and any designation of any other agency as the administrative agency would necessarily require legislation.

Under the existing law, the unrefunded moneys cannot be used for the Aeronautics Commission or for any other purpose other than the purpose set out in the section above quoted.

We sincerely hope this answers your inquiry.

By Fred M. Standley

Assistant Attorney General