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SPRINGFIELD

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FILE NO. S-1119

**HIGHWAYS:  
Use of Matching Tax Funds  
For Reconstruction of  
County Highway Bridges**

Honorable John J. Bowman  
State's Attorney of DuPage County  
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Wheaton, Illinois 60187

Dear Mr. Bowman:

This is in response to your letter concerning the use of "matching tax funds" under section 5-603 of the Illinois Highway Code (Ill. Rev. Stat. 1975, ch. 121, par. 5-603.) The specific question is whether "matching tax funds" may be used with "county bridge funds" (Ill. Rev. Stat. 1975, ch. 121, par. 5-602) in the reconstruction of bridges which are part of the county highway program.

For the reasons discussed below I am of the opinion that county bridge funds may be used in accordance with statutory

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requirements on projects involving the expenditure of matching tax funds; however, matching tax funds can only be used in conjunction with Federal aid or motor fuel taxes. County bridge funds cannot be the "match" which permits use of the matching tax funds.

Section 5-603 of the Illinois Highway Code authorizes a county to levy a tax, referred to as the matching tax, and to use its proceeds for named purposes in relation to costs of highway construction. It provides in relevant part:

"§ 5-603. For the purpose of providing funds to pay the expenses for engineering and right-of-way costs, utility relocations and its proportionate share of construction of highways in the federal aid primary, secondary or county highway network and costs incurred incident to transportation planning studies conducted in cooperation, and by formal agreement, with the Department of Transportation or its predecessor, the Department of Public Works and Buildings and the designated authority of the United States Government the county board except in counties having a population in excess of 1,000,000 inhabitants has the power to levy an annual tax to be known as the matching tax. \* \* \* All moneys derived from the matching tax shall be placed in a separate fund to be known as the matching fund and shall be used for no other purposes. The county board shall from time to time adopt resolutions appropriating matching funds for specific federal aid projects and motor fuel tax sections or for transportation planning studies conducted in cooperation, and by formal agreement, with the Department of Transportation or its predecessor, the Department of Public Works and Buildings and the designated authority of the United States Government and no moneys shall be

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disbursed from this fund unless so appropriated by the county board. After the end of the fiscal year, if there is still an unappropriated balance it shall operate to reduce, in like amount, any subsequent levy."

Aside from transportation planning studies, which are not relevant here, section 5-603 expressly limits the use of matching funds to "specific Federal aid projects" and "motor fuel tax sections".

"Federal aid project" is self-explanatory; however, the term "motor fuel tax sections" may be somewhat ambiguous. Prior to its amendment by Public Act 77-447, section 5-603 of the Code was limited in scope solely to Federal aid projects and sections. Public Act 77-447 added the reference to "county highway networks" in the first sentence of section 5-603, changed the name of the tax from "Federal aid matching tax" to "matching tax", and inserted "motor fuel tax" before the word "sections" in the next to the last sentence of section 5-603 of the Code. The intent of this amendment by Public Act 77-447 was to broaden the scope of section 5-603 and authorize the county board to appropriate matching tax funds to match motor fuel tax funds for the construction of county highways. Therefore, "motor fuel tax sections" must be construed to mean portions of highways constructed with motor

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fuel tax funds.

Section 5-101.2 of the Illinois Highway Code (Ill. Rev. Stat. 1975, ch. 121, par. 5-101.2) authorizes a county "to levy taxes and expend funds, either general or special, in accordance with law for highway purposes". Additionally, section 5-101.3 (Ill. Rev. Stat. 1975, ch. 121, par. 5-101.3) authorizes a county to construct any county highway in the discretion of the county board out of any funds available for such purpose. Since the term "construct" includes the process of reconstruction for purposes of the Illinois Highway Code (Ill. Rev. Stat. 1975, ch. 121, par. 2-210) and the term "highway" includes bridges thereon (Ill. Rev. Stat. 1975, ch. 121, par. 2-202), the payment of costs of constructing or reconstructing a bridge on a county highway is not limited to the appropriation of funds from the "county bridge fund". Other available funds, general or special, may also be used.

Section 5-602 of the Illinois Highway Code authorizes a county with a population of less than 1,000,000 to levy an annual tax and place its proceeds into a special fund designated as the "county bridge fund". Proceeds from this fund may be used by a county for the purpose of constructing or

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repairing any bridge on any highway in the county. (Ill. Rev. Stat. 1975, ch. 121, pars. 5-502, 5-602.) There is no provision authorizing county bridge funds to be the match so as to authorize the use of matching tax funds.

In conclusion, a county may expend any funds which are available for the purpose of highway construction. (Ill. Rev. Stat. 1975, ch. 121, par. 5-101.3.) In reference to the reconstruction of county highway bridges, "county bridge funds" are available, under certain conditions; "matching tax funds" are also available. The latter may be devoted to the purpose of reconstructing a county highway bridge if and only if such reconstruction is part of the construction of a Federal aid project, or if motor fuel tax funds are also used for the purpose of reconstructing the bridge.

Very truly yours,

A T T O R N E Y   G E N E R A L