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# 18th Amendment to the Constitution

The 18<sup>th</sup> Amendment to the Washington State Constitution is codified as Article 2, Section 40, and was approved November 1944. The amendment restricts the expenditure of gas tax and vehicle license fees deposited into the motor vehicle fund to “highway purposes.”

The text of the amendment reads as follows:

“All fees collected by the State of Washington as license fees for motor vehicles and all excise taxes collected by the State of Washington on the sale, distribution or use of motor vehicle fuel and all other state revenue intended to be used for highway purposes, shall be paid into the state treasury and placed in a special fund to be used exclusively for highway purposes. Such highway purposes shall be construed to include the following:

(a) The necessary operating, engineering and legal expenses connected with the administration of public highways, county roads and city streets;

(b) The construction, reconstruction, maintenance, repair, and betterment of public highways, county roads, bridges and city streets; including the cost and expense of (1) acquisition of rights-of-way, (2) installing, maintaining and operating traffic signs and signal lights, (3) policing by the state of public highways, (4) operation of movable span bridges, (5) operation of ferries which are a part of any public highway, county road, or city street;

(c) The payment or refunding of any obligation of the State of Washington, or any political subdivision thereof, for which any of the revenues described in section 1 may have been legally pledged prior to the effective date of this act;

(d) Refunds authorized by law for taxes paid on motor vehicle fuels;

(e) The cost of collection of any revenues described in this section:

*Provided*, That this section shall not be construed to include revenue from general or special taxes or excises not levied primarily for highway purposes, or apply to vehicle operator's license fees or any excise tax imposed on motor vehicles or the use thereof in lieu of a property tax thereon, or fees for certificates of ownership of motor vehicles. “Wash. Const. Art. II, Sec. 40. Approved November, 1944.”

## Case Law:

The following issues have been specifically defined in the context of the 18<sup>th</sup> Amendment:

- **Public Transportation** – The expenditure of 18<sup>th</sup> amendment protected funds for the financing of a public transportation system violates the 18<sup>th</sup> amendment since it is not for a highway purpose contemplated by the 18<sup>th</sup> amendment (*State ex rel. O’Connell v. Slavin*, 75 Wn. 2d 544, 452 P.2d 943 (1969)). However, highway lanes may be leased for transit use, so long as the State is reimbursed for all motor vehicle funds used to construct them (*Freeman v. State*, 178 Wn.2d 387, 309 P.3d 437 (2013)).

- Park and Ride facilities – The expenditure of 18<sup>th</sup> amendment protected funds on the construction of park and ride facilities does not violate the 18<sup>th</sup> Amendment because such facilities are directly related to a more efficient and safer operation of the highway system (*Washington State Highway Commission v. O'Brien*, 83 Wn.2d 878, 523 P.2d 190 (1974)).
- Relocation of Utilities – The expenditure of 18<sup>th</sup> amendment protected funds on the relocation of utilities violates the 18<sup>th</sup> amendment because the relocation of such facilities does not directly or indirectly benefit the highway system (*Washington State Highway Commission v. Pacific Northwest Bell Tel. Co.*, 59 Wn.2d 216, 367 P.2d 605 (1961)).
- Debt Payment – The expenditure of 18<sup>th</sup> amendment protected funds for the repayment of bonds issued for the construction of a highway bridge does not violate the 18<sup>th</sup> amendment because the bonds were issued for a highway purpose (*State ex rel. Bugge v. Martin*, 38 Wn.2d 834, 232 P.2d 833 (1951)).
- Tort Claims – The expenditure of 18<sup>th</sup> amendment protected funds for the payment of tort judgments violates the 18<sup>th</sup> amendment because such an expenditure does not relate to the highway purposes listed in the amendment (*Automobile Club of Wash. v. City of Seattle*, 55 Wn.2d 161, 346 P.2d 695 (1959)). However, please note that the case was decided before the state waived its sovereign immunity.
- Motor Vehicle Excise Tax Revenue – Motor Vehicle Excise Tax revenue may be deposited into the Motor Vehicle Fund to be used for highway purposes, although the 18th Amendment does not require such deposits (*State ex rel. Heavey v. Murphy*, 138 Wn.2d 800, 982 P.2d 611 (1999)).
- Valuation of Highway Property - Valuation performed in anticipation of the eventual transfer or lease of highway land indirectly benefits public highways and serves a valid highway purpose under the 18th Amendment (*Freeman v. Gregoire*, 171 Wn.2d 316, 256 P.3d 264 (2011)).
- Other Taxes Imposed on Gas - Because the Hazardous Substance Tax was enacted for the purpose of cleaning up spills of hazardous substances, it falls under the 18th Amendment's proviso excluding the tax from the "highway purposes" restrictions (*Automotive United Trades Organization v. State*, 175 Wn.2d 537, 286 P.3d 377 (2012)).
- Gas Tax Refunds – Refunds for gas taxes levied on non-highway driving, to benefit recreational trails, comes within the Legislature's plenary powers of taxation, and nothing in the 18th Amendment prohibits it. Such refunds for gas taxes are considered a "highway purpose" under the 18th Amendment (*Motorcycle Ass'n v. Interagency Comm.*, 127 Wn.App. 408, 110 P.3d 1196 (2005)). However, the refunds must benefit non-highway users who purchased the taxed fuel (*Wash. Off-Highway Vehicle Alliance et al. v. State*, 176 Wn.2d 225, 290 P.3d 954 (2012); *Auto. United Trades Org. v. State*, 183 Wn.2d 842, 357 P.3d 615 (2015)).