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FILE NO. S-950

ROADS AND BRIDGES:

**Use of Motor Fuel Tax Funds
to Maintain and Improve Non-
dedicated Subdivision Roads**

Honorable William C. Harris
State Senate, Minority Leader
State of Illinois
State House
Springfield, Illinois 62706

Dear Senator Harris:

This is to respond to your letter wherein you
pose the following questions regarding House Bill 2792

(P.A. 78-1252) and House Bill 2391 (P.A. 78-1274):

1. Since House Bill 2391 did not contain an authorization to use motor fuel tax funds to maintain and improve nondedicated subdivision roads, did that fact repeal the power expressly granted in House Bill 2792 to use such funds for that purpose?

2. In spite of the apparent inconsistency in the two bills, may a township board of auditors expend money received from motor fuel tax funds

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for the maintenance or improvement of non-dedicated subdivision roads established prior to July 23, 1959?

3. In the event such roads are maintained and improved from such funds, do they become by operation of law, a part of the township and district road system providing such roads meet standards as established by the county?

In all matters relevant to this inquiry, House Bill 2792 and House Bill 2391 were identical when originally passed on June 29, 1974. Each bill amended the Highway Code by adding a new section 6-701.8 (Ill. Rev. Stat. 1974 Supp., ch. 121, par. 6-701.8) which permitted local authorities to use 20% of their motor fuel tax funds to maintain and improve nondedicated subdivision roads established prior to July 23, 1959. Each bill also added to existing section 2-103 (Ill. Rev. Stat. 1974 Supp., ch. 121, par. 2-103) a new sentence to provide that such roads, so improved, became part of the township and district road system.

The Governor, on September 5, 1974, vetoed both bills, House Bill 2792 outright and House Bill 2391 with an amendatory veto. The amendatory veto deleted section 6-701.8 which as noted above gave local authorities power to use

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part of motor fuel tax funds to maintain and improve certain nondedicated subdivision roads. It also deleted the new sentence added to existing section 2-103 which new sentence incorporated such roads, when sufficiently improved, into the township and district road system.

On December 4, 1974, the General Assembly overrode the outright veto of House Bill 2792 by a three-fifths vote as permitted by section 9(c) of article IV of the Illinois Constitution. House Bill 2792 became law and became effective. The General Assembly's three-fifths vote established an entirely new scheme to permit use of motor fuel tax funds to maintain and improve nondedicated subdivision roads established prior to July 23, 1959.

Those parts of House Bill 2792 (P.A. 78-1254) relevant to this inquiry provide as follows:

"Section 2. Sections 2-103, 6-702 and 7-202.3 of the 'Illinois Highway Code', approved June 8, 1959, as amended, are amended, and Sections 6-701.8 and 7-202.22 are added thereto, the amended and added Sections to read as follows:

Sec. 2-103. (ch. 121, sec. 2-103)

The township and district road system includes all rural roads to which this Code applies under Section

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1-103 and which are not a part of the State highway system, county highway system or municipal street system, and includes any access road constructed under Section 10-22.36A of The School Code which connects school grounds with such a rural road. The township and district road system also includes such nondedicated subdivision roads as have been maintained or improved, under Section 6-701.8, with motor fuel tax funds allocated for use in road districts.

Sec. 6-701.8. (ch. 121, sec. 6-701.8)

The formula allocation for township and road districts for the distribution of motor fuel tax funds, provided for in Section 8 in the 'Motor Fuel Tax Law', may be used by the highway commissioner, subject to the conditions set out in Sections 6-301, 6-701.1 and 6-701.2 as respects the methods, equipment and materials appropriate for such maintenance or improvement, and, in township counties, with the approval of the board of town auditors, for the maintenance or improvement of nondedicated subdivision roads established prior to July 23, 1959. Any such road improved becomes, by operation of law, a part of the township and district road system providing such road meets standards as established by the county. In township counties, the board of town auditors shall condition its approval, as required by this Section, upon proportional matching contributions, whether in cash, kind, services or otherwise, by property owners in the subdivision where such a road is situated. No more than 20% of such funds allocated under the formula as provided in Section 8 in the 'Motor Fuel Tax Law' and subsequently approved as provided in this Section, may be expended on eligible nondedicated subdivision roads.

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Sec. 6-702. (ch. 121, sec. 6-702)

Payment of money to each county by the Department of Transportation for the purposes stated in Sections 6-701.1 through 6-701.8, shall be made as soon as possible after the allotment is made.

* * *

Later on December 4, shortly after the Governor's veto of House Bill 2792 had been overridden, the General Assembly accepted by a majority vote the Governor's recommendations to House Bill 2391 and on December 30, 1974, the Governor certified the bill. (Ill. Const., art. IV, sec. 9(e).) House Bill 2391 became law with an effective date of July 1, 1975.

In spite of the Governor's evident intentions, the bill he amended and certified was ambiguous. Though it purported to delete section 6-701.8, it provided in the caption that "section 6-701.8 is added thereto * * *" and provided in section 6-702 that the county should receive funds "* * * for the purposes stated in sections 6-701.1 through 6-701.8". The pertinent parts of House Bill 2391 (P.A. 78-1274) provide as follows:

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"Section 1. Sections 2-103, 6-702, 7-202.2 and 7-202.3 of the 'Illinois Highway Code', approved June 8, 1959, as amended, are amended, and Section 6-701.8 is added thereto, the amended and added Sections to read as follows:

Sec. 2-103. [S.H.A. ch. 121, § 2-103]

The township and district road system includes all rural roads to which this Code applies under Section 1-103 and which are not a part of the State highway system, county highway system or municipal street system, and includes any access road constructed under Section 10-22.36A of The School Code which connects school grounds with such a rural road.

Sec. 6-702. [S.H.A. ch. 121, § 6-702]

Payment of money to each county by the Department of Transportation for the purposes stated in Sections 6-701.1 through 6-701.8, shall be made as soon as possible after the allotment is made.

* * *

(emphasis added.)

There is a clear inconsistency between the provisions of House Bill 2792 and those of House Bill 2391. The provisions of House Bill 2792 create a legislative scheme to improve certain nondedicated subdivision roads with motor fuel tax money and to integrate these roads into the township and district road system when they meet county standards. The definition of township and district road system enacted by

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House Bill 2391 does not include nondedicated subdivision roads improved with motor fuel tax funds. Putting this definition into effect on July 1, 1975, would disrupt the legislative scheme of improvement and integration of non-dedicated subdivision roads.

It is a well recognized rule that when inconsistent acts are passed at the same session of the legislature, the later act in point of time repeals the inconsistent provisions of the earlier act. (People ex rel. Hines v. Baltimore & O. S.W.R.R., 366 Ill. 318.) Strict obedience to this rule would result in the repeal of sections 6-701.8 and 2-103, as amended by House Bill 2792, since the scheme of improvement and integration of nondedicated subdivision roads established by these sections are inconsistent with House Bill 2391.

However, the rule that the act passed last is to be obeyed is not applied mechanically. In People ex rel. Schlaeger v. Mattes, 396 Ill. 348, the court pointed out that the fundamental question, as in all cases of statutory construction, is the intention of the legislature rather than the chronological priority of acts, saying at pages 353 and 354:

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"It is well settled that where acts are passed at the same session, containing conflicting provisions, the whole record of the legislation will be examined in order to ascertain the legislative intent, and in all cases the primary question is the intention of the legislature, rather than the technical priority of the passage of the acts."

When inconsistent acts are passed during the same session of the legislature, the primary question in resolving the conflict is the intention of the legislature. Canons of construction are only aids to this determination and should never be followed to the extent of defeating the definite intent of the legislature. The whole record of the legislation is open to ascertain this intent. Apex Motor Fuel Co. v. Barrett, 20 Ill. 2d 395; Hull, The Effect of More than One Amendment of a Section at the Same Session of the General Assembly, 54 Ill. Bar J. 212 (1965).

The legislative record of House Bill 2391 gives no evidence of an intention to abandon the scheme of improvement and integration of nondedicated subdivision roads. According to section 6-701.8 of the Highway Code, townships and road districts can spend no more than 20% of

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motor fuel tax money allotted to them on the improvement and maintenance of nondedicated subdivision roads established prior to July 23, 1959. With such a limit on expenditure, relatively few such roads could be sufficiently improved to meet county standards in seven months. The version of section 2-103 of the Highway Code enacted in House Bill 2391 would limit to less than seven months the time in which roads improved with motor fuel tax funds could become part of the township and district road system. It is error to impute to the legislature an unreasonable or improbable action on the basis of the rule that the last legislative enactment must be obeyed. (S. Buchsbaum & Co. v. Gordon, 389 Ill. 493.) To obey the definition of township and district road system enacted by House Bill 2391 would be to impute a highly improbable action to the legislature. It would mean that the legislature, minutes after having put into effect a scheme for the improvement and integration of nondedicated subdivision roads without any time limitation, deliberately intended to restrict the working of the scheme to less than seven months.

The legislative history of House Bill 2391 shows no such deliberate intent to restrict the functioning of the

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provisions in House Bill 2792. Since the Governor's amendatory veto and his certification of House Bill 2391 both referred to section 6-701.8 as being added and provided in section 6-702 for funds to be distributed for "the purposes stated in * * * section 6-701.8", it is possible that the General Assembly may have failed to realize section 6-701.6 had not actually been included in the bill. Even had the omission been clear, the amended bill would then have been essentially a mere reenactment of section 2-103 as it had read prior to the passage of House Bill 2792. As the court in Klemme et al v. Drainage Dist. No. 5 of Crete Tp., 380 Ill. 221, noted such a reenactment does not necessarily indicate a legislative intent to repeal the intermediate act, saying at page 224:

"Another canon of construction or aid to the ascertainment of the legislative intent is the principle (which, of course, must yield to legislative intent if the same be otherwise,) that a later law which is merely a reenactment of a former law does not repeal an intermediate act which has qualified or limited the first one, but the intermediate act will be deemed to remain in force and to qualify or modify the new act in the same manner as it did the first. 25 R.C.L. p. 935, par. 187."

The fact that the General Assembly adopted a bill by a majority vote, either because it was confusing or because they felt it was merely a reenactment of a previous statute,

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cannot possibly affect a bill with an entirely new legislative scheme which the same General Assembly had just adopted by a three-fifths vote.

That the legislature did not intend to abandon the scheme created by House Bill 2792 is further evidenced by the fact that House Bill 2391 amends section 6-702 of the Highway Code. That section requires the Department of Transportation to pay motor fuel tax money "as soon as possible" to counties for certain purposes. House Bill 2391 amended section 6-702 to expand the number of purposes. This expansion included the purpose of maintaining and improving nondedicated subdivision roads established prior to July 23, 1959, since the amendment explicitly includes section 6-701.8. The amendment of section 6-702 counteracts with the definition of township and district road system in House Bill 2391. To give effect to that definition would mean at the same time the legislature was insuring that townships receive motor fuel tax funds to maintain and improve nondedicated subdivision roads, it was blocking the integration of these roads into the township and district road system. Such an action is

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improbable since the original purpose of improving nondedicated subdivision roads with motor fuel taxes was to integrate them into the township and district road system once they meet county standards. The mere fact that the definition of township and district road system in House Bill 2391 was passed minutes after the definition in House Bill 2792 cannot support an improbable result. The clear intention of the legislature was to continue to improve nondedicated subdivision roads with motor fuel tax money and to integrate them into the township and district road system.

It is my conclusion that the later passage of House Bill 2391 does not repeal the scheme of improvement and integration of nondedicated subdivision roads implemented by House Bill 2792. The rule that a later legislative enactment must be obeyed cannot be used to defeat the clear intention of the legislature. It is my opinion that the intention of the legislature is that township auditors may continue to expend motor fuel tax funds to maintain and improve nondedicated subdivision roads established prior to July 23, 1959, and also that once these roads meet the

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standards established by the county, they become part of the township and district road system by operation of law.

Very truly yours,

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