

USE OF COUNTY ROAD FUNDS FOR SHERIFF'S ROAD PATROL

Jon Oshel, AOC County Road Program Manager
December 2011

In 2007 Douglas and Lane Counties received legislative authority to spend USFS County Road Funds to pay for Sheriff's patrol of county roads. It is anticipated that other counties may wish to obtain similar authority. This purpose of this paper is to:

- Explain the limitations on County Road Funds.
- Explain the authorization for Sheriff's Patrol from County Road Funds.
- State current AOC policy.
- Summarize the limitations and conditions if County Road Funds are to be used for Sheriff's patrol.

COUNTY ROAD FUNDS ARE DEDICATED

Most of the money available for county roads comes from dedicated sources: it cannot be used for non-road purposes because it has been dedicated strictly for road purposes. The dedication for road use is by one of the following:

1. Federal law;
2. State Statutes and Constitution;
3. Local government law;
4. Terms of a tax levy that has been approved by the voters; or
5. Conditions of an intergovernmental grant in aid or contract.

LIMITATION ON OREGON STATE HIGHWAY FUNDS

The Oregon Constitution restricts the use of revenue from taxes on the use of motor vehicles and on motor vehicle fuel, whether the taxes are imposed by the state and shared with local governments or imposed by the local governments themselves. The restriction: "...revenue from the following 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" (Article IX, Section 3a—See Appendix "A"). Subsection (2)(d) provides an exception for enforcement of "commercial vehicle weight, size, load, conformation and equipment regulation."

When the State Highway Fund was initially created in 1942, its dedicated funds could also be used for parks and policing of public highways (Old Article IX, Section 3—See Appendix "A"). Eligibility for parks and public highway policing was eliminated by a vote of the people in 1980. Many attempts have been made to "Bust the Trust" and expand the State Highway Fund usage. Since 1980 the Oregon Legislature has introduced 59 resolutions proposing expansion of services which could be funded with the State Highway Fund (See Appendix "E"). They have all failed. Of the 59 proposals,

16 of them were proposals to reinstate policing as an eligible use of highway funds. Only two of these resulted in submitting the question to the voters (1991 and 1999). In both cases approximately 65% of the voters opposed the change.

LIMITATION ON US FOREST SERVICE REVENUES

Controlling Laws

Federal and Oregon law limit the use of USFS revenues paid to counties:

1. National Forest revenues are dedicated by federal law. (16 U.S. Code 500—See Appendix “D”), which states that 25 percent of "all moneys received" from National Forest timber sales and other sources be paid to the states in which the National Forests are located “to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated”
2. Oregon law (ORS 294.060—See Appendix “B”) requires that the 25 percent payments be divided 75 percent to the county road fund and 25 percent to the county school fund (Subsections 3 through 6 allow specified counties the authority to transfer road funds to the county school fund).

Court Cases and Attorney General Legal Opinions

Following the 1980 constitutional change the meaning of the limitations were clarified. This was done through a series of Attorney General Opinions and litigation resolved at either the Oregon Court of Appeals or the Oregon Supreme Court (See Appendix “F”). Specifically, *41 Or. Atty Gen. Op. 270 (1980)* and *Lane County v. Paulus (1982)* speak to conditions associated with co-mingled federal forest revenues and State Highway Funds. It is clear that caution should be used in determining what services are being paid for with county road funds.

Authorization for Sheriff’s Road Patrol

In 2007 Douglas and Lane Counties received legislative approval to expend county road fund moneys from the USFS for the patrolling of county roads by county law enforcement officials (SB 808—See Appendix “C”). The authorization had a January 2, 2014 sunset provision.

In 2011 Douglas and Lane Counties received an extension of the sunset to January 2, 2016. Klamath and Josephine Counties attempted to obtain similar authority but failed (SB 443, SB 189 & HB 3585—See Appendix “C”). Curry County was considering piggy-backing on one of these bills, but did not.

LIMITATION ON USE OF COUNTY ROAD FUND

State law defines “county road fund” as a separate fund in the county treasury designated to receive deposit of revenues that are dedicated to roads or road improvements (ORS 368.705—See Appendix “C”). The county road fund must be used in establishing, laying out, opening, surveying, altering, improving, constructing,

maintaining and repairing county roads and bridges on county roads. There is a note in this section of the law that provides for the Douglas and Lane exceptions to use USFS funds deposited in the county road fund for patrolling county roads by county law enforcement officials.

AOC POLICY

AOC has had a long standing policy of actively opposing expanding the use of State Highway Funds for anything other than highways, roads and streets. However, one of AOC's core principles is local control. As such AOC has remained neutral whenever an individual county sought legislative authority for additional discretion in the use of USFS road funds dedicated for public roads of their county.

LIMITATIONS AND CONDITIONS IF USING COUNTY ROAD FUNDS FOR SHERIFF'S PATROL

1. For State Highway Funds:
 - a. It is critical that they are not used for Sheriff's Patrol, as this would be a violation of Article IX, Section 3(a) of the Oregon Constitution.
2. For USFS Funds
 - a. A county must have authorization from the Legislature before it uses USFS funds for Sheriff's patrol.
 - b. The use of USFS revenues for Sheriff's road patrol must be limited to expenditures "for the benefit of the...public roads of the county" (Federal Law 16 USC Section 500).
 - c. If existing road fund reserves are to be used, the county will have to make a determination of how much of the reserve was from USFS revenues, as opposed to other dedicated revenues.
3. It is recommended that policies and procedures be in place to assure that all of the above conditions are met.

APPENDIX "A"
OREGON CONSTITUTION

CURRENT VERSION

Article IX, Section 3a. Use of revenue from taxes on motor use and fuel; legislative review of allocation of taxes between vehicle classes.

- (1) Except as provided in subsection (2) of this section, revenue from the following 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:
 - (a) Any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, transportation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles; and
 - (b) Any tax or excise levied on the ownership, operation or use of motor vehicles.
- (2) Revenues described in subsection (1) of this section:
 - (a) May also be used for the cost of administration and any refunds or credits authorized by law.
 - (b) May also be used for the retirement of bonds for which such revenues have been pledged.
 - (c) If from levies under paragraph (b) of subsection (1) of this section on campers, motor homes, travel trailers, snowmobiles, or like vehicles, may also be used for the acquisition, development, maintenance or care of parks or recreation areas.
 - (d) If from levies under paragraph (b) of subsection (1) of this section on vehicles used or held out for use for commercial purposes, may also be used for enforcement of commercial vehicle weight, size, load, conformation and equipment regulation.
- (3) Revenues described in subsection (1) of this section that are generated by taxes or excises imposed by the state shall be generated in a manner that ensures that the share of revenues paid for the use of light vehicles, including cars, and the share of revenues paid for the use of heavy vehicles, including trucks, is fair and proportionate to the costs incurred for the highway system because of each class of vehicle. The Legislative Assembly shall provide for a biennial review and, if necessary, adjustment, of revenue sources to ensure fairness and proportionality.

VERSION IN EFFECT 1942 TO 1980

Article IX, Section 3. Laws imposing taxes; gasoline and motor vehicle taxes.

No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied. The proceeds from any tax levied on, with respect to, or measured by the storage, withdrawal, use, sale, distribution, importation or receipt of motor vehicle fuel or any other product used for the propulsion of motor vehicles, and the proceeds from any tax or excise levied on the ownership, operation or use of motor vehicles shall, after providing for the cost of administration and any refunds or credits authorized by law, be used exclusively for the construction, reconstruction, improvement, repair, maintenance, operation, use and policing of public highways, roads and streets within the state of Oregon, including the retirement of bonds for the payment of which such revenues have been pledged, and also may be used for the acquisition, development, maintenance, care and use of parks, recreational, scenic or other historic places and for the publicizing of any of the foregoing uses and things. [Constitution of 1859; Amendment proposed by S.J.R. No. 11, 1941, and adopted by people Nov. 3, 1942]

APPENDIX “B”
OREGON REVISED STATUTES (2009 Edition)

293.560 Apportionment among counties of moneys received from federal government from forest reserves.

(1) Except for a distribution charge that shall be deducted to meet expenses incurred by the Oregon Department of Administrative Services in administering this section, all sums received by the state from the United States Government as its distributive share of the amounts collected by the United States Government for forest reserve rentals, sales of timber, and other sources from forest reserves within the State of Oregon, shall, upon receipt, be distributed among the several counties in which such forest reserves are located. The distribution charge shall be 60 cents per county and is in addition to the transaction charge approved for the department during the budgetary process. The amount of the distribution charges is continuously appropriated to the department to meet expenses incurred in administering this section.

(2) The department shall ascertain from the proper United States officers having the records of receipts from forest reserves, the amount of receipts from each forest reserve in this state for each year for which money is received by the state, less the share of each forest reserve of the deduction made under subsection (1) of this section. A separate account shall be kept of the sum, less the deduction, received from each forest reserve, which sum shall be paid only to the county or counties in which the forest reserve is located. Each county shall receive such proportional amount of the sum as the area of the forest reserve included within the boundaries of the county bears to the total area of the forest reserve within the state. The department shall in all cases when possible make all computations upon the net areas of such forest reserves according to the data furnished by the federal officials. [Formerly 291.534; 1985 c.787 §3]

294.060 Apportionment of moneys received by counties from federal forest reserves to road and school funds.

(1) The moneys received by each county under ORS 293.560 shall be divided 75 percent to the road fund and 25 percent to the school fund of the county and, subject to subsection (2) of this section, the moneys shall be expended as other moneys in those funds are expended.

(2) The moneys apportioned to the county road fund may be applied in payment of any outstanding road bonds or may be placed in any county road bond sinking fund for the purpose of being so applied.

(3) Notwithstanding the division of receipts specified in subsection (1) of this section, in any county east of the summit of the Cascade Mountains with a population of less than 9,000 and more than 6,500, according to the 1990 federal decennial census,

moneys from the road fund in excess of \$2 million may be transferred to the school fund when the amount of money credited to the road fund under subsection (1) of this section exceeds the amount needed for county roads, as determined by the board of county commissioners. Any amount received by a school district from the school fund of the county that is in excess of the 25 percent required under subsection (1) of this section may not be considered as a receipt that would reduce the district's apportionments from the State School Fund.

(4) Notwithstanding the division of receipts specified in subsection (1) of this section, in any county east of the summit of the Cascade Mountains with a population of less than 58,000 and more than 55,000, according to the 1990 federal decennial census, if the moneys credited to the road fund under subsection (1) of this section exceed the amount needed for county roads, as determined by the county governing body, the portion of such moneys in excess of an amount specified by the county governing body may be transferred to the school fund of the county or may be transferred directly to the school districts of the county in accordance with procedures established by the county governing body. The county governing body may distribute moneys under this subsection among the several school districts without regard to the percentage of the resident average daily membership in each school district. Moneys transferred under this subsection may be transferred upon the condition that any school district receiving a share of such moneys must use the moneys only for a purpose described in ORS 328.205 (1)(a) or (c). Any amount received by a school district from the county under this subsection that is in excess of the 25 percent required under subsection (1) of this section may not be considered as a receipt that would reduce the district's apportionments from the State School Fund.

(5) Notwithstanding the division of receipts specified in subsection (1) of this section, in any county east of the summit of the Cascade Mountains with a population of less than 6,500, according to the 1990 federal decennial census, moneys received by the county under ORS 293.560 may be divided between the road fund and the school fund of the county as specified under an agreement between the county governing body and the education service district board of the county that provides for a different apportionment of those moneys. Any amount received by a school district from the school fund of the county that is in excess of the 25 percent required under subsection (1) of this section may not be considered as a receipt that would reduce the district's apportionments from the State School Fund.

(6) Notwithstanding the division of receipts specified in subsection (1) of this section, in any county west of the summit of the Cascade Mountains with a population of less than 19,500 and more than 6,500, according to the 1990 federal decennial census, moneys from the road fund in excess of \$1 million may be transferred to the school fund when the amount of money credited to the road fund under subsection (1) of this section exceeds the amount needed for county roads, as determined by the board of county commissioners. Any amount received by a school district from the school fund of the

county that is in excess of the 25 percent required under subsection (1) of this section may not be considered as a receipt that would reduce the district's apportionments from the State School Fund.

(7) As used in subsections (3) to (6) of this section, "summit of the Cascade Mountains" has the meaning for that term provided in ORS 477.001. [Amended by 1969 c.327 §1; 1971 c.539 §1; 1977 c.776 §1; 1981 c.342 §1; 1987 c.315 §1; 1989 c.579 §1; 1991 c.309 §1; 2003 c.226 §21]

Note: Section 4, chapter 894, Oregon Laws 2007, provides:

Sec. 4. (1) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Douglas County and deposited into its road fund may be expended for the patrolling of Douglas County roads by Douglas County law enforcement officials.

(2) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Lane County and deposited into its road fund may be expended for the patrolling of Lane County roads by Lane County law enforcement officials.

(3) This section is repealed on January 2, 2014.

(4) This section applies to moneys described in subsections (1) and (2) of this section that are received before, on or after the effective date of this 2007 Act [September 27, 2007]. [2007 c.894 §4]

368.705 County road fund; use of fund.

(1) As used in this section and ORS 368.710, "county road fund" means a separate fund in the county treasury designated to receive deposit of revenues that are dedicated to roads or road improvements.

(2) The county road fund must be used in establishing, laying out, opening, surveying, altering, improving, constructing, maintaining and repairing county roads and bridges on county roads.

(3) County funds derived from any ad valorem tax levy may not be used or expended by the county governing body upon any roads or bridges except:

(a) Funds derived from a levy within the permanent rate limit of section 11 (3), Article XI of the Oregon Constitution, or the statutory rate as provided in ORS 310.236 (4) or 310.237, if a voter-approved county serial levy dedicated to road improvements was used in determining the rate limit; or

(b) Local option taxes levied under ORS 280.040 to 280.145. [Amended by 1963 c.9 §18; 1967 c.203 §1; 1973 c.240 §3; 1983 c.582 §1; 1987 c.667 §5; 1991 c.459 §388; 1999 c.21 §73; 2007 c.679 §1]

Note: Section 4, chapter 894, Oregon Laws 2007, provides:

Sec. 4. (1) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Douglas County and deposited into its road fund may

be expended for the patrolling of Douglas County roads by Douglas County law enforcement officials.

(2) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Lane County and deposited into its road fund may be expended for the patrolling of Lane County roads by Lane County law enforcement officials.

(3) This section is repealed on January 2, 2014.

(4) This section applies to moneys described in subsections (1) and (2) of this section that are received before, on or after the effective date of this 2007 Act [September 27, 2007]. [2007 c.894 §4]

APPENDIX “C”
OREGON LEGISLATIVE ACTION

2007 Oregon Legislature

Senate Bill 808 (Passed)

SECTION 4. (1) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Douglas County and deposited into its road fund may be expended for the patrolling of Douglas County roads by Douglas County law enforcement officials.

(2) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Lane County and deposited into its road fund may be expended for the patrolling of Lane County roads by Lane County law enforcement officials.

(3) This section is repealed on January 2, 2014.

(4) This section applies to moneys described in subsections (1) and (2) of this section that are received before, on or after the effective date of this 2007 Act.

2011 Oregon Legislature

Senate Bill 443 (Passed)

Section 4, chapter 894, Oregon Laws 2007, is amended to read:

Sec. 4. (1) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Douglas County and deposited into its road fund may be expended for the patrolling of Douglas County roads by Douglas County law enforcement officials.

(2) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Lane County and deposited into its road fund may be expended for the patrolling of Lane County roads by Lane County law enforcement officials.

(3) This section is repealed on January 2, [2014] **2016**.

(4) This section applies to moneys described in subsections (1) and (2) of this section that are received before, on or after September 27, 2007.

Senate Bill 189 (Failed)

Section 4, chapter 894, Oregon Laws 2007, is amended to read:

Sec. 4. (1) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Douglas County and deposited into its road fund may be expended for the patrolling of Douglas County roads by Douglas County law enforcement officials.

(2) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Lane County and deposited into its road fund may be expended for the patrolling of Lane County roads by Lane County law enforcement officials.

(3) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Klamath County and deposited into its road

fund may be expended for the patrolling of Klamath County roads by Klamath County law enforcement officials.

(4) This section is repealed on January 2, 2014.

(5) This section applies to moneys described in subsections (1), [and] (2) and (3) of this section that are received before, on or after September 27, 2007.

House Bill 3585 (Failed)

Section 4, chapter 894, Oregon Laws 2007, is amended to read:

Sec. 4. (1) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Douglas County and deposited into its road fund may be expended for the patrolling of Douglas County roads by Douglas County law enforcement officials.

(2) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Lane County and deposited into its road fund may be expended for the patrolling of Lane County roads by Lane County law enforcement officials.

(3) Notwithstanding ORS 294.060 and 368.705, moneys described in ORS 294.060 (1) that are received by Josephine County and deposited into its road fund may be expended for the patrolling of Josephine County roads by Josephine County law enforcement officials.

(4) This section is repealed on January 2, 2014.

(5) This section applies to moneys described in subsections (1), (2) and (3) of this section that are received before, on or after September 27, 2007.

**APPENDIX “D”
FEDERAL LAW
16 USC Section 500**

Sec. 500. Payment and evaluation of receipts to State or Territory for schools and roads; moneys received; projections of revenues and estimated payments.

On and after May 23, 1908, an amount equal to the annual average of 25 percent of all amounts received for the applicable fiscal year and each of the preceding 6 fiscal years from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State or Territory in which such national forest is situated, to be expended as the State or Territorial legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: Provided, That when any national forest is in more than one State or Territory or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber. Beginning October 1, 1976, the term "moneys received" shall include all collections under the Act of June 9, 1930, and all amounts earned or allowed any purchaser of national forest timber and other forest products within such State as purchaser credits, for the construction of roads on the National Forest Transportation System within such national forests or parts thereof in connection with any Forest Service timber sales contract. The Secretary of Agriculture shall, from time to time as he goes through his process of developing the budget revenue estimates, make available to the States his current projections of revenues and payments estimated to be made under the Act of May 23, 1908, as amended, or any other special Acts making payments in lieu of taxes, for their use for local budget planning purposes.

APPENDIX “E”
BILLS PROPOSING AMENDMENTS TO ARTICLE IX, SEC. 3A
Proposals to add highway policing shown in Bold Face

1981

HJR 7 Relating to oil and natural gas tax rate limit and exclusive use of that tax as one source of Common School Fund. (In committee upon adjournment)

1983

SJR 15 To allow local governments to use certain vehicle tax moneys for certain mass transit purposes. (Tabled in committee)

HJR 13 Relating to uses of motor vehicle and motor vehicle fuel taxes for policing highways or streets. (Tabled in committee)

1985

SJR 1 To permit special levies on motor vehicle license to be used for police enforcement of vehicle and traffic laws. (Tabled in committee)

HJR 18 Relating to local government using certain highway fund moneys for ground transportation facilities. (In committee upon adjournment)

1987

SJR 19 To allow local governments to use certain highway fund moneys for ground transportation facilities. (In committee upon adjournment)

1989

SJR 12 To authorize counties and special districts established to provide transportation services that levy taxes on ownership, operation and use of motor vehicles to use revenues for benefit of surface transportation systems. (Primary Election vote failed 294,099 to 324,458)

- SJR 31 To include policing within authorized uses of highway fund moneys. (In committee upon adjournment).**
- SJR 42 To allow assessment on gross operating revenues of petroleum refiners and wholesale distributors...to create Pollution Prevention Fund to clean up hazardous waste sites. (Failed in Senate 13-17)
- HJR 34 To allow certain fuel tax proceeds to be used for public transportation. (In committee upon adjournment.)
- HJR 35 To allow certain fuel tax proceeds to be used for leaking underground storage tank account. (In committee upon adjournment.)
- HJR 36 To allow governments to use certain highway fund moneys for ground transportation facilities. (In committee upon adjournment.)
- HJR 40 To allow proceeds from specially dedicated fuel tax to be used for Motor Vehicle Insurance Pool. (In committee upon adjournment.)

1991

- SJR 10 Authorizes use of fuel tax moneys for mass transit purposes. (In committee upon adjournment)
- SJR 12 Allows proceeds from specially dedicated fuel tax to be used for acquisition, development, maintenance, care and use of state parks. Limits amount of increase of certain dedicated tax funds by Legislative Assembly during biennium. (General Election vote failed 399,259 to 1,039,322)
- HJR 7 Allows proceeds from specially dedicated fuel tax to be used for leaking underground tank account. (In committee upon adjournment)
- HJR 14 Allows proceeds from specially dedicated fuel tax to be used for Motor Vehicle Insurance Pool. (In committee upon adjournment)
- HJR 15 Allow certain fuel tax proceeds to be used for public transportation. (In committee upon adjournment.)
- HJR 27 **Includes policing within authorized uses of highway fund moneys. (Primary Election vote failed 244,173 to 451,715)**

HJR 29 Allows proceeds from specially dedicated fuel tax to be used for Motor Vehicle Insurance Pool. (In committee upon adjournment)

HJR 40 Authorizes use of fuel tax money for policing and parks. (In committee upon adjournment)

HJR 42 Allows proceeds from specially dedicated fuel tax to be used for school transportation. (In committee upon adjournment)

HJR 43 Authorizes use of highway fund moneys for school transportation if moneys are from tax on ownership of vehicles specially dedicated to such use. (In committee upon adjournment)

1993

SJR 2 To authorize use of motor vehicle fuel tax revenues and revenues from taxes or fees on ownership, operation or use of motor vehicle for implementation of surface transportation plans that reduce traffic burden or pollution. (Failed in Senate)

SJR 19 Repeals highway fund taxes and fees in favor of “equal tax.” (In committee upon adjournment)

SJR 20 to create General Fund to which all moneys received by the state are credited. Transfers fund from motor vehicle and motor vehicle fuel taxes to General Fund. (In committee upon adjournment)

SJR 31 Repeals highway fund taxes and fees in favor of “equal tax.” (In committee upon adjournment)

HJR 5 Repeals highway fund taxes and fees in favor of “equal tax.” (In committee upon adjournment)

HJR 7 To allow motor vehicle fees or fuel tax or excise to be used for acquisition, improvement, repair, maintenance and operation of parks, facilities, vehicles and equipment used for public transportation and other programs to reduce air pollution from motor vehicles. (In committee upon adjournment)

HJR 23 To allow proceeds from specially dedicated fuel tax to be used for Motor Vehicle Insurance Pool. (In committee upon adjournment)

HJR 44 Repeals highway fund taxes and fees in favor of “equal tax.” (In committee upon adjournment)

HJR 69 To allow proceeds from specially dedicated motor vehicle fuel tax to be used to preserve motor vehicle fuel availability, and to remedy and prevent environmental contamination caused by storage or distribution of petroleum products. (Primary Election vote failed 158,029 to 446,665)

1995

- SJR 17 To authorize use of motor vehicle fuel tax revenues and revenues from taxes or fees on ownership, operation or use of motor vehicle for implementation of surface transportation plans that reduce traffic burden or pollution. (In committee upon adjournment)
- SJR 21 To allow use of money from motor vehicle taxes and fees for bicycle trails off highway right of way. (In committee upon adjournment)
- SJR 28 To allow use of certain fees on motor vehicles for monitoring, protecting and enhancing Oregon's natural resources. (In committee upon adjournment)
- HJR 1 To allow use of certain moneys for transportation of public school students. (In committee upon adjournment)
- HJR 58 To allow motor vehicle fees or fuel tax or excise revenues to be used for acquisition, improvement, repair, maintenance and operation of transportation facilities, projects, vehicles, programs and equipment that reduce traffic and air pollution or are used by elderly and disabled persons. (In committee upon adjournment)

1997

- HJR 10 To allow specified registration fee increases to be used to fund state parks and state police. (In committee upon adjournment)**
- HJR 15 Allowing use of certain taxes on motor vehicle fuel and of certain taxes paid in lieu of fuel taxes for funding state police patrol activities. (In committee upon adjournment)**
- HJR 18 Authorizing that certain fees imposed on owners of motor vehicles may be used for school transportation and transportation of elderly and handicapped persons. (In committee upon adjournment)

- HJR 20 To allow money from vehicle registration fee increase to be used for funding emergency medical services. (In committee upon adjournment)
- HJR 25 To allow use of certain fuel tax money for state parks. (In committee upon adjournment)
- HJR 43 Allowing use of fuel tax money for acquisition, development, maintenance or care of parks or recreation areas. (In committee upon adjournment)
- HJR 48 To allow funds for public transit to be paid from fuel taxes and taxes on ownership, operation and use of a motor vehicle. (In committee upon adjournment)
- HJR 80 To allow use of certain fuel and motor vehicle tax revenue raised by or transferred to local governments to be used for transportation projects that reduce traffic or pollution. (In committee upon adjournment)
- HJR 89 To allow Legislative Assembly to dedicate up to five percent of State Highway Fund moneys to alternative transportation projects. (In committee upon adjournment)

1999

- SJR 11 To allow revenues from motor vehicle and motor vehicle fuel taxes and fees to be used for policing highways. (Primary Election vote failed 310,640 to 559,941)**
- SJR 44 Requiring that revenues from fuel taxes and fees imposed by state on motor vehicles be generated in manner that ensures that classes of vehicles pay fair and proportionate share of costs of highway system. (Primary Election vote failed 109,741 to 767,329)
- HJR 1 To allow fuel tax and motor vehicle use fees or excise revenues to be used for state police patrol activities and for public transportation. Limits spending for new uses. (In committee upon adjournment)**
- HJR 59 To allow limited funding of Oregon State Police by revenues from fuel taxes and other taxes or excises on ownership, operation or use of motor vehicles. (In committee upon adjournment)**

2001

HJR 30 To allow moneys from taxes on ownership, operation or use of motor vehicles to be used by state police for policing highways. (In committee upon adjournment)

2003

SJR 13 To allow using revenues from fuel taxes and fees on motor vehicles for policing of highways. (In committee upon adjournment)

SJR 14 To delete reference to mobile homes in section of Constitution dedicating revenues from taxes on ownership, operation or use of motor vehicles. (General Election vote passed 1,048,090 to 661,576)

SJR 32 To authorize use of revenue from motor vehicle fees and fuel taxes for public education. (In committee upon adjournment)

HJR 25 To allow using revenues from fuel taxes and fees on motor vehicles for policing of highways. (In committee upon adjournment)

2005

HJR 4 To authorize use of revenues from taxes on motor vehicle fuel and on ownership and operation of motor vehicle by school districts for transportation of students. (In committee upon adjournment)

HJR 5 To allow revenue from taxes on motor vehicle fuel and ownership and operation of motor vehicles to be used for policing of highways. (In committee upon adjournment)

2007

SJR 32 To allow revenue from taxes on motor vehicle fuel and ownership, operation or use of motor vehicles to be used for policing of highways. (In committee upon adjournment)

2009

- SJR 21 To allow revenue from taxes on motor vehicle fuel and ownership, operation or use of motor vehicles to be used for public transportation services. (In committee upon adjournment)

2011

- SJR 13 To allow revenue from taxes on motor vehicle fuel and ownership, operation or use of motor vehicles to be used for public transportation services. (In committee upon adjournment)
- SJR 17 To allow revenue from taxes on motor vehicle fuel and on ownership, operation or use of motor vehicles to be used for public transportation services. (In committee upon adjournment)
- SJR 36 To allow revenue from taxes on motor vehicle fuel and ownership, operation or use of motor vehicles to be used by state police for policing highways. (In committee upon adjournment)**
- HJR 5 To allow revenue from taxes on motor vehicle fuel and ownership, operation or use of motor vehicles to be used for transportation projects that will prevent or reduce pollution and congestion created by use of motor vehicles. (In committee upon adjournment)

APPENDIX “F”
ARTICLE IX, SECTION 3a
COURT CASES and ATTORNEY GENERAL LEGAL OPINIONS
(Partial List as of December 2011)

ATTORNEY GENERAL LEGAL OPINIONS

41 Or. Atty. Gen. Op. 270 (1980): Federal statute, 16 USC sec 500, authorizes the Oregon Legislature to spend forest receipts for the benefit of public roads and schools of the counties where the national forest is located. Whether certain expenditures of forest receipts from the road fund are permissible must be judged in light of ORS 368.705(2), which prescribes how the county road fund will be used. Because forest receipts are non-tax funds, the spending limitation imposed by Article IX, Section 3a of the Oregon Constitution is not controlling.

A county may expend federal forest receipts for bicycle trails that are a part of the county road system, or inside the right of way. Federal forest receipts may also be spent on trails outside the right of way where those trails link to a county road or state system. These receipts may also be spent for parking lots that are appurtenant to the county road system and available for the general motoring public on the county road system. The county may not expend federal forest receipts directly for mass transit, as the mass transit system cannot be deemed part of the county road system.

42 Or. Atty. Gen. Op. 271 (1982): Proceeds in a county road fund dedicated by statute or constitutional provision to a particular purpose may be used only for such purpose; an expenditure or use of such proceeds for a different purpose would require reimbursement to the fund involved.

41 Or. Atty. Gen. Op. 430 (1981): Federal forest receipts, as well as interest earned by the investments of these funds, must be deposited in the county road fund. Federal forest receipts are not “taxes” within the meaning of Article IX, section 3a of the Oregon Constitution. (Copy attached.)

Or. Atty. Gen. Inf. Letter Op. DOJ File NO. 731-001-GG0201-00 (January 2001): In a detailed analysis of the constitutional law on expenditure of road funds, with particular emphasis on the *Rogers* and *Auto Club* cases, the Attorney General explained how these opinions have narrowly construed the provision of Article IX, section 3a that refers to funds used for the “operation and use” of highways. The use of Highway Funds must either involve the construction, reconstruction, improvement, repair or maintenance of highways, specified weighmaster activities, or be restricted to projects or purposes that primarily and directly facilitate motorized vehicle travel. *Rogers* prompted this comprehensive review of ODOT programs, many of which predated the 1980 constitutional amendment, to determine whether they conformed to Article IX, section 3a.

COURT CASES

Lane County v. Paulus, 57 Or. App. 297, 644 P.2d 616 (1982): The county brought a declaratory judgment action, believing it had the statutory authority to commingle federal forest revenues in the county road fund with other county monies for the purpose of investment and to credit all interest earned from the commingled

investments to county's general fund. The Oregon Court of Appeals disagreed. The Court stated ORS 294.060 required that any unobligated road funds be invested for the benefit of county road fund and all interest earnings credited to the road fund. However, once the county road fund had been obligated for road fund purposes, or had been invested for benefit of the road fund, any remaining cash balances maintained on hand to meet current obligations could be commingled with county general fund for investment purposes. Any resulting earnings on any nonconstitutionally dedicated portion of such residual cash balances could also be credited to the county general fund.

State ex rel Weinstein v. Lane County, 71 Or. App. 238, 692 P.2d 135 (1984): The County appealed an order of the trial court requiring an accounting of all monies borrowed from the county general road fund and a cessation of borrowing from that fund. The trial court concluded that money in the road fund may only be borrowed to supplement depleted election accounts pursuant to ORS 294.050. However, the Court of Appeals agreed with the County that ORS 294.460 authorized local governments to loan money from any fund, including special revenue funds raised for particular purposes such as the county road fund, to any other fund. (NOTE: See restrictions and pay back requirements on such loans in ORS 294.460.)

Rogers v. Lane County, 307 Or 534, 771 P.2d 254 (1989): The County and the City of Eugene sought declaration that the use of proceeds of taxes on motor vehicles and motor vehicles fuels for expansion and improvement of the airport was valid. The trial court applied a use-benefit test, and held that the construction of such improvements with 3-19 highway funds was authorized by Article IX, section 3a of the Oregon Constitution. The Court of Appeals reversed, holding that Article IX, section 3a of the Oregon Constitution prevented the proposed expenditure for a parking lot facility and covered walkways. The Supreme Court agreed with the Court of Appeals, concluding that the expenditure must be for the highway itself, and cannot be justified by a broad use-benefit test. The constitutional amendment section 3a and its accompanying materials (Voters' Pamphlet) demonstrated voter approval of a narrow construction of Article IX, section 3a, where taxes and fees on motor vehicles and vehicle fuels are only used for highway purposes.

Automobile Club v. State of Oregon, 314 Or 479, 840 P.2d 674 (1992): A fee from persons who received gasoline intended for resale and stored in an underground tank and used to assist rural gas stations to conform to federal environmental regulations relative to underground storage tanks was held to be an unconstitutional tax under Article IX, section 3a by the Oregon Supreme Court. The revenue from the fee did not provide for construction, improvement, repair, maintenance, or use of highways, nor did the fund primarily and directly facilitate motorized vehicle traffic. The primary beneficiaries of the revenue were not users of highways, but rather owners of gasoline stations.