SUPREME COURT, STATE OF COLORADO

Case No. 95SC10

BRIEF OF COLORADO MUNICIPAL LEAGUE AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

CITY OF AURORA, CITY OF THORNTON, CITY OF WESTMINSTER, CITY OF BRIGHTON, CITY OF BROOMFIELD, and CITY OF FEDERAL HEIGHTS, COLORADO,

Petitioners

v.

THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF ADAMS, and the following County officers in their official capacities, HELEN HILL, Treasurer; TERRY FUNDERBURK, Finance Director; DAVID WILSON, Budget Officer,

Respondents

Certiorari to the Court of Appeals
Court of Appeals Case Nos. 94CA0180 and 94CA0185
Division III; Opinion by: Judge Davidson;
Judges Jones and Ney, JJ., concurring

October 2, 1995

COLORADO MUNICIPAL LEAGUE
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COMES NOW, the Colorado Municipal League as amicus curiae, and through its undersigned counsel submits this amicus brief in support of Petitioners, the Cities of Aurora, Thornton, Westminster, Brighton, Broomfield and Federal Heights, Colorado (hereafter, the "Cities").

I. ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeals erred in ruling that a county may allocate its specific ownership tax revenue to its Road and Bridge Fund.

II. STATEMENT OF THE CASE

The Colorado Municipal League hereby adopts and fully incorporates by reference the Statement of the Case in Petitioners' opening brief.

III. STATEMENT OF FACTS

The Colorado Municipal League hereby adopts and fully incorporates by reference the Statement of Facts in the Petitioners' opening brief.

IV. SUMMARY OF ARGUMENT

By its most unfortunate decision in this case, the Court of Appeals proposes a new policy for highway finance in Colorado and nullifies an important statutory mechanism to assure tax equity between Colorado municipalities, their residents and county governments. The decision of the Court of Appeals is contrary to the language of the applicable statutes, contrary to the evident legislative purpose behind those statutes and contrary to prior decisions of this Court concerning the role of the judiciary and the construction of statutes.

The decision of the Court of Appeals will permit inequitable budgeting and taxing practices to support road and bridge work in counties across Colorado. The impact of the Court of Appeals' decision will reach well beyond Adams County and the municipal Petitioners. Unless reversed, this decision will have immense, adverse consequences for Colorado municipalities and their citizens statewide. The General Assembly has developed a comprehensive, detailed scheme for financing construction and maintenance of state highways, county roads and municipal streets. The Court of Appeals decision does violence to one piece of this overall scheme.

The General Assembly has not seen fit to enact in statute the policy announced by Division III of the Court of Appeals. The League respectfully suggests that, unless and until the General Assembly changes the law, the present statutes should be applied as written and

consistent with their purpose. This the Court of Appeals has failed to do. The Court of Appeals' decision is sweeping, and it is wrong. This decision must be reversed.

V. ARGUMENT

The statutes applicable in this case are clear. All county revenue, "except that specifically allocated by law for other purposes," shall become part of the county general fund. Section 30-25-105, C.R.S (1986 Repl. Vol.). General fund monies may be used for "all ordinary county expenses . . . except expenditures for [inter alia] roads and bridges." Section 30-25-106(1), C.R.S. Road and bridge work is to be paid for out of a county's road and bridge fund. See Section 43-2-202, C.R.S. (1986 Repl Vol.). The road and bridge fund consists of monies from a countywide road and bridge mill levy, See Section 43-2-203, C.R.S. (1986 Repl. Vol.), as well as:

> . . . all moneys received by the county from the state or federal governments *for expenditure on roads and bridges*, and any other moneys which may become available to the county *for such purpose.*

Id. (emphasis added). An amount equal to 50 percent of the revenues derived from imposition of the road and bridge mill levy on property within a municipality must be shared back with the municipality. Section 43-2-202(2), C.R.S. (1986 Repl. Vol.).

Colorado has a comprehensive and long standing system for managing and financing public highways. The public highway system consists of state highways, county roads and municipal streets. State highways are under the jurisdiction of the Colorado Department of Transportation and are located in municipalities, as well as in unincorporated areas of counties. Counties are responsible for construction and maintenance of roads in the unincorporated portion of the county. Municipalities are responsible for construction and maintenance of streets within their boundaries. While counties are responsible only for roads in unincorporated areas, county property taxes, such as the road and bridge mill levy, apply county-wide, i.e. to property in both the incorporated and unincorporated areas of the county. Municipal property taxes, on the other hand, apply only to property within the municipal boundaries. Obviously, a large portion of the total assessed valuation of taxable property in counties will be found within the municipalities. Municipal residents would therefore, absent legislative relief, pay an inequitable share of county taxes to maintain roads in the unincorporated areas of the county, while also financing their own municipal streets. Without a "share-back," requirement, this inequity would be compounded, since municipal taxpayers would have to pay even higher taxes to maintain their streets.

In 1970, the General Assembly amended the county road and bridge fund statute to impose the 50% share-back requirement on road and bridge mill levy revenues. Significantly, the 1970 legislation, HB 1037 (1970 Colo. Sess. Laws, Ch. 77; See Appendix A) also eliminated a provision of the statute that permitted "appropriations by the county commissioners" to be a source of revenue for county road and bridge funds. See Section 120-1-2, C.R.S.

(1963). HB 1037 was a recommendation of the Highway Revenue Committee, which found in its 1969 "Report to the General Assembly":

> Growth of the cities and towns has resulted in a large increase in their assessed valuations, at a rate fifty percent greater than the increase in valuation of property outside their boundaries. Such increase in municipal valuation has resulted in a windfall to the county road and bridge funds because of the county-wide application of the county road and bridge levy.
>
> Generally, the counties have not shared this windfall with their cities and towns; only in Arapahoe and Jefferson Counties does there exist any consistent policy of revenue sharing and this procedure is not sanctioned by law.
>
> There exists a demonstrated need in cities and towns for a larger share of all taxes paid for road and highway purposes.

Highway Revenue Committee, Report to the Gen. Assembly, Research Publication No. 150 (Dec. 1969) (Appendix B, page 9)

Considering the county general fund statute, the road and bridge fund statute and the 1970 amendments thereto together, the legislative policy and statutory scheme is obvious. County road and bridge work must be paid for exclusively out of the road and bridge fund; no general fund money is to be used. Appropriations by the commissioners to the fund are prohibited, reflecting the clear legislative policy determination that counties should be compelled to rely upon the road and bridge mill levy, the proceeds of which must be shared with municipalities, if other earmarked road and bridge revenues prove insufficient to meet budgeted expenditures. By imposing the share-back requirement, the General Assembly was seeking to

avoid the inequity of municipal residents having to pay a disproportionate share of county road and bridge taxes, which are then used exclusively for road work in the unincorporated portions of the county.

Here, the Court of Appeals has approved Adams County's allocation of motor vehicle specific ownership tax revenues to its road and bridge fund pursuant to the county's general budgeting authority. This is precisely the sort of "appropriation by the county commissioners" to the road and bridge fund that the General Assembly sought to prohibit with its 1970 amendments. By reading back into the statute the language that the General Assembly repealed in 1970, the Court of Appeals permits frustration and circumvention of the intent of the General Assembly. The Court of Appeals decision is thus directly contrary to the well established rule that statutes should be construed in a manner that furthers rather than defeats the obvious legislative intent. See Yuma County Board of Equalization v. Cabot Petroleum Corp., 856 P.2d 844, 849 (Colo. 1993); Rowe v. People, 856 P.2d 486, 489 (Colo. 1993); Snyder v. Jefferson Co. School Dist. R-1, 842 P.2d 624, 629 (Colo. 1992).

The specific ownership tax is a species of property tax on the ownership of motor vehicles, Riverton Produce Company v. State, 871 P.2d 1213, 1226 (Colo. 1994), that is authorized in Article X, Sec. 6 of the Colorado Constitution, wherein it is provided that such tax shall be "apportioned, distributed and paid over to the political subdivisions of the State in such manner as may be described by law." Neither the constitutional provision, nor the statutes implementing the specific ownership tax see Sections 42-3-101 to 144 (1986 Repl. Vol. and

1995 Cum Supp.), C.R.S, specifically allocate the revenues from such tax to road and bridge purposes, much less to the county road and bridge fund in particular.

Clearly, when the General Assembly has decided that public policy supports specifically allocating particular revenue streams to county road and bridge purposes, it has done so. HB 1037, the 1970 legislation that imposed the shareback requirement and eliminated commissioners' authority to appropriate money to their road and bridge funds, was just one of several bills recommended by the Highway Revenue Committee in its 1969 report. HB 1037 resulted in a diminution of county revenue from the road and bridge mill levy by imposing the shareback requirement. The other Highway Revenue Committee bills approved in the 1970 legislative session sought to offset some of this impact by specifically allocating money to county road and bridge purposes. HB 1038, 1970 Colo. Sess. Laws, Ch. 40, provided for division of the first $2.50 of annual vehicle registration fees between counties and municipalities based upon municipal and unincorporated registration. See Section 42-3-129(4), C.R.S. (1986 Repl. Vol.). Significantly, the county share of this revenue is specifically allocated to the road and bridge fund. Section 42-3-129(5), C.R.S. (1986 Repl. Vol.). HB 1040, 1970 Colo. Sess. Laws, Ch. 37, provided that fines collected for certain traffic violations would be credited to the Highway Users Tax Fund (HUTF). The HUTF receives monies from various sources, see Section 43-4-203, C.R.S. (1986 Repl. Vol.), which monies are distributed between the State, counties and municipalities under a complex set of formulas. See: Section 43-4-205, C.R.S. (1986 Repl Vol. and 1995 Cum. Supp). Accordingly, the result of HB 1040 was to cause equitable distribution

of a portion of the fine revenues to counties and municipalities out of the HUTF. Pursuant to the HUTF statute, the counties' share of this distribution:

> . . . shall be expended by said counties *only* on the construction, engineering, reconstruction, maintenance, repair, equipment, improvement, and administration of the county highway systems and any other public highways, including any state highways, together with acquisition of rights-of-way and access rights for the same *and for no other purpose.*

Section 43-4-207(1), C.R.S. (1986 Repl. Vol.) (emphasis added). Thus, the HUTF distribution of the HB 1040 money, along with other HUTF distributions to the counties, is specifically allocated to road and bridge purposes, and is appropriately credited to the county road and bridge fund pursuant to Section 43-2-202(1), C.R.S., rather than to the general fund.

The 1970 package of highway legislation is but one illustration of the fact that the General Assembly has developed a comprehensive scheme for financing state, county and municipal highway work. As part of this statutory scheme, the General Assembly has specifically allocated revenues for road and bridge purposes, when it felt this was appropriate. In this context, the fact that the General Assembly has chosen not to specifically allocate specific ownership tax revenue to the county road and bridge funds, or even to road and bridge purposes (either directly, or through allocation to the HUTF) cannot be ignored. Since the county general fund statute requires that all county revenues, except those "specifically allocated by law to other purposes," shall become part of the general fund, it seems patent that specific ownership tax revenues belong in the county general fund, which fund cannot be used for road and bridge purposes. Section 30-25-105, C.R.S.

The Court of Appeals avoided this obvious result by seizing upon the language in Section 43-2-202(1), C.R.S., which permits county road and bridge funds to receive "any other moneys which may become available to the county for [road and bridge construction, maintenance and administration]." The Court of Appeals essentially ignored the 1970 amendment disallowing county commissioner appropriations to the road and bridge funds, finding instead that the above quoted language would be rendered "meaningless," unless commissioners could "allocate" revenues such as specific ownership taxes to the road and bridge funds pursuant to their general budgeting authority (Appendix C, page 3).

Respectfully, the Court of Appeals was simply wrong. The "other moneys" language of Section 43-2-202(1), C.R.S. is amenable to alternative reasonable constructions that do not do violence to the obvious legislative policy intent to prohibit appropriations by the county commissioners of non-earmarked revenues to the road and bridge funds. One such construction may be inferred by simply looking at the next sentence in Section 43-2-202(1), C.R.S.. In 1989, the General Assembly provided special direction to counties concerning accounting and expenditure of development impact fees for roads and bridges. See: 1989 Colo. Sess. Laws, Ch. 266:

> Any moneys which have become available to the county for expenditure on roads and bridges by virtue of a condition placed on any type of land use approval shall be accounted for separately and said expenditure shall be limited to roads and bridges in connection with such land use project.

Id. The monies referred to are "other moneys" that are "specifically allocated" for road and bridge purposes. These "private source" revenues are not derived from the road and bridge mill levy, nor are they distributed to the county by the state or federal governments. This money is thus appropriately placed in the county road and bridge fund pursuant to a reasonable construction of the "other moneys" language of the Section 43-2-202(1), C.R.S. "Other moneys" may also become available to a county for road and bridge purposes pursuant to an intergovernmental agreement under which the county, for monetary consideration, agrees to perform road and bridge work for another political subdivision. These monies, insofar as they are derived neither from the road and bridge levy, nor from state or federal sources, are appropriately placed in the road and bridge fund pursuant to the "other money" authority.

The decision of the Court of Appeals would be bad enough if the Court's decision had only sanctioned diversion of specific ownership tax revenue to the road and bridge fund, in contravention of the obvious legislative scheme. This alone would have represented a dramatic new policy announcement by the Court of Appeals concerning the way in which county and municipal highway work is financed. Unfortunately, the opinion does not stop there. The opinion contains the following remarkable statement:

> [W]e read Section 30-25-105 to provide that county revenues not allocated by constitutional provision or by statute to some other purpose *may be allocated to the road and bridge fund.* Funds *not allocated by the county to any specific purpose pursuant to budgetary authority* must be placed in the general fund and used for "ordinary county expenses."

(Appendix C, page 3).

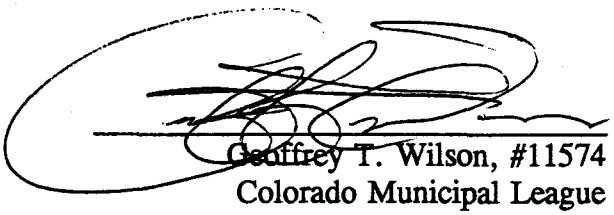
The potential impact of what the Court of Appeals has here explicitly allowed cannot be overstated. County revenues not specifically allocated by the Constitution or a statute for other purposes will no longer have to go into the county general fund, despite the apparently clear language to the contrary in Section 30-25-105, C.R.S. Now such funds can simply be "allocated" by county commissioners to their road and bridge funds, notwithstanding the General Assembly's 1970 amendments to the road and bridge statutes disallowing such practice. This rule would permit counties to dump revenues from a wide array of taxes and other revenue sources into the road and bridge funds. Road and bridge mill levies, with their attendant municipal share-back requirement, could be radically reduced or eliminated. This would give rise to precisely the sort of tax inequity that the 1970 legislation was specifically aimed at eliminating.

VI. CONCLUSION

The Court of Appeals decision announces a new policy concerning the financing of highway work by counties and municipalities. This policy is at odds with the applicable statutes and frustrates the evident legislative scheme. The policy announced by the Court of Appeals would permit and invite just the sort of tax inequity between municipalities and counties that the legislative scheme is clearly designed to prevent. The Court of Appeals decision must be reversed.

WHEREFORE, the League respectfully urges this Court to reverse the decision of the Court of Appeals.

Respectfully submitted this 2nd day of October, 1995,



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CHAPTER 77

ROADS AND HIGHWAYS

COUNTY ROAD AND BRIDGE FUNDS

(House Bill No. 1037. By Representatives Burch, Edmonds, Jackson, Ed McCormick, Arnold, Baer, Braden, Bryant, Koster, Lamb, H. McCormick, Mullen, Newman, Sack, Sanchez, Shore, Showalter, Singer, Sonnenberg, and Youngiund; also Senators Jackson, MacManus, Ohlson, and Stockton.)

AN ACT

CONCERNING COUNTY ROAD AND BRIDGE FUNDS AND THE APPORTIONMENT OF CERTAIN REVENUES ACCRUING TO SUCH FUNDS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 120-1-2, Colorado Revised Statutes 1963, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

120-1-2. County road and bridge fund—apportionment to municipalities.—(1) A fund to be known as the "county road and bridge fund" is hereby created and established in each county of this state. Such fund shall consist of the revenue derived from the tax authorized to be levied under section 120-1-3 for road and bridge construction, maintenance, and administration, all moneys received by the county from the state or federal governments for expenditure on roads and bridges, and any other moneys which may become available to the county for such purpose.

(2) For the calendar years 1971, 1972, and 1973 only, each municipality located in any county of this state shall be entitled to receive from the county road and bridge fund of the county wherein it is located an amount equal to fifty percent of the revenue accruing to said fund from extension only of the levy authorized to be made under section 120-1-3 against the valuation for assessment of all taxable property located within its corporate boundaries; except, that by mutual agreement between such municipality and the board of county commissioners, such municipality may elect to receive the equivalent of such amount in the value of materials furnished, or work performed on roads and streets located within its corporate boundaries, by the county during the calendar year in which such revenue is actually collected; and except, that in all cases where the annual amount of revenue receivable by a municipality from the county road and bridge fund is estimated to be less than two thousand dollars, such estimated amount shall be receivable by such municipality only in the equivalent value of materials furnished, or work performed on roads and streets within its corporate boundaries, by the county during the calendar year in which such revenue is actually collected.

(3) In all cases where a municipality has not elected to receive its share of the county road and bridge fund in equivalent value of materials furnished or work performed by the county, under mutual agreement, it shall

be the duty of the county treasurer, beginning April 15, 1971, and on the fifteenth day of each July, October, January, and April thereafter, but not subsequent to January 15, 1974, to pay over to the treasurer of such municipality, out of the county road and bridge fund, the amount to which such municipality shall have become entitled during the preceding three calendar months.

(4) All moneys received by a municipality from the county road and bridge fund shall be credited to an appropriate fund, and shall be used by such municipality only for construction and maintenance of roads and streets located within its corporate boundaries.

Section 2. 120-1-3, Colorado Revised Statutes 1963, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

120-1-3. County road and bridge budget—tax levy.—(1) As a part of the total county budget, and in conformity with the "Local Government Budget Law of Colorado", each county shall annually adopt a county road and bridge budget for the ensuing fiscal year, which budget shall show: The aggregate amount estimated to be expended for county road and bridge construction, maintenance, and administration, and the aggregate amount estimated to be paid from the county road and bridge fund to municipalities located within the county, either in cash or in equivalent value of materials to be furnished or work to be performed under mutual agreements with such municipalities, during said fiscal year; the estimated balance in said fund at the beginning of said fiscal year; the aggregate amount estimated to be received from state, federal, or other sources during said fiscal year; and the amount necessary to be raised during said fiscal year from the levy authorized in subsection (2) of this section.

(2) The board of county commissioners in each county is authorized to levy such rate of tax on all taxable property located within the county as shall be required, when added to the estimated balance on hand at the beginning of said ensuing fiscal year and the amount of all revenues, other than property tax revenue, estimated to be received during said fiscal year, to defray all expenditures and payments estimated to be made from the county road and bridge fund during said fiscal year.

Section 3. Safety clause.—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 10, 1970

Report to the Colorado General Assembly:

HIGHWAY REVENUE COMMITTEE

RESEARCH PUBLICATION NO. 150

December 1969

HIGHWAY REVENUE COMMITTEE

OF THE

COLORADO GENERAL ASSEMBLY

Representatives	Senators
Palmer L. Burch, Chairman	George F. Jackson, Vice Chairman
Charles (Bud) Edmonds	Clarence A. Decker
Robert A. Jackson	Donald H. MacManus
Charles E. McCormick	Norman W. Ohlson

* * * * *

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State Representative
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Denver, Colorado 80220
242 State Capitol
Denver, Colorado 80203
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Majority Floor Leader
COMMITTEES
Vice-Chairman of:
Finance
Rules
Member of:
Education

HOUSE OF REPRESENTATIVES
THE STATE OF COLORADO
DENVER

December 18, 1969.

Members of the 47th General Assembly of the State of Colorado:

Pursuant to House Joint Resolution No. 1023, adopted during the 1969 session and directing a study of highway revenues, the Speaker of the House appointed Representatives Burch, Edmonds, Jackson and Charles McCormick, and the President of the Senate appointed Senators Decker, Jackson, McManus and Ohlson, as members of the study committee.

The committee met seven times during the months of June through December. Senator Decker did not attend any meetings of the committee.

The report of the findings and recommendations of the comittee is attached.

Palmer L. Burch

Palmer L. Burch, Chairman.

BACKGROUND

Section 18 of Article X of the state constitution reads:

"On and after July 1, 1935, the proceeds from the imposition of any license, registration fee or other charge with respect to the operation of any motor vehicle upon any public highway in this state and the proceeds from the imposition of any excise tax on gasoline or other liquid motor fuel shall, except costs of administration, be used exclusively for the construction, maintenance and supervision of the public highways of this state."

Taxes on motor fuel are collected by the Department of Revenue under the provisions of various laws, as are ton-mile and passenger-mile taxes; vehicle registration fees are collected by county clerks in sixty-two counties of the state and by the manager of revenue in the city and county of Denver, such officials acting as authorized agents of the Department of Revenue under regulations prescribed by the executive director of the department.

In 1949, Governor Lee Knous appointed a representative committee to study Colorado's highway system and highway laws, and to submit a report to the General Assembly. The chairman of the committee was Senator Steve McNichols, who later served as governor for six years.

In brief, the committee, after two years of study, recomended the establishment of a state highway system, a county road system, and a city street system, the enactment of a weight-distance tax on trucks over a prescribed minimum weight, and the creation of a highway users tax fund, into which would be paid all constitutionally dedicated fees and taxes, and which would be apportioned among the three systems recommended.

The recommendations of the committee were not enacted into law by the general assembly as a package; rather, they were considered during four annual sessions and enacted into law during said four-year period.

In 1951, legislation was enacted creating a "county road and bridge fund" in each county of the state, to consist of "all moneys received from state and federal sources to be expended for road and bridge construction, maintenance and administration; appropriations by the county commissioners; and all other moneys available for road and bridge purposes."

Such legislation required each board of county commissioners to adopt an annual county road and bridge budget, and authorized the levy of a tax on all property located in the county in an amount sufficient, with other resources, to cover said budget. No limitation was placed on the levy.

In 1953, the general assembly created the "Highway Users Tax Fund", into which were to be paid all net revenue (net revenue meaning gross revenue after costs of collection):

(a) From the imposition of any excise tax on motor fuel;

(b) From the imposition of annual registration fees on drivers, motor vehicles, trailers and semitrailers;

(c) From the imposition of ton-mile and passenger-mile taxes on vehicles or any fee or payment substituted therefor.

The legislation provided that the costs of the state patrol should be annually appropriated out of the highway users tax fund, and that the remaining balance should be apportioned and distributed, on the twentieth day of each month, as follows:

(a) To the state highway fund, 65%;

(b) To the several counties of the state, excluding the city and county of Denver, 30%;

(c) To the several cities and incorporated towns of the state, including the city and county of Denver, 5%.

It further provided that the 30% share apportioned to the counties should be distributed among the sixty-two counties under the following formula:

(a) Twenty per cent of the amount apportioned in proportion to rural motor vehicle registration in each county;

(b) Eighty per cent of the amount apportioned in proportion to "the adjusted mileage of open and used rural roads in each county, excepting the mileage of state highways."

"Adjusted mileage" of open and used rural roads was to be determined by multiplying the actual mileage thereof by a "factor of difficulty", as follows:

(a)	Plains	1.00
(b)	Plains rolling and irrigated	1.75
(c)	Mountainous	3.00

It further provided that the 5% share apportioned to cities and incorporated towns should be distributed among such cities and towns under the following formula:

(a) Twenty per cent of the amount apportioned in proportion to the mileage of open and used streets in each such city and incorporated town, excepting the mileage of state highways;

(b) Eighty per cent of the amount apportioned in proportion to adjusted motor vehicle registration in each city and incorporated town, "adjusted registration" to be computed by the following table:

Actual registration	Factor
1 to 500	1.0
501 to 1,250	1.1
1,251 to 2,500	1.2
2,501 to 5,000	1.3
5,001 to 12,500	1.4
12,501 to 25,000	1.5
25,001 to 50,000	1.6
50,001 to 85,000	1.7
85,001 to 130,000	1.8
130,001 to 185,000	1.9
185,001 and over	2.0

However, in the case of a city or incorporated town having an area of ten square miles or more and an actual urban motor vehicle registration of less than seven hundred, it allocation shall not be paid to it, but shall be included in the allocation of the county in which it is located.

The highway users tax fund became operative on January 1, 1954; adjustments in the mileage and registration factors are made effective on the first day of July of each year, and operate without change during the ensuing twelve months.

In the 1954 session, the general assembly enacted a modified weight-distance tax on trucks, commonly called the gross ton mile tax, and also a passenger-mile tax with respect to buses. Such taxes became effective on January 1, 1955, and the revenue therefrom was credited to the highway users tax fund.

In the 1955 session, the general assembly modified the provisions of the gross ton mile tax, and provided for the establishment, effective July 1, 1955 of motor vehicle inspection stations, commonly called ports of entry, for the administration of the gross ton mile tax, and directed that the cost of operating such stations should be annually appropriated out of the highway users tax fund.

No signifacant changes were made in highway revenue laws during the ensuing three years.

In the 1959 session, the general assembly changed the apportionment of the highway users tax fund to cities and incorporated towns from 5% to 9%, and reduced the county share from 30% to 26%, effective on July 1, 1959, but it provided that the county share would in no event be less than $12,600,000 annually during the period July 1, 1959 to January 1, 1963.

It also enacted legislation imposing an additional registration fee of $1.50, beginning on January 1, 1960, on every motor vehicle, trailer, semitrailer, trailer coach and mobile home, but directed that such additional fee not be credited to the highway users tax fund, but rather be distributed to the county, if a rural registration, and to the city or town, if an urban registration, wherein it was located at the time of registration, with the further requirement that all such fees received by a county should be credited to the county road and bridge fund, and all such fees received by a city or incorporated town be credited to an appropriate fund and used only for the construction and maintenance of the roads and streets in such city or town.

Such additional registration fee has been extended by the general assembly from time to time, and under present law will expire on December 31, 1971.

During the past fifteen years, the tax on motor fuel has been imposed at the rate of 6¢ per gallon, except for a period of thirteen months during 1965 and 1966 when an additional 1¢ per gallon tax was imposed to provide funds to repair flood damage to highways. However, effective June 1, 1969, the tax was permanently increased to 7¢ per gallon. Also, effective January 1, 1970, registration fees on all vehicles will increase. The added revenue from these two changes will accrue to the highway users tax fund, increasing it, at the minimum, by an estimated $13,000,000 annually.

In the 1953 higway legislation, the general assembly directed that such legislation should be reviewed each five years, beginning in 1959, by a committee appointed by the governor, consisting of eight members of the general assembly and seven members representing the public. During the ensuing fifteen years, only one such committee has been appointed, and it made no specific recommendations to the general assembly for changes in the 1953 legislation. Thus, aside from the one change made in the apportionment of the fund, and the legislation providing additional revenue to the fund, no changes have been made in the 1953 legislation.

With this background, the committee began its study.

INFORMATIVE MEETINGS

The committee devoted three meetings for discussions and presentation of material by representatives of the three highway systems - state, county and municipal.

At the first meeting, Charles Shumate, chief engineer and chief executive of the Department of Highways, informed the committee of the operations and problems of the department. He explained how the department is organized and how its operations relate to those of the other two systems. He presented copies of the department's budget for the fiscal year beginning July 1, 1969, and explained it in detail.

He explained how the federal government participates in highway construction in the state and how federal funds are allocated with respect to the interstate highways, federal aid primary and secondary highways, and new programs devoted exclusively to highway construction in urban areas.

He gave a detailed explanation of the manner in which the department contracts with county and city highway departments for the maintenance of designated portions of the state highway system, and admitted to a lack of uniformity in such contracts, attributing such lack to the fact that the contracts were negotiated by various district engineers and that local conditions caused variations.

He commented on various problems arising in connection with the operation of the department, such as the unpredictable costs of snow removal, dependent entirely on annual snowfall, the cost of removing trash fom highways and rights of way ($590,000 in 1968), and the necessity of constructing additional lanes on existing highways due to increased traffic, and the added cost of maintenance involved.

Another meeting was devoted to discussions with county representatives.

The Jefferson County spokesman stressed the changes occurring in that county because of the recent incorporation of two large areas; that, for highway purposes, Jefferson County was almost overnight changing from rural to urban status; and that the fiscal impact on the county would be great.

He stated that his county had in recent years worked closely with their cities, and had adopted a policy whereby about 50% of the revenue accruing to the county road and bridge fund from taxation of municipally located property was returned to the respective cities, under procedures which were not specifically provided by law, and which might be challenged in the courts.

The Arapahoe County spokesman, a commissioner, stated that in his county it was the policy to perform road work within the cities to the extent of what one-half mill on their valuations would produce, but that there was no payment of cash or its equivalent involved. He pointed out that the county's road and bridge levy was a modest 1.33 mills.

The Mesa County spokesman stated that although the valuation of the city of Grand Junction supplied a substantial part of the revenue accruing to the county road and bridge fund, the county made no contribution whatever to the city.

The Fremont County spokesman, a commissioner, stated that the county did quite a bit of work within the cities, and also supplied materials and the use of equipment to them, but that the amount varied, in the same municipality, from year to year, dependent on conditions.

The Rio Grande County spokesman, a commissioner, stated that the county performs work in the cities, for which is is to be reimbursed, maintains streets in some towns at its own cost, removes snow, and furnishes meterials and the use of equipment. He expressed his belief that cities and towns having small population could not support adequate street departments and that in such cities and towns, it might be better for the county to receive all money supplied by the state and do all road work therein. He also stated that the United States Forest Service has built roads in the county, but thereupon it becomes the obligation of the county to maintain them, although their mileage is added to the county road system and the county accordingly receives more money from the state.

The question of so-called "primitive roads" in some of the counties was raised, but was not pursued.

It was pointed out that two counties do not levy a road and bridge tax, and that the rate of levy in the other counties varies from .40 mill to over 8 mills, with the greater number levying from 2 mills to 5 mills.

At the last meeting, views of representatives of the cities and towns were expressed.

Karl Carson, Mayor of Fort Collins and President of The Colorado Municipal League made a formal presentation on behalf of the league, in which was requested:

(a) An increase from 9% to not less than 15% in the apportionment of the highway users tax fund to cities and towns;

(b) Appropriations to the highway patrol and other agencies to be made from the state general fund rather than from the highway users tax fund;

(c) 50% of the revenue accruing to county road and bridge funds from imposition of the county road and bridge levy on property within the boundaries of municipalities to be returned to such municipalities.

The committee heard from spokesmen for the cities of Arvada, Aurora, Boulder, Colorado Springs, Durango, Grand Junction, Monte Vista, Salida, Palisade and Yuma, who presented the problems of their respective cities in considerable detail, and who all supported the position of the Colorado Municipal League in its request for a greater share of the highway users tax funds for cities and towns.

Spokesmen for Arvada and Aurora confirmed that these cities receive support for their street systems from their counties on the basis of what their municipal valuations contribute to the county road and bridge fund.

The spokesman for Boulder submitted a detailed statement of the operations of its street department for the year 1967, showing that it spent 3.3 times the amount it received from the highway users tax fund. He stated that Boulder County contributed nothing to the city.

The spokesman for Colorado Springs stated that the city spent $8,900 in 1968 for lighting the portion of the interstate highway which is located within the city, but that the county is not required to make such expenditure for the portions of the highway located in the county. He further stated that although the city of Colorado Springs contributes over one million dollars to the county road and bridge fund through taxation of property located within its boundaries, it receives nothing whatever from such fund.

The spokesman for Grand Junction submitted charts showing the source of its street department revenues and the expenditures made by categories. Although the city contributes approximately $168,000 to the county road and bridge fund, it receives nothing from such fund.

The spokesman for Salida stated that there is a general lack of cooperation between the city and the county commissioners, although on occasion they use each other's equipment. He said that when county snowplows move through the city to reach a county road, they do not drop the blades to remove snow from the streets which they travel. The city receives nothing from the county in the shape of street maintenance.

It appeared that the annual report of the department of highways, showing revenue accruing to cities from state sources, does not present a correct picture, since in many instances it shows state expenditures within the city in addition to city receipts from the highway users tax fund.

Several of the city spokesmen commented on the necessity for providing multi-lane and divided streets in their cities, which additional lanes, requiring additional maintenance, are not taken into account in determining the total mileage of city streets.

BASIC DATA

Mileage

(1) Excluding interstate highways, the mileage of the state highway system has increased from 7,788.23 miles in 1953 to 7,974.50 miles in 1938, an increase of 186.27 miles, or 2.39%.

(2) The county road system has increased from 61,732.83 miles in 1953 to 66,745.25 miles in 1968, an increase of 5,012.42 miles, or 8.12%.

(3) The mileage of city streets has increased from 3,974.36 miles in 1953 to 5,999.39 miles in 1968, an increase of 2,025.03 miles, or 50.95%.

Vehicle registrations:

	1959	1968	Numerical Increase	% of Increase
Denver	229,638	288,340	58,702	25.56 %
Other urban	365,847	580,370	214,523	58.67 %
Rural	293,338	460,284	166,946	56.91 %
Total	888,823	1,328,994	440,171	49.52 %

Assessed valuation:

Changes in assessed valuation (excluding Denver), are reflected in the following table:

	1959	1968	Increase	
Municipal	$ 846,156,900	$1,409,551,870	$ 563,394,970	66.58%
Rural	1,478,611,790	1,978,175,630	499,563,840	33.78%
Total	$2,324,768,690	$3,387,727,500	$1,062,958,810	45.72%

(See accompanying Tables I and II for increases in the nine counties of largest population and the largest municipalities located in such nine counties)

County property tax revenue:

The aggregate amount of revenue accuring to the several county road and bridge funds increased from $6,157,708 in 1959 to $12,262,775 in 1968, the amount of increase being almost 100%.

In 1968, county road and bridge levies varied from a low of .50 mill in Ouray County to a high of 8.58 mills in Elbert County; two counties, Moffat and San Miguel, made no road and bridge levy in 1968.

(See accompanying Table III)

City & County of Denver

The factors used in computing payments from the city and town apportionment of the highway users tax fund to individual cities and towns has made Denver's share approximately 40% of the total during past years, but it is indicated that such percentage will decline in future years.

FINDINGS

The rapid growth in population experience by many cities and towns during the past ten years, and the attendant geographical growth through necessary annexations of adjoining territory, have resulted in a substantial increase in the mileage of city streets. Such growth has also resulted in increased vehicle registrations in the cities and towns, making necessary increased expenditures for widening and laning of streets and installation of traffic controls.

These developments have imposed greatly increased financial burdens on cities and towns, and in many instances has caused necessary maintenance of older streets to be deferred.

Aside from the moderate increase in the city-town share of the highway user tax fund revenue resulting from economic growth, the only assistance provided by the state has been the revenue from the additional $1.50 annual registration fee imposed in 1959.

Growth of the cities and towns has resulted in a large increase in their assessed valuations, at a rate fifty per cent greater than the increase in valuation of property outside their boundaries. Such increase in municipal valuation has resulted in a windfall to the county road and bridge funds because of the county-wide application of the county road and bridge levy.

Generally, the counties have not shared this windfall with their cities and towns; only in Arapahoe and Jefferson Counties does there exist any consistent policy of revenue sharing and this procedures is not sanctioned by law.

There exists a demonstrated need in cities and towns for a larger share of all taxes paid for road and highway purposes.

The operating costs of the state patrol appropriated from the highway users tax fund have been increasing at an annual rate greater than the rate of increase of revenue accruing to said fund. To illustrate, the appropriation to the state patrol for the fiscal year beginning July 1, 1959 was $2,932,275; for the fiscal year beginning July 1, 1969 it was $6,993,085.

BASIC RECOMMENDATIONS.

The committee recommends the following changes in the laws relating to highway revenues, to become effective on January 1, 1971, unless a different date is specified:

1. That $4.00 of each annual vehicle registration fee prescribed in section 13-3-23, CRS 1963, as amended, except for the registration fees prescribed for motorcycles, motor-scooters, motorbicycles, trailer coaches, mobile homes, and trailers having an empty weight of 2,000 pounds or less, be retained by each authorized agent as collected, and be transmitted directly to the county treasurer for distribution by him to the county and to the cities and incorporated towns located in the county according to the record of rural and urban vehicle registrations maintained by the authorized agent. Since the procedures involved in this recommensation are precisely those now being followed with respect to the additional $1.50 registration fee which has been imposed for some years, no increase in administrative costs will result.

2. That the additional $1.50 registration fee prescribed in section 13-3-30, CRS 1963, as amended, be repealed, effective December 31, 1970.

3. That section 13-2-15, CRS 1963, as amended, relating to the disposition of the state's share of fines, penalties and forfeitures for violation of the provisions of the laws in said section specified, be amended to provide that the entire amount of the state's share thereof be credited to the general fund.

4. That the provision of law providing that the entire cost of the operation and communication services of the state patrol be appropriated from the highway users tax fund be amended to provide that only 50% of such appropriation be made from such fund and that the remaining 50% be appropriated from the general fund, in recognition of the fact that at least half of the duties of the state patrol are devoted to the preservation of the public peace, health and safety.

5. That the law relating to the county road and bridge levy and the county road and bridge fund be amended to provide that 50% of the revenue raised from the valuation of property located within the boundaries of a city or incorporated town by extension of the county road and bridge levy against such valuation be paid over to said city or town when collected by the county treasurer, with the provision that said city or town, by mutual agreement with the county, may elect to receive the equivalent of such amount in the form of materials furnished, or work performed within its boundaries, by the county, but in those cases where the annual amount of such revenue is estimated to be less than $2,000, the equivalent of such amount shall be receivable by such city or town only in the form ofmaterials furnished, or work performed within its boundaries, by the county.

SUPPLEMENTARY RECOMMENDATIONS

The committee reviewed the provisions of two old laws, both presently administered by the State Patrol, which contribute approximately $55,000 annually to the state highway fund. The committee found that because of changed conditions affecting the persons and establishments originally intended to be covered by these laws, the provisions are no longer universally applicable to such persons and establishments and have become discriminatory; the committee further believes that the costs of administration by the patrol exceed the small amount of revenue collected, and that the patrolmen's time should be used to better advantage.

The first law was enacted at a special session in 1919, for the general purpose of detecting automobile thefts; it reflects conditions existing 50 years ago, and has never been amended. It requires that every dealer in second-hand automobile parts and every garage operator be licensed at an annual fee of $3.00, and that he shall make voluminous monthly reports of all used parts, accessories, equipment, etc. coming into his hands; it also requires owners of vehicles to fill out forms when having their vehicles repaired, and obviously this provision is not being enforced in today's economy.

Statutes subsequently enacted, such as the motor vehicle title law and motor vehicle dealers law, and modern means of communication, render the provisions of this ancient statute somewhat ludicrous.

The second law was enacted in 1929, again for the general purpose of detecting automobile thefts. It relates to "auto camps" and requires of the operator of each auto camp an annual license fee of $1.00, plus 50¢ for each "cabin, unit, trailer stall, or tent" and that he keep "an easily accessible and permanent daily record of all automobiles stored, kept, parked or maintained in said auto court", in a manner approved by the state patrol.

Today's motels and motor hotels clearly fall under the definition of an "auto court", but they are not required to be licensed under the law or pay a fee for each parking space provided for their guests. Furthermore, it has become the universal custom that each guest register in the same manner as is customary at regular hotels.

The committee feels that the original purpose of the law is no longer valid, and that its requirements do not conform to practices followed in providing tourist accomodations in this day and age.

Accordingly, the committee recommends that sections 13-13-6 through 13-13-10, CRS 1963, relating to garage licenses, and article 14 of chapter 13, CRS 1963, relating to auto camps, be repealed, effective December 31, 1970; likewise, that section 120-10-30, CRS 1963, relating to the disposition of the license fees for garages and auto camps be also repealed, effective December 31, 1970.

The committee reviewed the recommendations of the Colorado Committee on Government Efficiency and Economy, submitted as a result of its study of the operations of the Department of Revenue, and, confirming such recommendations, urges that the general assembly make the following changes in laws administered by the department of revenue affecting highway revenues, such changes to become effective on July 1, 1970:

1. Provide for the collection of the excise tax on diesel fuel, but not on butane, propane, or liquified natural gas, in the same manner as the excise tax on gasoline, that is to say, from the distributor rather than from the user. Such change in method of collection would eliminate the issuance of thousands of permits annually, make unnecessary the posting of hundreds of bonds by users, greatly reduce the number of monthly and annual reports required to be filed, and would result in an estimated minimum saving of $25,000 annually in administrative costs.

2. Change the date for filing monthly reports and making payment of ton-mile and passenger-mile taxes from the fifteenth day of each month to the twenty-fifth day of each month. Such change will greatly reduce the number of applications made and granted for extensions of time, and will not affect the amount of tax collected.

3. Provide an appropriate penalty for failure to procure a gross ton-mile tax identification number and permit, a provision which is not contained in the present law, and the adoption of which would result in improved enforcement.

In view of the growing recreational demands by the heavy populated areas immediately adjacent to the front range, the committee recommends an appropriation of $250,000 from the highway users fund to fiance a study of mass transportation.

FINAL RECOMMENDATION

It is obvious to the committee that the factors governing the distribution of both the county and the city and town apportionments of their respective shares of the highway users tax fund require review. The conditions existing in 1969 within both counties and cities and towns have changed materially since such factors were adopted in 1953.

The so-called "difficulty" factor with respect to county road mileage, the mileage of "primitive" roads, not always "open and used" included in the mileage of many counties, the needs for new roads to provide access to recreational areas, and the classification of expenditures by county road departments all require such review.

The "adjusted registration" factor applying to the allocations to the several cities and towns and the one city and county may not have the same validity as when adopted in 1953, and the purposes for which amounts received from the highway users tax fund by many small towns are expended should be reviewed.

The form in which receipts and disbursements for highway purposes by counties and cities and towns is not uniform as to the classification of either receipts or expenditures. A uniform reporting system should be required.

Therefore, the committee recommends that it, or an equivalent committee, be appointed, and authorized to continue study of the highway laws of this state during the year 1970 and to submit a comprehensive report of such study to the general assembly for its consideration during the 1971 session.

TABLE I 9 LARGEST COUNTIES ON BASIS OF VALUATION AND POPULATION

	Total Valuation	Municipal Valuation	Rural Valuation	R & B Fund Revenue	County Road Mileage	Rural Registrations
Adams County						
1959	$166,784,090	$ 76,257,490	$ 90,526,600	$ 250,186	1,570,03	26,787
1968	284,265,810	114,852,400	169,413,410	909,650	1,569.75	44,614
Arapahoe County						
1959	$166,670,410	$109,964,700	$ 56,705,710	$ 250,005	723.75	14,787
1968	299,916,850	211,392,200	88,524,650	398,889	686.02	23,285
Boulder County						
1959	$126,447,890	$ 74,307,550	$ 52,140,340	$ 423,600	706.46	9,702
1968	263,502,060	167,357,010	96,151,050	988,132	713.28	14,731
El Paso County						
1959	$192,651,890	$104,957,810	$ 87,694,080	$ 635,751	1,839.78	28,131
1968	339,234,780	217,025,920	122,208,860	1,780,982	2,046,09	47,640
Jefferson County						
1959	$192,257,110	$ 34,479,690	$157,777,420	$ 672,900	1,101.85	54,313
1968	421,195,840	84,231,280	336,964,560	1,613,180	1,338.45	113,085
Larimer County						
1959	$ 96,092,480	$ 45,640,150	$ 50,452,330	$ 259,450	1,354.57	9,436
1968	156,422,790	91,099,940	65,322,850	594,406	1,352.57	15,468
Mesa County						
1959	$ 88,235,960	$ 36,439,450	$ 51,796,510	$ 220,085	1,339.89	16,300
1968	104,848,480	45,347,680	59,500,800	419,394	1,437.25	22,265
Pueblo County						
1959	$164,459,440	$ 91,288,800	$ 73,170,640	$ 164,459	1,328.43	7,892
1968	191,148,580	115,329,030	75,819,550	324,952	1,208.18	15,112
Weld County						
1959	$148,734,300	$ 47,897,250	$100,837,050	$ 297,468	4,431.96	19,617
1968	184,684,170	69,833,780	114,850,390	646,394	4,433.52	24,633

Source: 1959 and 1968 Annual Reports of
Tax Commission and Highway Department.

TABLE II

LARGEST CITIES IN NINE LARGEST COUNTIES

	Assessed Valuation		Street Mileage		Urban Registrations	
	1959	1968	1959	1968	1959	1968
Adams-Arapahoe						
Aurora	$ 20,335,620	$ 61,682,580	126.15	195.63	17,461	35,830
Arapahoe						
Cherry Hills Village	6,376,990	14,606,170	18.59	37.98	1,107	2,606
Englewood	41,552,470	61,101,690	105.62	114.53	18,457	23,628
Glendale	1,367,460	8,928,120	3.36	3.89	352	1,030
Greenwood Village	1,213,750	8,430,240	7.32	30.30	267	1,626
Littleton	21,433,910	46,511,130	56.57	89.65	7,452	15,148
Adams						
Brighton	6,991,500	10,183,910	26.47	32.74	5,190	5,253
Commerce City	21,458,170	30,864,670	38.66	69.44	2,334	12,969
Thornton	11,240,000	15,251,740	27.87	41.68	5,682	7,075
Westminster	15,247,680	25,031,120	48.58	58.98	7,178	12,279
Boulder						
Boulder	51,745,610	111,179,910	108.66	167.89	16,314	34,896
Broomfield		11,950,730		22.88		4,362
Longmont	17,662,820	36,590,840	44.98	84.29	6,915	14,381
El Paso						
Colo. Springs	96,764,960	206,338,130	245.56	457.94	34,579	61,881
Jefferson						
Arvada	20,335,620	61,682,850	70.90	158.95	5,927	19,178
Golden	8,688,000	15,781,460	30.61	43.28	3,915	6,916
Larimer						
Fort Collins	27,316,390	56,501,610	75.32	123.60	11,645	22,830
Loveland	12,750,280	26,360,620	42.57	67.86	6,018	10,600
Mesa						
Grand Junction	33,255,320	41,773,480	74.84	89.96	11,458	14,270
Pueblo						
Pueblo	90,853,550	114,892,980	272.21	334.48	41,684	52,912
Weld						
Greeley	34,113,280	52,155,140	84.53	115.37	13,432	21,412

Source: 1959 and 1968 Annual Reports of Tax Commission and Highway Department.

TABLE III COUNTY ROAD AND BRIDGE FUND LEVIES - 1968

County	Rate of levy	Revenue	County	Rate of Levy	Revenue
Adams	3.20 mills	$ 909,651	Lake	2.89 mills	$ 136,063
Alamosa	3.00 mills	58,915	La Plata	5.00 mills	218,334
Arapahoe	1.33 mills	398,889	Larimer	3.80 mills	594,407
Archuleta	1.00 mill	8,445	Las Animas	3.00 mills	83,221
Baca	5.00 mills	123,121	Lincoln	7.50 mills	156,536
Bent	1.00 mill	15,926	Logan	3.42 mills	222,356
Boulder	3.75 mills	988,132	Mesa	4.00 mills	419,394
Chaffee	1.85 mills	39,561	Mineral	6.99 mills	15,281
Cheyenne	4.50 mills	69,640	Moffat	None	
Clear Creek	6.00 mills	125,241	Montezuma	2.00 mills	49,315
Conejos	1.50 mills	17,548	Montrose	1.00 mill	34,427
Costilla	1.00 mill	6,359	Morgan	7.50 mills	414,641
Crowley	1.90 mills	17,508	Otero	4.46 mills	188,884
Custer	1.00 mill	3,961	Ouray	.50 mill	2,639
Delta	4.50 mills	101,721	Park	4.00 mills	39,336
Dolores	1.00 mill	5,100	Phillips	2.24 mills	41,031
Douglas	8.50 mills	178,673	Pitkin	7.14 mills	168,045
Eagle	3.85 mills	84,887	Prowers	4.00 mills	124,819
Elbert	8.58 mills	159,576	Pueblo	1.70 mills	324,953
El Paso	5.25 mills	1,780,983	Rio Blanco	4.30 mills	283,582
Fremont	2.00 mills	70,118	Rio Grande	7.00 mills	170,200
Garfield	5.30 mills	200,945	Routt	2.40 mills	65,087
Gilpin	2.80 mills	10,770	Saguache	2.00 mills	23,420
Grand	1.00 mill	15,923	San Juan	1.00 mill	3,098
Gunnison	4.75 mills	78,733	San Miguel	None	
Hinsdale	2.00 mills	4,550	Sedgwick	4.33 mills	69,651
Huerfano	3.00 mills	32,809	Summit	2.33 mills	25,551
Jackson	1.00 mill	8,779	Teller	2.68 mills	18,610
Jefferson	3.83 mills	1,613,180	Washington	3.00 mills	117,568
Kiowa	7.20 mills	109,635	Weld	3.50 mills	646,395
Kit Carson	7.50 mills	197,929	Yuma	5.70 mills	168,724

attempted to escape but was not subsequently convicted of the other pending felony, the mandatory aggravated sentence provision would not apply. Hence, the felony classification of escape or attempted escape is not rendered meaningless by the application of §18-1-105(9.5)(a) to those crimes. Accordingly, we conclude that the Andrews analysis does not apply to cases involving that statutory provision.

II.

As to defendant's claims, he maintains that the trial court abused its discretion in imposing the maximum eight-year sentence to run consecutively to the sentence in a related case. We disagree.

When a sentence outside the presumptive range is imposed, the court is required to place on the record its findings as to aggravating circumstances that justify variation from the presumptive range. People v. Vela, 716 P.2d 150 (Colo. App. 1985). Further, there must be sufficient facts in the record to support the trial court's findings. People v. Walters, 632 P.2d 566 (Colo. 1981). A trial court's sentencing decision will not be reversed absent a clear abuse of discretion. People v. Watkins, 684 P.2d 234 (Colo. 1984).

Here, the trial court properly justified defendant's aggravated sentence on the grounds that he was charged with a previous felony at the time of his commission of attempted escape and was ultimately convicted of that charge. Moreover, the record indicates that the trial court based its decision on additional appropriate factors, including defendant's criminal history and lack of rehabilitative interest or potential. See People v. Sanchez, 769 P.2d 1064 (Colo. 1989); §18-1-105(9.5)(a). Accordingly, we find no abuse of the trial court's discretion in imposing the eight-year sentence.

Sentence affirmed.

JUDGE JONES and JUDGE NEY concur.

Cite as:
18 Brief Times Reporter 1794 (Colo. App. 1994)

No. 94CA0180
No. 94CA0185

City of Aurora, Colorado; City of Thornton, Colorado; City of Westminster, Colorado; City of Broomfield, Colorado; City of Federal Heights, Colorado; and City of Brighton, Colorado, Plaintiffs-Appellants and Cross-Appellees

v.

The Board of County Commissioners of the County of Adams, Colorado; and the following officers in their official capacities, Helen Hill, Treasurer, Terry Funderburk, Finance Director, David Wilson, Budget Officer, Defendants-Appellees and Cross-Appellants

October 20, 1994

Appeal from the District Court of Adams County
Honorable John E. Popovich, Judge

Charles H. Richardson, City Attorney, Michael J. Hyman, Assistant City Attorney, Julia A. Bannon, Assistant City Attorney, for Plaintiff-Appellant and Cross-Appellee City of Aurora, Colorado

Griffiths & Tanoue, P.C., Susan K. Griffiths; Kevin Maggio, City Attorney, Margaret A. Emerich, Assistant City Attorney, for Plaintiff-Appellant and Cross-Appellee City of Thornton, Colorado

Martin R. McCullough, City Attorney, Ruthanne Gartland, Assistant City Attorney, for Plaintiff-Appellant and Cross-Appellee City of Westminster, Colorado

Roy S. Howard, City Attorney, James W. Rourke, Assistant City Attorney, for Plaintiff-Appellant and Cross-Appellee City of Broomfield, Colorado

Daniel, McCain, Brown, Wallace & Brubaker, LLC, Margaret R. Brubaker, Leonard H. McCain, for Plaintiff-Appellant and Cross-Appellee City of Brighton, Colorado

Windholz & Associates, David S. Williamson, William P. Hayashi, James A. Windholz, for Plaintiff-Appellant and Cross-Appellee City of Federal Heights, Colorado

Robert J. Loew, County Attorney, Ronald A. Carl, Assistant County Attorney, Rita M. Harrell, Assistant County Attorney, for Defendants-Appellees and Cross-Appellants

Bruce T. Barker, Office of Weld County Attorney, *Amicus Curiae* for Colorado Counties, Inc.

Division III

Opinion by **JUDGE DAVIDSON**

In this action for a declaratory judgment, injunctive relief, and damages, plaintiffs, City of Aurora, City of Thornton, City of Westminster, City of Brighton, City of Broomfield, and City of Federal Heights, appeal from the denial of a preliminary injunction prohibiting defendants, the Adams County Board of Commissioners, and, in their official capacities, Helen Hill, Adams County treasurer, Terry Funderburk, Adams County finance director, and David Wilson, Adams County budget officer, (Adams County) from allocating specific ownership tax revenue to the County Road and Bridge Fund. Adams County cross-appeals from the partial summary judgment entered in favor of plaintiffs in which the trial court declared that specific ownership tax revenue may not lawfully be allocated to the County Road and Bridge Fund.

Because it is dispositive, we first address the issue raised by Adams County on cross-appeal. As to that issue, we reverse. And, as a consequence, we affirm the denial of the preliminary injunction on grounds different from that relied upon by the trial court.

I.

Plaintiffs filed this action to challenge the practice by Adams County of allocating specific ownership tax revenue to the County Road and Bridge Fund. According to plaintiffs, specific ownership tax revenue, pursuant to statute, must be placed in the general fund of the county receiving the funds. Thus, they argue, it is illegal for Adams County to allocate any of the specific ownership tax revenue to the County Road and Bridge Fund. For several reasons, we do not agree.

A.

Section 30-25-105, C.R.S. (1986 Repl. Vol. 12A) provides that:

"A fund to be known as the county general fund is hereby created and established in each of the counties of the state of Colorado. The county general fund shall consist of all county revenue except that specifically allocated by law for other purposes."

Colo. Const. art. X, §6, provides for the creation of a specific ownership tax upon motor vehicles, wheeled trailers, semi-trailers, trailer coaches, and mobile and self-propelled construction equipment in lieu of ad valorem taxes, to be "apportioned, distributed, and paid over to the political subdivisions of the state in such manner as may be prescribed by law." See also §42-3-101, et seq., C.R.S. (1993 Repl. Vol. 17).

Because the funds collected and distributed as specific ownership taxes are not allocated by this constitutional provision to any specific purpose, plaintiffs maintain that they must be placed in the county general fund. On the other hand, Adams County argues that the specific ownership taxes are specifically allocated to the road and bridge fund by law pursuant to the budgetary authority accorded a board of county commissioners by §30-11-107, C.R.S. (1986 Repl. Vol. 12A) and §29-1-108, C.R.S. (1994 Cum. Supp.). We agree with Adams County.

A county acts through its board of county commissioners which "possesses only such powers as are by the Constitution and statutes expressly conferred upon it, and, in addition, such implied powers as are reasonably necessary to the proper execution of its express powers." Robbins v. County Commissioners, 50 Colo. 610, 615, 115 P. 526, 528 (1911). "[T]he legislature can and does, at times in Colorado, delegate limited police and legislative powers to local governmental units" including counties. See Asphalt Paving Co. v. Board of County Commissioners, 162 Colo. 254, 259, 425 P.2d 289, 292 (1967).

Pursuant to legislative authority, county commissioners are accorded broad discretion on budgetary matters. See Tihonovich v. Williams, 196 Colo. 144, 582 P.2d 1051 (1978). County commissioners have the exclusive power to adopt an annual budget, which is presumptively valid. Beacom v. Board of County Commissioners, 657 P.2d 440 (Colo. 1983); §30-11-107(2)(b), C.R.S. (1986 Repl. Vol. 12A). In reviewing budgeting actions, courts must give great deference to the county commissioners' determinations, and such actions may be nullified only if they are a clear abuse of discretion. Johns v. Miller, 42 Colo. App. 97, 594 P.2d 590 (1979).

Accordingly, by law, the defendant board possesses broad discretionary authority to develop and adopt a county budget; thus, it may determine to what use the specific ownership tax moneys may be put. We perceive no abuse of discretion by that board in placing moneys derived from the

specific ownership tax in the county road and bridge fund. See §30-11-107; Tihonovich v. Williams, supra.

B.

Plaintiffs contend that this construction of §30-25-105 gives the board of county commissioners unwarranted discretionary power over the creation and financing of county funds not intended by the General Assembly. We do not agree.

A county ordinance or resolution and a state statute may both remain effective so long as they do not contain express or implied terms in irreconcilable conflict. Wilkinson v. Board of County Commissioners, 872 P.2d 1269 (Colo. App. 1993). However, a county may not adopt an ordinance or resolution which is in conflict with a state statute. See §30-15-411, C.R.S. (1986 Repl. Vol. 12A); see also C & M Sand & Gravel v. Board of County Commissioners, 673 P.2d 1013 (Colo. App. 1983). If there are conflicting terms, the local legislation may be preempted by the state statute. Board of County Commissioners v. Martin, 856 P.2d 62 (Colo. App. 1993).

Thus, the board of county commissioners has broad discretion over budgetary matters only within the power granted by the General Assembly. If a county budgetary action conflicts with an explicit state statute as to the creation or distribution of county funds, the state statute controls. See City of Greeley v. Board of County Commissioners, 644 P.2d 76 (Colo. App. 1981) (transfer of moneys by board of county commissioners from general fund to road and bridge fund conflicted with state statute prohibiting such a transfer); cf. Tisdel v. Board of County Commissioners, 621 P.2d 1357 (Colo. 1980) (board of county commissioners was without power to reduce the salary of the district attorney as that decision conflicted with state constitutional provision prohibiting change in salary of elected officials during their term of office).

C.

Nonetheless, according to plaintiffs, the statutory scheme for the creation and financing of the county road and bridge fund must be read restrictively. In support of this contention, they argue that changes in the language of §43-2-202(1), C.R.S. (1993 Repl. Vol. 17), enacted in 1970, eliminated any discretionary appropriations by the board of county commissioners. We disagree.

Section 43-2-202(1) provides for the creation of a county road and bridge fund in each county:

"Such fund shall consist of the revenue derived from the tax authorized to be levied under section 43-2-203 for road and bridge construction, maintenance, and administration, all moneys received by the county from the state or federal governments for expenditure on roads and bridges, and any other moneys which may become available to the county for such purpose."

Prior to 1970, the predecessor statute, C.R.S. 1963, 120-1-2, read as follows:

"A fund to be known as the county road and bridge fund is hereby created and established in each of the counties of the state of Colorado. The county road and bridge fund shall consist of all moneys received from state and federal sources to be expended by a county for road and bridge construction, maintenance and administration; appropriation by the county commissioners; and all other moneys available for road and bridge purposes."

Contrary to plaintiffs' contentions, the 1970 amendments do not simply eliminate county appropriations as a method of funding for roads and bridges. The amended language provides for a road and bridge tax levy and broadens the "all other moneys" provision to include all moneys "which may become available."

Adoption of the construction of §§30-25-105 and 43-2-202(1) urged by plaintiffs would render meaningless the phrase "any other moneys which may become available to the county for such purpose." "May" implies a certain amount of discretion; thus, moneys which *may* become available for road and bridge purposes are not "specifically allocated" for that purpose and, according to plaintiffs, therefore would have to be placed in the general fund. However, we must presume that the General Assembly intended the entire statute to be effective, and we must thus construe the statute so as to give sensible effect to all its parts. See Colorado State Board of Nursing v. Bethesda Psychiatric Hospital, 809 P.2d 1051 (Colo. App. 1990).

Accordingly, we read §30-25-105 to provide that county revenues not allocated by constitutional provision or by statute to some other purpose may be allocated to the road and bridge fund. Funds not allocated by the county to any specific purpose pursuant to budgetary authority must be placed in the general fund and used for "ordinary county expenses." See §30-25-106, C.R.S. (1986 Repl. Vol. 12A).

D.

Relying upon McMurray v. Wright, 19 Colo. App. 17, 26, 73 P. 257, 261 (1903), in which the court explained that "[t]he term 'law,' when used without restriction or qualification, refers not to a special charter or a private act, but to the public law of the state or sovereignty," and City of Thornton v. Farmers Reservoir & Irrigation Co., 194 Colo. 526, 536, 575 P.2d 382, 390 (1978), in which the court ruled the phrase "as provided by law" may refer to constitutional provision as well as to state statute, plaintiffs contend that it requires a specific state statute or constitutional provision in order to allocate funds for specific purposes other than the county general fund. We do not view these cases as dispositive.

As discussed, the county derives its budgetary power from state statutes, and, unless in direct conflict with some statutory provision, its discretionary acts are undertaken by authority of such laws.

We further note that the supreme court, although it has not addressed the issue directly, has not adopted the construction urged by plaintiffs. In Colorado Department of Social Services v. Board of County Commissioners, 697 P.2d 1 (Colo. 1985), the court assumed without discussion that specific ownership taxes properly were utilized by the county for the purpose of public assistance costs although not

mandated for such use by statute or constitution.

E.

Plaintiffs also rely upon City of Greeley v. Board of County Commissioners, supra, and City of Colorado Springs v. Board of County Commissioners, 648 P.2d 671 (Colo.App. 1982) to argue that the use of specific ownership taxes for road and bridge purposes is expressly prohibited by state statute. Again, we disagree.

Section 30-25-106(1), C.R.S. (1986 Repl. Vol. 12A) provides that:

"The board of county commissioners is authorized to appropriate money from the county general fund for all ordinary county expenses, including the administrative expenditures of elective and appointive offices, library, agricultural extension service, fire protection, fairs, advertising, airports, health, rodent control, water conservation, weed control, pest control, predatory animal control, and all other general county purposes authorized by law, except expenditures for public welfare, roads and bridges, debt service, public hospitals, public works, contingencies, and purposes voted by the electors."

This section makes unavailable for road and bridge use any money contained in the county general fund. Road and bridge funding "shall be from a special levy for roads and bridges, together with moneys from state or federal governments for expenditures on roads and bridges, and other moneys which may become available for roads and bridges, except money from the general fund." City of Greeley v. Board of County Commissioners, supra, 644 P.2d at 77. Once money has been placed in the county general fund there is a specific statutory prohibition against its use for road and bridge purposes, among others.

Plaintiffs, however, have not alleged that Adams County is appropriating money from the general fund and placing it in the County Road and Bridge Fund. Because we have determined that there is no statutory mandate that the specific ownership tax be placed in the general fund, Adams County is free to allocate some or all of the money to the County Road and Bridge Fund. See §43-2-202(1) (specifically permitting acceptance into fund of "any other moneys which may become available" for road and bridge construction, maintenance, and administration); cf. Colorado Department of Social Services v. Board of County Commissioners, supra; §26-1-123, C.R.S. (1989 Repl. Vol. 11B) (county social services fund shall consist, *inter alia*, of "such other moneys as may be provided from time to time from other sources").

F.

Finally, plaintiffs assert that the General Assembly intended that road and bridge funds be acquired primarily by the county road and bridge tax levy, which, pursuant to §43-2-202(2), C.R.S. (1993 Repl. Vol. 17), must be shared with the municipalities within the county, and not from specific ownership taxes. Accordingly, plaintiffs contend, specific ownership tax moneys are not moneys which "may become available" for road and bridge purposes. Again, we do not agree.

The collection and distribution of the specific ownership tax is closely tied to vehicle use. Payment occurs at the time of, and is tied to, the registration of vehicles and certain other equipment capable of operation on streets and highways. See Board of County Commissioners v. E.J. Rippy & Sons, 161 Colo. 261, 421 P.2d 461 (1966). The tax is expressly in lieu of all ad valorem taxes on such vehicles and equipment. See Cooper Motors, Inc. v. Board of County Commissioners, 131 Colo. 78, 84, 279 P.2d 685, 688 (1955) (Colo. Const. art. X, §6 "created a class of 'motor vehicles, etc.' within the broad classification of personal property, and commanded that this new 'class of subjects' be separately treated for purposes of taxation.").

Certain of the specific ownership taxes collected are apportioned to each county based upon the mileage of the state highway system located within each county compared with the total mileage of the state highway system. Section 42-3-106(7), C.R.S. (1993 Repl. Vol. 17). Failure to apply for registration of a vehicle and pay the required amounts, including the specific ownership tax, is considered a traffic infraction even though the registration requirement relates to revenue rather than safety. See §42-3-102(1), C.R.S. (1993 Repl. Vol. 17); Carlson v. District Court, 116 Colo. 330, 180 P.2d 525 (1947) (construing predecessor registration statute).

The proceeds from license fees, registration fees, and other charges with respect to the operation of motor vehicles in Colorado, except administration costs, must "be used exclusively for the construction, maintenance, and supervision of the public highways." Colo. Const. art. X, §18.

While we do not infer necessarily that the specific ownership tax is a "charge with respect to the operations of a motor vehicle upon any public highway in this state" as contemplated by Colo. Const. art. X, §18, see Colorado Department of Social Services v. Board of County Commissioners, supra (approving use of ownership tax money for public assistance fund), nevertheless, in our view, at a minimum, allowing specific ownership taxes to be available for county road and bridge funds is not inconsistent with an apparent statutory design of drawing funds for road construction or maintenance from vehicle-related sources of revenue.

Again, although the supreme court did not address the issue directly, in a recent case in which the elimination of an invalid disparity between specific ownership tax rates applicable to interstate and intrastate vehicles ten years old or older was determined as not frustrating "the General Assembly's efforts to raise revenue for the maintenance of its roads and highways," the court impliedly approved the use of specific ownership taxes for such purposes. See Riverton Produce Co. v. State, 871 P.2d 1213, 1228 (Colo. 1994).

From this, we must surmise that, while Adams County is not required to place the specific ownership tax money into the County Road and Bridge Fund, it certainly is not prohibited from doing so. Thus, the partial summary

judgment in favor of plaintiffs on this issue was in error.

II.

Plaintiffs have appealed from the denial of their request for preliminary injunctive relief. In ruling upon plaintiffs' motion for a preliminary injunction, the trial court found there was a reasonable probability of ultimate success, but that the other requirements for preliminary injunctive relief were not met. Our resolution of the issue raised on Adams County's cross-appeal now disposes of the trial court's finding that plaintiffs had a reasonable probability of ultimate success.

Accordingly, the denial of plaintiffs' request for preliminary injunction is affirmed. The judgment declaring that the specific ownership tax revenue may not be allocated to the County Road and Bridge Fund is reversed, and the cause is remanded for entry of a judgment consistent with this opinion.

JUDGE JONES and **JUDGE NEY** concur.

□

Cite as:
18 Brief Times Reporter 1798 (Colo. App. 1994)

No. 94CA0542

Dale E. Jones,
Petitioner

v.

The Industrial Claim Appeals Office of the State of Colorado; Colorado Compensation Insurance Authority; and Tractor Rebuilders, Inc.,
Respondents

October 20, 1994

Review of Order from the Industrial Claim Appeals Office
of the State of Colorado

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No Appearance for Respondent Industrial Claim Appeals Office

Paul Tochtrop, for Respondents Colorado Compensation Insurance Authority and Tractor Rebuilders, Inc.

Division I

Opinion by **JUDGE KAPELKE**

OPINION PREVIOUSLY ANNOUNCED AS NON-PUBLISHED SEPTEMBER 15, 1994
IS NOW SELECTED FOR OFFICIAL PUBLICATION

Dale E. Jones, claimant, seeks review of the final order of the Industrial Claim Appeals Office (Panel) which subtracted the amount of attorney fees from his Social Security payment before calculating the offset for his disability payments from Colorado Compensation Insurance Authority (CCIA). We affirm.

The claimant was awarded Social Security benefits of $30,845.14. Attorney fees of $4,000 were withheld from the award, resulting in a payment of $26,845.14 to the claimant. When CCIA calculated the offset pursuant to §8-42-103(1)(c)(I), C.R.S. (1994 Cum. Supp.), and St. Vincent's Hospital v. Alires, 778 P.2d 277 (Colo. App. 1989), it divided $26,845.14 in half to obtain an offset of $13,422.57. The claimant argued that CCIA should deduct $2,000, one half of the attorney fees, from the amount of the offset. Both the Administrative Law Judge (ALJ) and the Panel concluded that the offset had been correctly calculated. This appeal followed.

The claimant contends that the method of calculation makes him bear a double loss. He argues that St. Vincent's Hospital v. Alires, supra, does not resolve the issue. We disagree.

CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of October, 1995, a true and correct copy of the foregoing was placed in the United States Mail, postage prepaid, addressed to:

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