



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL**  
ATTORNEY GENERAL

April 30, 1975

The Honorable Joe Wyatt, Jr.  
Chairman  
Committee on Revenue and Taxation  
House of Representatives  
Austin, Texas

Letter Advisory No. 100

Re: Constitutionality of  
proposed bill which imposes  
an occupation tax on refining  
and permits allocation of a  
portion of that tax to the general  
revenue fund.

Dear Representative Wyatt:

On behalf of the Committee on Revenue and Taxation, you have requested our opinion concerning whether the allocation provisions on that portion of House Bill 17, which proposed to impose an occupation tax on the business of refining motor and diesel fuel, are violative of article 8, section 7-a of the Texas Constitution.

The proceeds of this tax are to be allocated as follows:

- (1) one-fourth shall be allocated to the available school fund;
- (2) the comptroller shall allocate to the credit of the state highway fund an amount of the proceeds of the tax imposed by this chapter that the comptroller determines arises from the application of this tax to motor fuel and diesel fuel used to propel motor vehicles over the public roadways of this state; except that the amount allocated under this subdivision for any fiscal year shall not be less than the amount allocated to the state highway fund and the county and road district highway fund under Article 9.25, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, from motor fuel taxes imposed under Articles 9.02 (1) and 9.14 of this title at the rate of one cent for each gallon of motor fuel, plus the amount allocated to the state highway fund under Article 10.22 of this title from special fuel taxes imposed under Article 10.03 of this title at the rate of one cent for each gallon of diesel fuel; and

(3) the remainder of the proceeds shall be allocated to the general revenue fund. (Emphasis added). Proposed codification: TAX-GEN, art. 27.15

Article 8, section 7-a of the Texas Constitution provides:

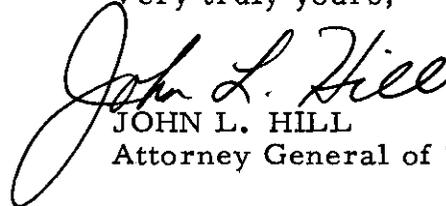
. . . Subject to legislative appropriation, allocation and direction, all net revenues remaining after payment of all refunds allowed by law and expenses of collection derived from motor vehicle registration fees, and all taxes, except gross production and ad valorem taxes, on motor fuels and lubricants used to propel motor vehicles over public roadways, shall be used for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways, and for the administration of such laws as may be prescribed by the Legislature pertaining to the supervision of traffic and safety on such roads; and for the payment of the principal and interest on county and road district bonds or warrants voted or issued prior to January 2, 1939, and declared eligible prior to January 2, 1945, for payment out of the County and Road District Highway Fund under existing law; provided, however, that one-fourth (1/4) of such net revenue from the motor fuel tax shall be allocated to the Available School Fund; and, provided, however, that the net revenue derived by counties from motor vehicle registration fees shall never be less than the maximum amounts allowed to be retained by each County and the percentage allowed to be retained by each County under the laws in effect on January 1, 1945. Nothing contained herein shall be construed as authorizing the pledging of the State's credit for any purpose. (Emphasis added).

Since House Bill 17 complies with the provisions of section 7-a insofar as the fuels taxed are to be used on Texas roadways, the question arises as to whether section 7-a was intended to apply to all taxes on fuels regardless of whether such fuels are used in the State.

While the matter is not free of doubt, in our opinion the application of section 7-a is limited to taxes on motor fuels to be used within the State. While "public roadways" as first mentioned in the provision is susceptible to a broader interpretation, we believe the clause stating "for the sole purpose of acquiring rights-of-way, constructing, maintaining, and policing such public roadways" (emphasis added) renders the section referable to roadways within the State, for obviously these activities are limited to the lands within the State.

Accordingly, since three-fourths of the revenue from taxation of fuel to be used outside the State is the only revenue to be allocated to the general fund, it is our opinion that the allocation provisions of House Bill 17 are not violative of article 8, section 7-a of the Constitution. We express no opinion concerning whether House Bill 17 is, in fact, an occupation tax, and if so, whether it is covered by the allocation provisions of article 8, section 7-a, for in our view it is not violative of either article 8, section 7-a or article 7, section 3 of the Texas Constitution which requires one-quarter of the proceeds of all occupation taxes to be allocated for the benefit of the public free schools.

Very truly yours,



JOHN L. HILL  
Attorney General of Texas

APPROVED:



DAVID M. KENDALL, First Assistant



C. ROBERT HEATH, Chairman  
Opinion Committee

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