

**Opinion No. 53-5687**

February 20, 1953

**BY:** RICHARD H. ROBINSON, Attorney General

**TO:** Honorable Joseph M. Montoya New Mexico State Senator Santa Fe, New Mexico

{\*79} You have requested an opinion from this office concerning the constitutionality of Senate Bill No. 92 {\*80} pertaining to the allocation of a portion of the 1c gasoline tax to counties for the purpose of obtaining rights-of-way and improving secondary roads.

Section 68-1205 (a) of the 1941 Compilation, Pocket Supplement is an act of the Legislature allocating 1/6th of the gasoline taxes collected and placing the same in a special fund for paying principal and interest on highway debentures. Since this fund obtained from the additional 1c tax is not pledged for the payment of highway debentures in any act authorizing the issuance of the debentures, but is only pledged by virtue of the foregoing statute, there can be no constitutional prohibition against the Legislature allocating any part or all of the proceeds of the 1c tax to other purposes. Since Senate Bill No. 92 provides that the requirements to service highway debentures shall first be deducted from this tax, there is no constitutional reason why the remaining surplus can not be allocated in any manner the Legislature may desire.

It is therefore our opinion that Senate Bill No. 92 is constitutional and will be valid if enacted into law.

By C. C. McCulloh

Assist. Attorney General