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Honorable Jack Floyd
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Counties - Highways, Roads &
Bridges - Gasoline Tax - Funds

County cannot use \$.04 gasoline
tax funds for mowing of shoulders
for normal maintenance of roads.
However, such funds may be used
if the mowing of shoulders is a
part of the rehabilitation or
restoration of a paved road.

Dear Mr. Floyd:

Reference is made to the request by the Etowah County
Commission for an opinion of the Attorney General on the
following matter:

"Act 427, Acts of the Legislature, 1980
(RRR Gasoline Tax Fund), provides permissible
acts and expenditures for work on paved roads
in the County. The maintenance of shoulders
of existing paved roadways appears to be a
permissible use of RRR money.

Our question is:

1. Would the cost of mowing shoulders
of existing paved roads which helps the
maintenance of the same, be a permissible
use of RRR money?"

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The question is to be answered in the negative.

Act No. 80-427 Acts of Alabama 1980, p. 590 which provides for a \$.04 per gallon tax on gasoline is codified at Code of Alabama 1975, Section 40-17-220 through Section 40-17-225. Section 40-17-224(b)(2) sets out the purposes for which this tax is to be used by counties. It states:

Where the use is by a county, such use shall be for the resurfacing restoration, and rehabilitation of the paved county roads and bridges or bridge replacement on the county road system. Such funds shall not be used for new construction unless 90 percent of the county's paved road system has achieved a grade of 85 percent based on the state of Alabama highway department's annual maintenance report of county roads and bridges. These funds shall not be used for the purchase of equipment. The net tax proceeds distributed to the county shall not be commingled with other funds of the county, including any other gasoline tax revenues, and shall be kept and disbursed by such county from a special fund only for the purposes hereinabove provided. (Emphasis added)

Resurfacing, restoration and rehabilitation is defined in the following manner in Section 40-17-224(a)(1):

RESURFACING, RESTORATION AND REHABILITATION (RRR). Work undertaken primarily to preserve an existing facility. Restoration and rehabilitation is considered to be work required to return the existing pavement or bridge deck (including shoulders) to a condition of adequate structural support or to a condition adequate for placement of an additional state of construction (bridge deck protective system or resurfacing). Resurfacing consists of the placement of additional surface material over the existing, restored or rehabilitated roadway or bridge deck to improve serviceability or to provide additional strength. RRR work may include changes to geometric features, such as minor widening, flattening curves, or improving sight distances.

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In an opinion to the Honorable Gerald Dial, Member of the House of Representatives, dated May 11, 1982, it was concluded that counties may not use the four-cent gasoline tax funds earmarked for the three R program (resurfacing, restoration and rehabilitation) to cut and maintain right-of-ways on county roads. In the same manner, it is the opinion of the Attorney General that the \$.04 gasoline tax cannot be used for mowing the shoulders of paved roads as a part of normal maintenance of the roads. However, if the mowing is part of the process of restoration and rehabilitation in order to return "the existing pavement . . . to a condition of adequate structural support or to a condition adequate for placement of an additional construction . . ." then the \$.04 gasoline tax funds may be used for mowing the shoulders.

I hope that your question has been adequately answered.

If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By:



LYNDA K. OSWALD
Assistant Attorney General

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