

**Statement of Michael J. Riley  
President  
Motor Transport Association of Connecticut  
Before  
The Joint Committee on Transportation  
March 5, 2014**

**Re: S. J. RESOLUTION 23 PROPOSING AN AMENDMENT  
TO THE STATE CONSTITUTION LIMITING THE USE OF  
MONEYS CONTAINED IN THE SPECIAL  
TRANSPORTATION FUND.**

I am Michael J. Riley, President of Motor Transport Association of Connecticut (MTAC), a statewide trade association, which represents over 800 companies that operate commercial motor vehicles in and through the state of Connecticut. Our membership includes freight haulers, movers of household goods, construction companies, distributors, tank truck operators and hundreds of companies that use trucks in their business and firms that provide goods and services to truck owners.

**MTAC supports this Resolution.**

Connecticut has a long history of using transportation funding as a piggy bank, and governors as well as legislatures have regularly raided it.

Traditionally in this country, roads and bridges were paid for by the people who used them. This "highway user fee" concept provided the funding to build, maintain and expand local roads throughout this country. People accepted and understood the reasonable proposition that those who use a facility should pay for it. For many years tolls on private roads and bridges provided the incentive to build and maintain the wooden bridges and dirt roads all around this country.

When the automobile came along, governments began to build local road systems. They used the mechanism of a fuel tax to provide the necessary



funds. Once again the logic and the fairness of a user fee was accepted and institutionalized.

After World War II, as the nation began to spread out and suburbanize, government, under President Eisenhower, recognized a need for an interstate highway system. The highway user fee was once again employed to provide the necessary funding to complete this ambitious and historic national highway system. Federal and state fuel taxes became the financing mechanism which built the interstate highway system.

The federal government seemed true to its commitment to use funds generated by highway user fees on roads and bridges. However, states have been less faithful to the notion of dedicated funds. In Connecticut, money was regularly diverted from the Highway Fund to non highway uses. At one point in the 1970's highway maintenance has suffered so much from lack of funds that a bridge on I-95 collapsed. This Mianus River disaster provided the impetus for a new commitment to dedicating and using highway user fees. The citizens of this state accepted the notion that increases in the state fuel taxes was acceptable, so long as the funds generated were to be used to make necessary repairs, provide maintenance and in some cases replace aging and neglected highway infrastructure.

Governor O'Neill's program was funded by bonds supported by fuel taxes and other transportation related revenues such as registration, licenses, fees and fines. The fuel tax rate was scheduled to increase gradually over the next few years. These funds were deposited in the Special Transportation Fund (STF) which exists to this day.

Over the years, the STF grew with the influx of new revenue. Governor O'Neill and Bill Burns, his brilliant Commissioner of Transportation, proposed a \$6 Billion program to repair and improve the states highway system and the work was begun.

Through this period, the fuel tax was increased incrementally one and two cents at a time. As the state's financial woes began to worsen in the 1980s and 1990s, Governors and Legislatures began to tap the STF for other than transportation purposes.



Then with the passage of the Income Tax, Connecticut significantly increased the Gross Receipts Tax (GRT) on Petroleum Products. This obscure tax had been put into place years earlier as a way to fund the removal of leaking underground storage tanks. It is a percentage tax, applied at the first sale of gasoline, diesel fuel and other petroleum based products in the state. The rate of the GRT was increased and all of the revenue generated by this "fuel tax" was dedicated to the General Fund.

When the price of gasoline and diesel fuel went through the roof around the turn of the century, the GRT began to spin off enormous increases in unanticipated revenue, because it is a percentage tax and not a cents per gallon tax. The state, true to its nature, used these funds for everything but transportation purposes.

Even after the influx of new money resulting from the adoption of the state Income Tax and the increase in the GRT, the 1990's were difficult times for the State of Connecticut and her citizens. General Fund revenues were down and "unmet needs" became paramount. And then the games really began.

The Special Transportation Fund and the Gross Receipts Tax on Petroleum Products were regularly raided.

- Town Aid Roads was sometimes funded in STF and sometimes in the General Fund
- Personnel costs, including retirement, of the Department of Transportation, the Motor Vehicle Department and the State Police have been paid for out of the STF.
- The Diesel Fuel Tax was increased by 8 cents per gallon overnight to fund one of the shell games between the General Fund and STF.
- Surcharges were imposed on fines which should have been totally dedicated to revenue for the STF. Funds were earmarked for municipal police training, to create an account to reimburse victims of crime, traumatic brain injury programs and, for the first time municipalities were allowed to tap the STF, with a ten dollar



surcharge on all tickets. Many traffic and transportation fines were totally redirected to the General Fund. In some years, almost none of the GRT revenue, generated by fuel taxes, was deposited in the STF.

- A few years back, when the Legislature ran into a buzz saw from fishermen about an increase in license fees, the funds to “fix” the problem were generated by increasing the fee for restitution of drivers’ licenses.

So while the STF was regularly raided and its funds diverted to the General Fund, the cry arose that we didn’t have enough money in the STF to build and maintain our roads and bridges. Some proposed that tolls ought to be instituted to make up the difference.

Poll have shown that the American people are willing to accept increases in highway user fees if they are confident that the funds generated will be reinvested in the roads and bridges which they are supposed to support. However, in this state the citizens have become aware of the fact that they cannot trust future legislatures to honor the sanctity of the STF. And so, there is very little support for providing government with another spigot to divert.

The only way to protect transportation funding is through Constitutional Amendments requiring that funds generated by transportation activities must be used to provide transportation facilities and programs. Even so, enough manipulations of the current Connecticut Constitutional Spending Cap have occurred to make people skeptical that even a Constitutional Amendment can protect the STF from the sticky fingers of governments of the future.

Connecticut’s citizens are not alone in their desire to protect transportation revenue from unrelated funding raids. 21 states have Constitutional Protections of the Transportation Funds. Copies of those provisions are attached to this statement.

MTAC supports S.J. Res. 23 RESOLUTION PROPOSING AN AMENDMENT TO THE STATE CONSTITUTION LIMITING THE USE



MICHAEL J. RILEY  
PRESIDENT

OF MONEYS CONTAINED IN THE SPECIAL TRANSPORTATION  
FUND.



*Work done for ADA litigation  
Center by Meyer, Handrick in  
Phoenix, AZ, June 1993*

Similar State Constitutional Provisions  
and Interpretive Opinions

Highway Fund Diversions

**1. Alabama**

Alabama Constitution, Amend. No. 354 (funds must be used for "[the] cost of administering [vehicle tax] laws, statutory refunds and adjustments allowed therein, cost of construction, reconstruction, maintenance and repair of public highways and bridges, costs of highway rights-of-way, payment of highway obligations, the cost of traffic regulation, and the expense of enforcing state traffic and motor vehicle laws").

In re Opinion of the Justices No. 324, 511 So.2d 505 (Ala. 1987) (fuel taxes may not be used to provide environmental protection for polluted groundwater "even if the groundwater is harmed by the leakage of motor fuels from underground tanks").

**2. Colorado**

Colorado Constitution, Art. X, § 18 (funds "shall, except costs of administration, be used exclusively for the construction, maintenance, and supervision of the public highways of this state").

**3. Iowa**

Iowa Constitution, Art. VII, § 8 (funds "shall be used exclusively for the construction, maintenance and supervision of the public highways exclusively within the state").

Op. Att'y Gen. 78-5-3 (5 May 1978) (funds may not be spent on wind erosion control barriers).

Op. Att'y Gen. 79-4-31 (26 April 1979) (disagrees w/ earlier opinion; funds may be spent on erosion control projects "designed to reduce wind erosion interfering with the maintenance of highways in the state or the safe operation of vehicles thereon").

Op. Att'y Gen. 84-9-6 (26 Sept. 1984) (given strong presumption of statute's constitutionality and broad construction of § 8, funds may be spent to pay tort claims against the department of transportation).

Op. Att'y Gen. 88-4-2 (4 April 1988) (funds may be used to construct bikeways).

**4. Kansas**

Kansas Constitution, Art. 11, § 10 ("The state shall have power to levy special taxes, for road and highway purposes, on motor vehicles and on motor fuels.").

**5. Kentucky**

Kentucky Constitution, § 230 (funds may be used only for "the cost of administration, statutory refunds and adjustments, payment of highway obligations, costs for construction, reconstruction, rights of way, maintenance and repair of public highways and bridges, and expense of enforcing state traffic and motor vehicle laws").

**6. Louisiana**

Louisiana Constitution, Art. VII, § 27B (funds shall be spent "solely and exclusively for the costs for and associated with construction and maintenance of the roads and bridges of the state and federal highway systems, the Statewide Flood-Control Program..., ports, airports, transit, state police for traffic control purposes, and the Parish Transportation fund").

Op. Att'y Gen. 89-679 (7 March 1990) (funds may not be used to pay for Department of Transportation liability insurance)

**7. Michigan**

Michigan Constitution, Art. IX, § 9 (fuel taxes "shall, after the payment of necessary collection expenses, be used exclusively for transportation purposes as set forth in this section.").

Advisory Opinion In re 1976 PA 295 and 1976 PA 297, 401 Mich. 686, 259 N.W.2d 129 (1977) (based on broad reading of constitutional provision, "public transportation services are highway purposes.").

**8. Minnesota**

Minnesota Constitution, Art. XVI, § 5 ("highway user tax distribution fund [shall] be used solely for highway purposes as specified in this article").

**9. Missouri**

Missouri Constitution, Art. 4, § 30(a) (fuel tax funds shall be used "solely for the construction, reconstruction, maintenance, repair, policing, signing, lighting, and cleaning roads and streets").

**10. Montana**

Montana Constitution, Art. XII, § 1(b) (funds shall be used "solely for: (a) Payment of obligations incurred for construction, reconstruction, repair, operation, and maintenance of public highways, streets, roads, and bridges. (b) Payment of county, city, and town obligations on streets, roads, and bridges. (c) Enforcement of highway safety, driver education, tourist promotion, and administrative collection costs").

State Highway Com'n v. West Great Falls Flood Control and Drainage Dist., 468 P.2d 753 (Mont. 1970) (funds could be used to pay flood control assessment where improvements bore a "substantial relationship" to the cost of constructing, maintaining, and repairing roads and highways).

#### 11. Nevada

Nevada Constitution, Art. IX, § 5 (funds shall "be used exclusively for the construction, maintenance, and repair of the public highways of this state").

#### 12. New Hampshire

New Hampshire Constitution, Part 2, Art. 6-a (funds shall be used "exclusively for the construction, reconstruction and maintenance of public highways within this state, including the supervision of traffic thereon").

Opinion of the Justices, 51 A.2d 836 (N.H. 1947) (funds may be used for public parking areas because the removal of parked cars from the highways is a "highway purpose").

Opinion of the Justices, 371 A.2d 1189 (N.H. 1977) (funds may be used to fund the detective bureau of the state police in proportion to its traffic control activities).

Opinion of the Justices, 377 A.2d 137 (N.H. 1977) (funds may not be used to develop highway transport for the elderly and handicapped: "The proposed expenditure is not designed to benefit highway users. Instead the expenditure is designed to assist the elderly and handicapped. The...assistance proposed relates to the means of transporting the elderly and handicapped. This does not, however, convert the measure into one designed for a highway purpose.... [T]his expenditure does not benefit those who have occasion to use the highways, nor does it assure that those who pay the assessment will receive the benefits therefrom.").

Op. Att'y Gen. (28 Oct. 1992) (funds may not be used for public bus or rail programs: "Although an argument could be made that public transit expenditures benefit highway users by relieving traffic congestion and minimizing the physical deterioration of highways, these beneficial effects are both indirect and difficult to quantify in any meaningful way. Such

expenditures would primarily benefit the users of public transportation rather than the highway users who had paid the revenues into the 'highway fund.'")

### 13. North Dakota

North Dakota Constitution, Art. X, § 11 (funds "shall be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways").

### 14. Ohio

Ohio Constitution, Art. XII, § 5a (funds shall be expended only for "costs of administering [vehicle tax] 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 expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.").

Grandle v. Rhodes, 166 Ohio St. 197, 140 N.E.2d 897 (1957) (highway funds may not be used to pay for study re. Statehouse parking lot)

Grandle v. Rhodes, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (constitutional provision meant to "closely restrict[] the expenditure...to purposes directly connected with the construction, maintenance and repair of highways and the enforcement of traffic laws;" however, "other statutory highway purposes" do not include payment of attorneys fees of party who successfully blocks an unconstitutional disbursement).

State v. Vogel, 169 Ohio St. 368, 159 N.E.2d 892 (1959) (funds may be used to pay for the lighting of urban portions of limited-access highways).

Op. Att'y Gen. 80-016 (6 May 1980) (funds may not be used to purchase insurance for county road machinery or road machinery operators)

Op. Att'y Gen. 83-031 (15 June 1983) (funds may not be used to assist public mass transit systems)

Op. Att'y Gen. 85-094 (27 Dec. 1985) (funds may not be used to purchase insurance for county commissioners against road repair liability)

Op. Att'y Gen. 86-054 (29 July 1986) (funds may not be used to fund security and investigative functions of State Highway Patrol, as they are not "highway purposes")

Op. Att'y Gen. 88-004 (25 Jan. 1988) (fuel taxes may not be used to construct buildings for county engineer except one used exclusively for road machinery)

Op. Att'y Gen. 88-067 (12 Sept. 1988) (funds may be used to pay the costs of a county self-insurance program).

Op. Att'y Gen. 91-043 (27 Sept. 1991) (funds may not be used to establish a motor vehicle fuel testing program)

Op. Att'y Gen. 92-049 (29 Sept. 1992) (funds may not be used to pay annual bonus to county engineer employees)

## 15. Oregon

Oregon Constitution, Art. IX, § 3a (funds "shall be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation and use of public highways, roads, streets and roadside rest areas in this state").

Rogers v. Lane County, 307 Or. 534, 771 P.2d 254 (1989) (funds may not be used to build airport parking lot; constitutional provision must be construed narrowly to limit uses of motor vehicle use and fuel taxes; mere "highway-related projects" are not permissible uses of funds).

Automobile Club of Oregon v. Oregon, 314 Or. 479, 840 P.2d 674 (1992) (fuel tax may not be used to assist compliance with environmental regulation of underground fuel storage tanks; funds may not be used to develop public transportation systems).

Op. Att'y Gen. OP-5756 (11 Jan. 1985) (Highway Fund may not be used to expand State Police office space)

Op. Att'y Gen. OP-6329 (16 June 1989) (proceeds from sale of motor vehicle records, which are developed using Highway Fund moneys, may not be used to defray voter registration costs).

Op. Att'y Gen. OP-6354 (13 Nov. 1989) (funds may not be used for assistance to emerging small businesses that are engaged in highway construction if the projects are no "directly and primarily for highway construction").

## 16. South Dakota

South Dakota Constitution, Art. XI, § 8 (funds "shall be used exclusively for the maintenance, construction and supervision of highways and bridges of this state").

## 17. Texas

Texas Constitution, Art. 8, § 7-a (funds "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").

#### **18. Utah**

Utah Constitution, Art. XIII, ¶ 13 (funds "shall be used exclusively for highway purposes as follows: (1) The construction, improvement, repair and maintenance of city streets, county roads, and state highways. . . (2) The administration of a driver education program. (3) The enforcement of state motor vehicle and traffic laws. (4) Tourists and publicity expense. . .").

Op. Att'y Gen. 84-44 (31 May 1984) (ferry across Lake Powell, to connect two state highways, is a "highway purpose")

#### **19. Washington**

Washington Constitution, Art. II, § 40 (funds "to be used exclusively for highway purposes," which are described in more detail).

State ex rel. O'Connell v. Slavin, 452 P.2d 943 (Wash. 1969) (en banc) (funds may not be used for development of a public transportation plan, as it is not a "highway purpose").

#### **20. West Virginia**

West Virginia Constitution, Art. VI, § 52 (funds shall be used "solely for construction, reconstruction, repair and maintenance of public highways").

Op. Att'y Gen. (19 Feb. 1992) (highway funds may not be allocated for boating and wildlife uses)

#### **21. Wyoming**

Wyoming Constitution, Art. 15, § 16 (funds may only be spent for "[the] cost of administering such laws, statutory refunds and adjustments allowed therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways, county roads, bridges, and streets, alleys and bridges in cities and towns, and expense of enforcing state traffic laws").