

STATE OF WEST VIRGINIA

**FULL PERFORMANCE EVALUATION OF THE
DIVISION OF MOTOR VEHICLES
Motorcycle Safety and Education Program**

**Lack of Revenue and
Expenditures Analysis and
Poor Contract Oversight Has
Jeopardized the Motorcycle
Safety Program**

**OFFICE OF LEGISLATIVE AUDITOR
Performance Evaluation and Research Division
Building 1, Room W-314
State Capitol Complex**

**CHARLESTON, WEST VIRGINIA 25305
(304) 347-4890**

July 2000

PE-00-17-175

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July 2000

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Antonio E. Jones, Ph.D.
Director

July 9, 2000

The Honorable Edwin J. Bowman
State Senate
129 West Circle Drive
Weirton, West Virginia 26062

The Honorable Vicki V. Douglas
House of Delegates
Building 1, Room E-213
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0470

Dear Chairs:

Pursuant to the West Virginia Sunset Law, we are transmitting a Full Performance Evaluation of the *Division of Motor Vehicles - Motorcycle Safety and Education Program*, which will be presented to the Joint Committee on Government Operations on Sunday, July 9, 2000. The issue covered herein is "*Lack of Revenue and Expenditures Analysis and Poor Contract Oversight has Jeopardized the Motorcycle Safety Program.*"

We conducted an exit conference with the *DMV* on July 5, 2000. We received the agency response on July 7, 2000.

Let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia
Acting Director

JS/wsc

TABLE OF CONTENTS

Executive Summary	3
Review, Objective, Scope, and Methodology	5
Background	7
Issue Area 1: The DMV’s Lack of Revenue and Expenditures Analysis and Poor Contract Oversight Has Jeopardized the Motorcycle Safety	9

LIST OF TABLES

Table 1: Motorcycle Safety Fund Revenue and Disbursements	10
Table 2: Administrative Costs Compared to Number of Classes	11
Table 3: Cost per Student	12
Appendix A: Full Cost Breakdown Worksheet	17
Appendix B: State Auditor’s Letter	21
Appendix C: Letter from DMV Commissioner Regarding State Road Funds	25
Appendix D: Transmittal Letter to Agency	47
Appendix E: Agency Response	51

Executive Summary

Issue Area 1: The DMV's Lack of Revenue and Expenditures Analysis and Poor Contract Oversight Has Jeopardized the Motorcycle Safety Program.

The account balance for the Motorcycle Safety Program is expected to be depleted in December 2000. The Motorcycle Safety Fund has dropped from a high of over \$300,000 in FY 1995 to only \$58,878 in FY 2000. Program costs have been more than twice the revenue since 1997. Program disbursements have exceeded revenue for five of the past six years. Disbursements from the fund are used to pay a contractor for administering the program.

There are two primary causes of the budget shortfall. The first is that yearly revenues and contract costs were not analyzed to determine if the fund could support the program costs. The second cause is that a mandated annual performance evaluation of the program has not been conducted.

In order to keep the Motorcycle Safety Education Program, the Division of Motor Vehicles needs to determine if contract costs are reasonable, or if they can be better managed. The Division also needs to find an adequate and consistent source of revenue to support the program. Yearly evaluations of the program will give the DMV and the legislature a better understanding of the costs associated with the program. The intent of this legislation was to reduce motorcycle crashes and fatalities by providing a statewide delivery system for rider and instructor training courses. Until DMV provides better program management, including contract oversight and cost controls, the availability of the program will be in jeopardy.

Review, Objective, Scope and Methodology

This full performance review of the *West Virginia Division of Motor Vehicles* (DMV) focuses on the *Motorcycle Safety Education Program*. It is required and authorized by the West Virginia Sunset Law, Chapter 4, Article 10, Section 5 of the West Virginia State *Code*, as amended. The **objective** of this review is to evaluate the effectiveness and efficiency of the Program. The time period examined was from 1995 to 2000. The **scope** of this report focuses on: the bid procedure for the Safety Program contract; the vendor's adherence to the contract and; the DMV's oversight of the contract and the program. **Methodology** included, a review of invoices, budget documents and contracts (including change orders), examination of class rosters and a review of meeting minutes. This performance evaluation was conducted in accordance with **Generally Accepted Government Auditing Standards** (GAGAS) as set forth by the Comptroller General of the United States.

Background

Motorcycle Safety Program

The Motorcycle Safety Education Program was established in 1990 by §17B-1D-2 of the West Virginia State *Code*, as amended. The program is to be administered by the Commissioner of the Division of Motor Vehicles and includes rider and instructor training courses. The statute allows that the program may also include the following: efforts to enhance public motorcycle safety awareness; alcohol and drug effects awareness for motorcyclists; driver improvement efforts; licensing improvement efforts; program promotion and; other efforts to enhance motorcycle safety through education.

Motorcycle Safety Fund

The Motorcycle Safety Fund was created by §17B-1D-7, as amended and is a special revolving fund. It consists of moneys received from motorcycle licensing fees (\$5.00), not including instruction permit fees which are allocated to the Motorcycle Driver Licensing Fund, one-half (42:00) of the \$4.00 received from the motorcycle safety fee assessed with each motorcycle registration and any other moneys allocated to the fund.

Issue Area 1: The DMV's Lack of Revenue and Expenditures Analysis and Poor Contract Oversight Has Jeopardized the Motorcycle Safety Program.

The Account Balance for the Motorcycle Safety Education Program is expected to be depleted in December 2000. The Motorcycle Safety Fund has dropped from a high of over \$300,000 in FY 1995 to only \$58,878 in FY 2000. Program costs have been more than twice the revenue since FY 1997. Consistent with §17B-1D-5 of the state *Code*, DMV chose to hire a contractor to conduct the Motorcycle Safety Education Program. Disbursements from the fund are used to pay the contractor for administering the program. Revenues deposited into the fund consist exclusively of the following sources:

- Motorcycle driver license fee (\$5);
- One-half (\$2) of the motorcycle safety fee assessed to each motorcycle registration; and
- Any special allocations.

DMV renews the contract annually and rebids it every three years. In the current contract, DMV agrees to pay the contractor \$9087.75 a month for administrative expenses, in addition to class reimbursements. Individuals enrolled in the program pay a \$50.00 tuition fee directly to the contractor. Administrative costs for the program have more than doubled since 1997. The DMV expects a funding crisis in December 2000.

Causes of Budget Shortfall

The DMV sought assistance from the National Highway Traffic Safety Administration (NHTSA) in April 1999. NHTSA provides assessments to state highway safety programs at the request of the state agency. In its assessment of the West Virginia Motorcycle Safety Education Program, NHTSA identified budgetary problems. The two primary causes for the budget shortfall are as follows:

- Yearly revenues and contract costs were not analyzed to determine if the fund could support the program costs; and
- A mandated annual performance evaluation of the program, which could determine if contract costs are reasonable, has not been conducted.

Table 1 indicates that the program's disbursements have exceeded revenue for five of the past six years.

Table 1 Motorcycle Safety Fund - Revenue and Disbursements				
Fiscal Year	Revenue	Disbursements	Start Balance	End Balance
95	\$42,493	\$54,108	\$322,878	\$311,263
96	\$49,141	\$33,904	\$311,263	\$326,500
97	\$45,422	\$107,208	\$326,500	\$264,714
98	\$49,884	\$102,297	\$264,714	\$212,301
99	\$49,538	\$109,752	\$212,301	\$152,087
00*	\$47,803	\$142,012	\$152,087	\$58,878

Source: 2000 PERD analysis of FIMS information. *Fiscal Year 00 figures end on June 19, 2000.

Administrative Costs By Contractor Have Doubled

Contract oversight should include an analysis of whether fixed costs are reasonable. For example, administrative costs have increased by \$4619.58 a month since 1997 and remain the same whether or not classes are taught. Current administrative costs of \$9087.75 per month (\$109,053 per year) were itemized and accepted in the bid process. The contract requires the vendor to give a single monthly cost for all administrative costs. (The full cost breakdown worksheet is Available in Appendix A). As administrative costs escalated, DMV should have required detailed invoices in order to determine the validity of contract expenses. **Since DMV has not conducted a financial audit to determine if costs are reasonable, the DMV will not be able to bring expenses under control.** Table 2 compares administrative costs to the number of classes taught.

Table 2
Administrative Costs Compared to Number of Classes

Month	FY 2000 No. of Classes	FY 2000 Admin. Cost	FY 1999 No. of Classes	FY 1999 Admin. Cost	FY 1998 No. of Classes	FY 1998 Admin. Cost	FY 1997 No. of Classes	FY 1997 Admin. Cost
July	18	\$9087	15	\$4,468	3	\$4,484	11	\$4,468
Aug.	7	\$9087	10	\$4,468	13	\$4,484	14	\$4,468
Sept.	14	\$9087	7	\$4,468	13	\$4,484	13	\$4,468
Oct.	13	\$9087	19	\$4,468	11	\$4,484	11	\$4,468
Nov.	0	\$9087	0	\$4,468	0	\$4,484	0	\$4,468
Dec.	0	\$9087	0	\$4,468	0	\$4,484	0	\$4,468
Jan.	0	\$9087	0	\$4,468	0	\$4,484	0	\$4,468
Feb.	0	\$9087	0	\$4,468	0	\$4,484	0	\$4,468
Mar.	4	\$9087	2	\$4,468	0	\$4,484	0	\$4,468
Apr.	15	\$9087	13	\$4,468	7	\$4,484	7	\$4,468
May			14	\$4,468	9	\$4,484	9	\$4,468
June			10	\$4,468	14	\$4,484	7	\$4,468
Total	71	\$90,877	90	\$53,717			72	\$53,618

Source: 2000 PERD analysis of FIMS cover sheets and invoices.

One result of this lack of oversight is that the contractor was overpaid. The contractor is paid \$453.21 for small classes containing six to eight students and \$540.57 for classes containing nine to twelve students. In September 1999, the contractor submitted an invoice to DMV requesting payment for 14 small classes at a cost of \$6,344.94 (\$453.21 per class). DMV paid the contractor for 14 classes when in fact the contractor only taught seven classes, according to the contractor's own documentation. **DMV did not review the information provided with the invoice. This lack of oversight allowed the contractor to be overpaid \$3,172.47.**

DMV Provides Equipment to the Contractor

The contract requires the contractor to provide equipment, including audio-visual equipment and motorcycles. A 1999 inventory indicates that the DMV provided the contractor with: three VCRs; one television; four overhead projectors; and two slide projectors. DMV has also provided the contractor with eight motorcycles which were donated by the Motorcycle Safety Foundation.

Despite providing these resources, which the contractor is obligated to provide, DMV saw no reduction in cost.

DMV Limited Tuition Paid By Students

Tuition paid by students could be increased if an annual evaluation (or financial audit) determines that administrative costs are reasonable. A higher tuition rate should be considered by the DMV to offset costs to the program. Through the contract, the DMV limits the amount of tuition the instructor may charge. The current tuition rate is \$50.00 up from \$25.00 in 1996. In a survey of 43 states conducted by the DMV, tuition rates for in-state applicants range from \$15.00 in Indiana to \$100.00 in New York and Vermont. In West Virginia, the Motorcycle Safety Education Program has provided training to a very small percentage of licensed motorcyclists since its inception in 1996. Since 1996, 1,387 individuals have successfully completed the program and have become licensed motorcycle operators. In the state of West Virginia, 78,853 individuals hold motorcycle licenses or Class F endorsements. Therefore, **1.75 percent of licensed motorcyclists have successfully completed the program.** The average cost per student completing the program is available in Table 3.

Calendar Year	# Students Graduating*	Tuition Paid by Students	Total Cost per Student Trained
1996**	189	\$4,725	\$365
1997	282	\$14,100	\$407
1998	435	\$21,750	\$279
1999	481	\$24,050	\$326
TOTAL	1387	\$64,525	\$347

Source: 2000 PERD analysis of FIMS invoices, class completion reports and annual reports. *The number of students paying for classes is greater than the number graduating; therefore, the amount of tuition received by the contractor is actually greater than that used for this analysis. The cost per student includes the amount paid to the contractor by DMV. **In 1996, tuition was \$25.00.

The Division of Motor Vehicles should consider increasing student contributions to offset rising program costs if current contract costs are determined to be reasonable after a financial audit is conducted. Local driving schools, which train individuals to operate automobiles, charge a minimum of \$359 to provide classroom and in car training. Participants in these schools pay full market value for their training. Through the contract, DMV limited the contractor to \$50.00 per student. Thus, DMV provides significant subsidies for the training. Had the DMV analyzed program costs and revenues it could have determined that a \$50.00 tuition fee was not adequate. Successful completion of the Motorcycle Safety Education Program allows an individual to receive a motorcycle endorsement on his or her driver's license. The statute allows the Commissioner of DMV to waive the skills test requirement for these individuals. **Once an individual completes training at a driving school, the individual must still take and pass the skills test in order to**

become a licensed motor vehicle operator. The state of West Virginia does not subsidize their training.

DMV is Considering Using State Road Funds for the Program

DMV currently plans to use State Road Funds to cover expenses. The State Auditor's Office determined such a transfer is not permitted by state law. The Auditor's Office stated:

Thus, monies appropriated to the State Road Fund may only be utilized for the purposes provided thereto by the Legislature. Transfers may only occur upon the express Legislative authorization and no such authorization appears within the substantive law delineating the State Road Fund...

The statute clearly provides authorization for only three uses of the money collected pursuant thereto. The motorcycle safety fund is not one of those uses. Based on the foregoing, it is our opinion that a transfer between the State Road Fund and the Motorcycle Safety Fund would not be authorized. (The complete letter is available in Appendix B.)

The DMV disagrees with the State Auditor's opinion on the use of State Road Funds. The complete response from the Commissioner of DMV is available in Appendix C. If the State Auditor is correct in its legal opinion regarding the use of State Road Funds, then DMV will have to seek additional funding from another source. However, if DMV is correct in its legal opinion, then funds will be available to cover costs for this program.

Driver License testing responsibilities will be transferred to the DMV from the State Police in July, 2000. NHTSA reported that *it is assumed that the funds deposited for the motorcycle licensing program account will be combined with the safety education program account.* However, the state Auditor did not combine the funds and kept the License Examination Fund separate from the Motorcycle Safety Fund. DMV will not be able to use license examination funds to augment the program.

No Annual Evaluation has been Conducted

In accordance with §17B-1D-2(b), the Commissioner of DMV appointed a program coordinator to oversee and direct the program, and to conduct an annual evaluation. **The Legislative Auditor found no documentation or evidence to indicate that a single evaluation of the program had been conducted by DMV's Program Coordinator before agreeing to increased fixed costs in the contract.** The West Virginia Motorcycle Safety Program Assessment, conducted by the National Highway Traffic Safety Administration (NHTSA) in April 1999 also affirms that *no formal evaluation of the Program has been completed.* NHTSA further stated:

Legislation requires the Program Coordinator to annually evaluate the Program. No

evaluation criteria has been established and no program evaluation has been conducted.

NHTSA advises that: ***Each State should evaluate motorcycle safety program activities regularly to ensure that programs are effective and scarce resources are allocated appropriately.*** According to NHTSA, evaluations should:

- Use available traffic records and other injury control data systems effectively;
- Be included in initial program planning; and
- Be conducted regularly and used to guide future program activities.

NHTSA recommended that the DMV *appoint a full-time coordinator with the expertise to direct the program.* DMV has not provided a full-time coordinator. NHTSA also recommended that the DMV:

Develop a comprehensive strategic plan for the Motorcycle Safety Program with goals, objectives and projects that are achievable, measurable and time specific. This plan should address continued funding, management and Program support.

Develop an evaluation process for yearly comprehensive Program reviews. This must include financial audits of the Program contractor. (Emphasis added.)

According to the Motorcycle Safety Education Program Coordinator, he has not been able to implement these recommendations due to a lack of funding, a lack of expertise and a lack of time. The program Coordinator also serves as a Driver License Manager with the Driver Services Section of DMV. He devotes an average of two hours a day to his role as Program Coordinator. The contractor provides the Program Coordinator with a yearly progress report. It includes information on the number of accidents; number and location of training sites and; number of students trained. The DMV does not determine the accuracy of these reports.

Conclusion

The Motorcycle Safety Education Program provides training to those individuals who are inexperienced and could not pass a skills test for licensure. The program may prevent illegal and unsafe operation of motorcycles on the state's roadways. The program is beneficial to the citizens of West Virginia, however, it lacks oversight and a sufficient funding source.

In order to keep the Motorcycle Safety Education Program, the Division of Motor Vehicles needs to determine if the contract costs are reasonable, or if they can be better managed. The DMV also needs to find an adequate and consistent source of revenue to support the program. Yearly evaluations of the program will give the DMV and the Legislature a better understanding of the costs associated with the program. The intent of this legislation was to reduce motorcycle crashes and fatalities by providing a statewide delivery system for rider and instructor training courses.

The DMV may need to terminate the contract if supplemental funding is not found. Article M, Section 3 of the current contract allows the contract to become *null and of no effect after June*

30 in the event funds are not appropriated or otherwise available for these services. Until DMV provides better program management, including contract oversight and cost controls, the availability of the program will be in jeopardy.

Recommendation 1:

The Division of Motor Vehicles needs to exercise greater diligence in monitoring contract expenses.

Recommendation 2:

The Division of Motor Vehicles should consider raising tuition rates, motorcycle license fees and motorcycle safety fees attached to motorcycle registrations, or a combination thereof in order to meet program expenses in the future.

Recommendation 3:

The Division of Motor Vehicles should develop an evaluation methodology and conduct its first yearly evaluation of the program for Fiscal Year 2000.

APPENDIX A
Full Cost Breakdown Worksheet

COST BREAKDOWN WORKSHEET

ADMINISTRATIVE COSTS	TOTAL COST	COST PER MONTH
Salaries, fringe benefits	57,584.00	4,798.66
Space rental	3,600.00	300.00
Utility costs	1,056.00	88.00
Communications system	4,200.00	350.00
Postage/delivery services	800.00	66.67
Photocopying	504.00	42.00
Office supplies	672.00	56.00
Travel .83 @ MILE X 5,783	4,800.00	400.00
Training motorcycle rental	6,000.00	500.00
Classrooms&range fees	15,523.00	1,293.58
Storage/security	9,114.00	759.50
Instructor training, updates	4,600.00	383.33
Accounting	600.00	50.00
TOTALS	109,053.00	9,087.00

APPENDIX B
State Auditor's Letter



State of West Virginia

Glen B. Gainer III
State Auditor
Barbara Harmon-Schamberger
General Counsel

Office of the State Auditor
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Charleston, West Virginia 25305

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June 1, 2000

Harvey S. Burke
Research Manager
West Virginia Legislature
Performance Evaluation and Research Division
Building 1, Room W-314
1900 Kanawha Blvd, East 25305-0610

RECEIVED

JUN 1 2000

**RESEARCH AND PERFORMANCE
EVALUATION DIVISION**

Dear Mr. Burke:

I am writing in response to your correspondence addressed to Paul Mollohan, dated May 23, 2000, regarding a proposed transfer of monies from the State Road Fund to the Motorcycle Safety Fund. State law specifically provides that no department may transfer monies between items of appropriations or otherwise expend monies designated for a particular purpose except for that purpose without specific authorization from the legislature. West Virginia Code §5A-2-17 states:

Notwithstanding any other provision of law to the contrary, there shall be no transfer of amounts between items of appropriations nor shall moneys appropriated for any particular purpose be expended for any other purpose by any spending unit of the executive, legislative or judicial branch except as hereinafter provided:

(1) Any transfer of amounts between items of appropriations for the executive branch of state government shall be made only as specifically authorized by the Legislature.

Thus, monies appropriated to the State Road Fund may only be utilized for the purposes provided thereto by the Legislature. Transfers may only occur upon express Legislative authorization and no such authorization appears within the substantive law delineating the State Road Fund.

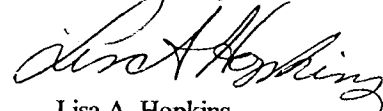
West Virginia Code §17-3-1, provides as follows:

...When any money is collected from any of the sources aforesaid, it shall be paid into the state treasury by the officer whose duty it is to collect and account for the same, and credited to the state road fund, and **shall be used only for the purposes** named in this chapter, which are: (a) **To pay the principal and interest** due on all state bonds issued for the benefit of said fund, and set aside and appropriated for that purpose; (b) **to pay the expenses of the administration** of the road department; and (c) **to pay the cost of maintenance, construction, reconstruction and improvement** of state roads. (emphasis added)

The statute clearly provides authorization for only three uses of the money collected pursuant thereto. The motorcycle safety fund is not one of those uses. Based on the foregoing, it is our opinion that a transfer between the State Road Fund and the Motorcycle Safety Fund would not be authorized by law.

I hope this analysis is of assistance. Please feel free to contact Paul Mollohan or myself at 558-2251, if you have any additional questions or concerns.

Sincerely



Lisa A. Hopkins
Assistant General Counsel

APPENDIX C

Letter From DMV Commissioner Regarding State Road Funds



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317-0010

Cecil H. Underwood
Governor

Samuel H. Beverage, P. E.
Acting Secretary

June 22, 2000

Joe E. Miller
Commissioner

Mr. Harvey R. Burke
Research Manager
West Virginia Legislature
Performance Evaluation and
Research Division
Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610

RECEIVED

JUN 27 2000

**RESEARCH AND PERFORMANCE
EVALUATION DIVISION**

Dear Mr. Burke:

Enclosed is a research effort conducted by one of the DMV attorneys regarding the legality issue of transferring state road fund monies to the Motorcycle Safety Fund.

It remains my opinion that such a transfer is authorized to "support the costs of administering the duties of the Division of Motor Vehicles." The Motorcycle Safety Fund is not an appropriation as alluded to in the Auditor's Opinion. It is an account within the DMV's organizational and financial structure. Were it to be an appropriation then I would understand the Auditor's conclusion, but that is not the case.

Now, after having argued in favor of the transfer of funds, it also remains my opinion that the Motorcycle Safety Committee is of very limited value and should be terminated. So addressing the funding may be a mute point if you also agree. Similar committees are not in place for other driving areas such as Class A cars and trucks and commercial vehicles and they get along very well. In view of this it doesn't make sense to have a committee that focuses on just one area - Motorcycles.

I trust that the enclosed information will be helpful as you near a conclusion on the audit. Should you have further questions, or need additional information, I would be pleased to hear from you.

Sincerely,

Joe E. Miller
Commissioner

JEM/ec
Enclosure

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WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317-0010

Cecil H. Underwood
Governor

Samuel G. Bonasso, P.E.
Secretary

Joe E. Miller
Commissioner

MEMORANDUM

TO: Joe E. Miller
FROM: Adam Holley
DATE: June 16, 2000
RE: Motorcycle Safety Fund

I have read the opinion from the State Auditor's Office provided to Mr. Harvey Burke of the Performance Evaluation and Research Division of the West Virginia Legislature concerning the transfer of funds with the Motorcycle Safety Education Program. I would suggest that the Division provide a copy of Contractors Ass'n v. West Virginia DPS, 189 W. Va. 685, 434 S.E.2d 357 (1993), to Mr. Burke.

In that case, the West Virginia Supreme Court discussed, et al., the Motorcycle Safety Fund. The Court included the costs of administering the duties of the Division of Motor Vehicles as one of the constitutional uses of the state road fund under West Virginia Constitution Article VI, Section 52. The Court recognized that administration of the Motorcycle Safety Education Program and the Motorcycle Licensing Program were duties of the Division.

The code section cited by the Auditor's Office, West Virginia Code §17-3-1, is the statutory implementation of the constitutional provision interpreted by the Court in the Contractors Ass'n case. The conclusions drawn by the Auditor's Office are contrary to the conclusions of the Supreme Court.

Based upon the Supreme Court opinion, the Division can use money appropriated from the state road fund to pay for the costs of the Motorcycle Safety Education Program. The costs to administer that program are legitimate administrative costs of the Division. The Motorcycle Safety Fund can only be used for the specific administrative costs delineated in West Virginia Code §17B-1D-7, and the Division has not proposed to spend those funds in any other manner.

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Motorcycle Safety Fund
Page 2

The other code section cited by the Auditor's Office does not seem to apply to the situation the Division proposed to Mr. Burke's Office. West Virginia Code §5A-2-17 refers to transfers between items of appropriation. The Motorcycle Safety Fund is not an appropriated fund. It is a special revolving fund dedicated to certain purposes by statute and it is listed as a non-appropriated fund in our budget. The Division proposed to pay administrative costs of the Motorcycle Safety Education Program from its appropriated budget. The Division is entitled to pay its administrative costs from state road fund appropriations according to the Supreme Court's opinion and the plain language of West Virginia Code §17A-2-22.

CONTRACTORS ASSOCIATION OF WEST VIRGINIA, a West Virginia Corporation, and the
Flexible Pavements Council of West Virginia, an Unincorporated Association,
Plaintiffs Below, Appellees,
v.
WEST VIRGINIA DEPARTMENT OF PUBLIC SAFETY, DIVISION OF PUBLIC SAFETY; J.R. Buckalew, Superintendent of West Virginia Department of Public Safety; West Virginia Department of Transportation, Division of Motor Vehicles; and **Jane Cline**, Commissioner of the West Virginia Department of Transportation, Division of Motor Vehicles, Defendants Below, Appellants.

No. 21519.

Supreme Court of Appeals of West Virginia.

Submitted Feb. 2, 1993.

Decided March 25, 1993.

Brotherton, Justice Dissenting Aug. 23, 1993.

State highway contractors sought declaratory judgment regarding Division of Motor Vehicles' reimbursements to Department of Public Safety and state road fund. The Circuit Court, Kanawha County, Paul Zakaib, Jr., J., found statutes to be unconstitutional and ruled in favor of contractors. Appeal was taken by Department of Public Safety, its Superintendent, Department of Transportation, Division of Motor Vehicles, and Transportation Commissioner. The Supreme Court of Appeals, McHugh, J., held that: (1) cost of administering duties of Division of Motor Vehicles is "cost of administration" in constitutional article permitting state road fund to be used only for statutory refunds, cost of administration and collection, or construction, reconstruction, repair, and maintenance of public highways; (2) safety activities directly related to efficiency of highway are "maintenance of public highways" within meaning of the constitutional article; and (3) use of inspection sticker fees to construct and operate police barracks is not directly related to ensuring highway safety and, therefore, is unconstitutional.

Affirmed in part and reversed in part.

Brotherton, J., dissented and filed opinion.

[1] AUTOMOBILES ⇨49
48Ak49

Fee of \$25 which is collected from businesses wishing to engage in license service business and is to be used by Division of Motor Vehicles to administer licensing of license service businesses is licensing fee related to motor vehicles, is not "business license tax," and, therefore, may constitutionally be used only for statutory refund, costs of administration and collection, or for construction, reconstruction, repair, and maintenance of public highways. Code, 17A-6B-3(b); Const. Art. 6, § 52.

See publication Words and Phrases for other judicial constructions and definitions.

[1] LICENSES ⇨1
238k1

Fee of \$25 which is collected from businesses wishing to engage in license service business and is to be used by Division of Motor Vehicles to administer licensing of license service businesses is licensing fee related to motor vehicles, is not "business license tax," and, therefore, may constitutionally be used only for statutory refund, costs of administration and collection, or for construction, reconstruction, repair, and maintenance of public highways. Code, 17A-6B-3(b); Const. Art. 6, § 52.

See publication Words and Phrases for other judicial constructions and definitions.

[2] AUTOMOBILES ⇨49
48Ak49

Fee of \$35 for inspection of salvaged or reconstructed vehicles is "revenue derived from motor vehicles" within meaning of constitutional article permitting state road fund revenue derived from motor vehicles to be used only for statutory refund, costs of administration and collection, or construction, reconstruction, repair, and maintenance of public highways. Const. Art. 6, § 52; Code, 17A-4-10.

See publication Words and Phrases for other judicial constructions and definitions.

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[3] HIGHWAYS ⇔ 99.1

200k99.1

Formerly 200k991/4

Cost of administering duties of Division of Motor Vehicles is "cost of administration" in constitutional article permitting state road fund to be used only for statutory refund, cost of administration and collection, or construction, reconstruction, repair, and maintenance of public highways. Const. Art. 6, § 52; Code, 17-3-1, 17A-2-22, 17A-3-3.

See publication Words and Phrases for other judicial constructions and definitions.

[4] CONSTITUTIONAL LAW ⇔ 14

92k14

If language in constitutional provision is clear and without ambiguity, plain meaning is to be accepted.

[5] HIGHWAYS ⇔ 99.1

200k99.1

Formerly 200k991/4

Safety activities directly related to efficiency of highway are "maintenance of public highways" within meaning of constitutional article permitting state road fund to be used only for statutory refunds, cost of administration and collection, and construction, reconstruction, repair, and maintenance of public highways. Const. Art. 6, § 52.

See publication Words and Phrases for other judicial constructions and definitions.

[6] HIGHWAYS ⇔ 99.1

200k99.1

Formerly 200k991/4

Road patrol, traffic, and traffic court activities directly affect safety of highways and, therefore, are "maintenance of public highways" within meaning of constitutional article permitting state road fund to be used only for statutory refunds, cost of administration and collection, and construction, reconstruction, repair, and maintenance of public highways. Code, 15-2-12(i); Const. Art. 6, § 52.

See publication Words and Phrases for other judicial constructions and definitions.

[7] HIGHWAYS ⇔ 99.1

200k99.1

Formerly 200k991/4

To extent that inspection sticker fees are used to carry out duties of Division of Motor Vehicles, they are "cost of administration" as used in constitutional

article permitting state road fund to be used only for statutory refunds, cost of administration and collection, and construction, reconstruction, repair, and maintenance of public highways. Const. Art. 6, § 52; Code, 17C-16-5.

See publication Words and Phrases for other judicial constructions and definitions.

[8] HIGHWAYS ⇔ 99.1

200k99.1

Formerly 200k991/4

Use of inspection sticker fees to construct and operate police barracks is not directly related to ensuring highway safety and, therefore, does not involve "maintenance of public highways" within meaning of constitutional article permitting state road fund to be used only for statutory refunds, cost of administration and collection, and construction, reconstruction, repair, and maintenance of public highways. Const. Art. 6, § 52; Code, 17C-16-5.

See publication Words and Phrases for other judicial constructions and definitions.

[9] HIGHWAYS ⇔ 99.1

200k99.1

Formerly 200k991/4

Registration fee that is used by Division of Motor Vehicles to administer compulsory insurance program involves cost of administering duties of Division and, therefore, is "cost of administration" within meaning of constitutional article permitting state road fund to be used only for statutory refunds, cost of administration and collection, and construction, reconstruction, repair, and maintenance of public highways. Code, 17A-3-3(a)(7); Const. Art. 6, § 52.

See publication Words and Phrases for other judicial constructions and definitions.

[10] HIGHWAYS ⇔ 99.1

200k99.1

Formerly 200k991/4

Motorcycle driver licensing fees for motorcycle safety education program and driver licensing program administered by Division of Motor Vehicles are "cost of administration" within meaning of constitutional article permitting state road fund to be used only for statutory refunds, cost of administration and collection, and construction, reconstruction, repair, and maintenance of public highways. Const. Art. 6, § 52; Code, 17B-1D-2, 17B-1D-7, 17B-2-7(b).

[11] HIGHWAYS ⇨99.1

200k99.1

Formerly 200k991/4

Fees from salvage and reconstructed vehicle inspections are "cost of administration" within meaning of constitutional article permitting state road fund to be used only for statutory refunds, cost of administration and collection, and construction, reconstruction, repair, and maintenance of public highways; the fees are to be used to administer duty of Division of Motor Vehicles. Const. Art. 6, § 52; Code, 17A-4-10(c).

[12] HIGHWAYS ⇨99.1

200k99.1

Formerly 200k991/4

License service certification fee is "cost of administration" within meaning of constitutional article permitting state road fund to be used only for statutory refunds, cost of administration and collection, and construction, reconstruction, repair, and maintenance of public highways; fee is used to administer duty of Division of Motor Vehicles. Const. Art. 6, § 52; Code, 17A-6B-3(b).

[13] STATES ⇨114

360k114

Division of Motor Vehicles' reimbursements to Department of Public Safety for road patrol, traffic, traffic court, operator examinations, and assistance with administrative duties are related to duties of Division and, therefore, are statutorily permitted. Code, 15-2-12(i).

[14] STATES ⇨114

360k114

"Relating to" within meaning of statute requiring Division of Motor Vehicles to reimburse Department of Public Safety for services relating to duties and obligations of Division requires that connection exist between two subjects, not that subjects be the same. Code, 15-2-12(i).

See publication Words and Phrases for other judicial constructions and definitions.

****359 *687 Syllabus by the Court**

1. The only purposes for which the funds described in W.Va. Const. art. VI, § 52 may be spent are for the "cost of administration and collection" and for the cost of "construction, reconstruction, repair and maintenance of public highways." The term "cost of administration" includes the cost of administering

the duties of the Division of Motor Vehicles. The term "maintenance" includes the following activities which are directly related to ensuring the safety of our public highways: the road patrol, traffic, and traffic court activities of the Department of Public Safety; and the motorcycle safety and licensing program, but the term "maintenance" will not be construed to include activities which are remotely connected to highway safety such as the construction and operation of police barracks.

2. The reimbursements by the Division of Motor Vehicles to the Department of Public Safety for the following activities: road patrol, traffic, traffic court, operator examinations, and assistance to the Division of Motor Vehicles with its administrative duties are authorized by W.Va.Code, 15-2-12(i) [1990] because the above activities are "related" to the duties of the Division of Motor Vehicles since the Department of Public Safety is responsible for enforcing traffic laws and regulations which the Division of Motor Vehicles has the duty to administer.

Darrell V. McGraw, Jr., Atty. Gen., Silas B. Taylor, Sr. Deputy Atty. Gen., Charleston, for appellants.

John Philip Melick, Thomas E. Potter, Jackson & Kelly, Charleston, for appellees.

McHUGH, Justice:

This case is before the Court upon the appeal of the West Virginia Department of Public Safety, Division of Public Safety; J.R. Buckalew, Superintendent of the West Virginia Department of Public Safety, Division of Public Safety; West Virginia Department of Transportation, Division of Motor Vehicles; and Jane Cline, Commissioner of the West Virginia Department of Transportation, Division of Motor Vehicles, the defendants below, from the December 4, 1992 order of the Circuit Court of Kanawha County which granted summary judgment to the appellees and held that certain statutes were in violation of the West Virginia Constitution. The appellees and plaintiffs below are: Contractors Association of West Virginia, a West Virginia corporation, and the Flexible Pavements Council of West Virginia, an unincorporated association.

I.

The appellees, which are in the business of constructing and repairing state highways, filed a declaratory action in order to determine whether or not the reimbursements to the Department of Public Safety violate W.Va. Const. art. VI, § 52, which prevents the diversion of funds from highways, or whether the reimbursements exceed the scope of W.Va.Code, 15-2-12(i) [1990], which authorizes reimbursements to the Department of Public Safety for services relating to the duties of the Division of Motor Vehicles. Since July 1, 1990, pursuant to *688 **360 to W.Va.Code, 15-2-12(i) [1990], [FN1] the Department of Public Safety has sent invoices for reimbursement to the Division of Motor Vehicles for the following activities: road patrol, traffic, traffic court, operator examinations, and assistance to the Division of Motor Vehicles with its administrative functions. The appellees also questioned whether the following five statutes violate W.Va. Const. art. VI, § 52:

FN1. W.Va.Code, 15-2-12 was amended in 1991 after this case was filed; however, the amendments did not affect subsection (i).

1. W.Va.Code, 17C-16-5 [1987], which involves the collection of inspection sticker fees and the operation and construction of police barracks; [FN2]

FN2. W.Va.Code, 17C-16-5 [1987] was amended in 1992 though the amendment does not affect our discussion.

2. W.Va.Code, 17A-3-3(a)(7) [1984], which involves the collection of registration fees in order to regulate the compulsory insurance program;

3. W.Va.Code, 17B-1D-7 [1990], which involves motorcycle licensing fees and the motorcycle safety program and licensing program;

4. W.Va.Code, 17A-4-10(c) [1990], which involves fees from salvage and reconstructed vehicle inspections; and

5. W.Va.Code, 17A-6B-3(b) [1990], which involves the collection of a license service certification fee. [FN3]

FN3. The appellants in their brief to this Court state that annual appropriations in excess of nine

million dollars (\$9,000,000) are at issue.

Both parties moved for summary judgment since there were no disputed issues of fact. The only evidence before the circuit court were the pleadings, three affidavits, and admissions by the State.

The circuit court granted the appellees' motion for summary judgment and found that the above six statutes violate W.Va. Const. art. VI, § 52 for two reasons. Number one, the revenues contemplated by the statutes were derived from taxes on fuels or motor vehicles, therefore the expenditure of those revenues are restricted by the language of W.Va. Const. art. VI, § 52. Number two, the purposes for which the revenues were appropriated under the challenged statutes were impermissible since the expenditures were neither "costs of administration and collection," nor "maintenance of public highways." The circuit court also found that certain payments made by the Division of Motor Vehicles to the Department of Public Safety exceed the scope of payments authorized by W.Va.Code, 15-2-12(i) [1990]. [FN4] For reasons set forth below, we reverse, in part, and affirm, in part.

FN4. The appellees also claimed that reimbursements for the patrol and traffic enforcement duties of the Department of Public Safety exceeded the scope of W.Va.Code, 17-3-1 [1967] (involving the state road fund) (17-3-1 was amended in 1991); however, the circuit court did not address this issue because of its ruling on the other two claims.

II.

Initially, the focus of this opinion will be on W.Va. Const. art. VI, § 52, which states:

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, and all other revenue derived from motor vehicles or motor fuels shall, after deduction of statutory refunds and cost of administration and collection authorized by legislative appropriation, be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and also the payment of the interest and principal on all road bonds heretofore issued or which may be hereafter issued for the construction, reconstruction or improvement of public highways, and the payment of obligations incurred in the construction,

reconstruction, repair and maintenance of public highways.

(emphasis added). Although the issues in this case are inextricable, for purposes of legal analysis, it is desirable to conduct a two-phase inquiry in order to determine whether or not any of the six statutes violate W.Va. Const. art. VI, § 52. First, **361 *689 are the expenditures of funds described in each statute restricted by W.Va. Const. art. VI, § 52? Yes, the expenditures of funds described in each statute are restricted since the funds are "[r]evenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, ... [or] revenue derived from motor vehicles or motor fuels[.]"

Second, and the more difficult question to answer, is whether the restricted revenue is being expended in one of the following manners authorized by W.Va. Const. art. VI, § 52: "[as] statutory refunds and cost of administration and collection ... [or for the] construction, reconstruction, repair and maintenance of public highways[?]" Yes, the restricted revenue is being expended in a manner authorized by W.Va. Const. art. VI, § 52 with the exception of the funds used for the maintenance and operation of police barracks.

The appellees argue that the expenditures authorized by the above six statutes are funds derived from sources named in the constitutional provision, and the expenditures are not the "cost of administration" nor are they being used for the purposes of "construction, reconstruction, repair or maintenance of public highways[.]" Therefore, the appellees conclude the statutes violate W.Va. Const. art. VI, § 52. We disagree with the appellees in part.

At the outset we point out that this issue concerns funds which are part of the state road fund which is codified at W.Va.Code, 17-3-1 [1967] and has been in existence since 1921. See West Virginia Acts 1920-21, c. 112, § 15. Currently, W.Va.Code, 17-3-1 [1967] makes it clear that certain monies derived from automobile or motor driven vehicle related taxes and fees are to be used for only three purposes:

- (a) To pay the principal and interest due on all state bonds issued for the benefit of said fund, and set aside and appropriated for that purpose;
- (b) to pay the expenses of the administration of the road

department; (c) to pay the cost of maintenance, construction, reconstruction and improvement of all state roads.

However, in 1942 W.Va. Const. art. VI, § 52 was ratified in order "to prevent diversion by the legislature of funds derived from the sources named in the constitutional provision [W.Va. Const. art. VI, § 52] to purposes other than the construction, reconstruction, repair and maintenance of public highways...." *Charleston Transit Company v. Condry*, 140 W.Va. 651, 659-60, 86 S.E.2d 391, 397 (1955). Obviously, the citizens of West Virginia found it necessary to add art. VI, § 52 to our Constitution in order to ensure that the purpose of the state road fund was not thwarted by the legislature.

Therefore, in our analysis of the six statutes we must examine each statute to ascertain whether or not the legislature is circumventing the purpose of W.Va. Const. art. VI, § 52. However, we also note that "[e]very reasonable construction must be resorted to by a court in order to sustain constitutionality and any doubt must be resolved in favor of the constitutionality of the legislative enactment in question." *State ex rel. Appalachian Power Co. v. Gainer*, 149 W.Va. 740, 747, 143 S.E.2d 351, 357 (1965).

Before we begin our analysis we also point out that in syllabus point 4 of *State ex rel. Smith v. Kelly*, 149 W.Va. 381, 141 S.E.2d 142 (1965), we stated:

"Though it is a cardinal rule of constitutional construction to give effect to the intent of the framers of the Constitution and the people who adopted it, new and changing conditions not existing at the time the Constitution was adopted should be looked to and applied in the interpretation of a procedural provision of the Constitution." [citation omitted]

When W.Va. Const. art. VI, § 52 was adopted, the interstates did not exist, nor did the powerful cars which have since been developed. At the time the constitutional provision was written, the writers' major concern was concrete: the building of roads. With the development of a vast interstate system and more powerful cars which travel at high rates of speed, our concern has changed and is more focused on safety and the costs to administer the **362 *690 vast highway system in order to protect our highway users. With this background, we will now discuss our first phase of inquiry.

A.

Our first phase of inquiry involves the following section of W.Va. Const. art. VI, § 52: "[r]evenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, and all other revenue derived from motor vehicles or motor fuels[.]" In order for W.Va. Const. art. VI, § 52 to apply, the six statutes must involve revenue described in the above section of the constitutional provision. Although the appellants concede that the expenditure of fees outlined in four of the statutes are restricted by W.Va. Const. art. VI, § 52, the appellants argue that the expenditure of fees outlined in W.Va.Code, 17A-6B-3(b) [1990], W.Va.Code, 17A-4-10(c) [1990], and W.Va.Code, 15-2-12(i) [1990], are not restricted under the constitutional provision.

[1] W.Va.Code, 17A-6B-3(b) [1990] involves the collection of a \$25.00 fee from businesses wishing to engage in the license service business. The fee is to be used by the Division of Motor Vehicles to administer its licensing of the license service businesses. The appellants argue that the \$25.00 fee is a business license tax. We disagree. The fee is a licensing fee related to motor vehicles; therefore, the fee is revenue which can only be spent for the purposes outlined in W.Va. Const. art. VI, § 52.

[2] W.Va.Code, 17A-4-10 [1990] involves the collection of a \$35.00 fee for the inspection of salvaged or reconstructed vehicles. The fee is to carry out the provisions of W.Va.Code, 17A-4-10 [1990]. The appellants argue that the fee is payment for a service rather than "revenue derived from motor vehicles." We disagree. The \$35.00 fee is money derived from a motor vehicle; therefore, the fee is also revenue which can only be spent for purposes outlined in W.Va. Const. art. VI, § 52.

W.Va.Code, 15-2-12(i) [1990] is implemented by funds from the state road fund. However, there is no language in W.Va.Code, 15-2-12(i) [1990] which indicates that the funds used are derived from the revenue listed in W.Va. Const. art. VI, § 52. However, since we find W.Va.Code, 15-2-12(i) [1990] constitutional in our second phase of inquiry, we need not address this issue in our first phase of inquiry. [FN5] We will assume that W.Va.Code, 15-2-12(i) [1990] involves funds described in the constitutional provision.

FN5. The appellants argue that even if the reimbursements by the Division of Motor Vehicles to the Department of Public Safety under W.Va.Code, 15-2-12(i) [1990] are not authorized by W.Va. Const. art. VI, § 52, the reimbursements from the state road fund are allowed because other revenue besides the revenue listed in W.Va. Const. art. VI, § 52 makes up the state road fund.

As part of that argument the appellants discuss certain federal funds which become part of the state road fund. James J. Haley, Business Manager for the West Virginia Division of Highways, in paragraph six of his affidavit stated that the federal funds which become part of the state road fund "consists of funds (excluding 'Restricted' revenue) received from federal reimbursement grant programs, which reimburse the State for 75%-100% of the sums previously expended by the State on certain qualifying road and highway projects." Part of Title 23 of the United States Code involves the funding of highway projects. However, we will not address the issue of whether or not the expenditures of those federal funds deposited in the state road fund are restricted by W.Va. Const. art. VI, § 52 because of our holding that the questioned funds are being expended for purposes authorized by W.Va. Const. art. VI, § 52.

The appellants concede that the other statutes are funded with revenue which can only be spent for purposes outlined in W.Va. Const. art. VI, § 52. Therefore, we conclude in our first phase of inquiry that all of the questioned statutes involve funds described in W.Va. Const. art. VI, § 52 with the exception of W.Va.Code, 15-2-12(i) [1990] which, for purposes of our analysis, we will assume involves funds described in the constitutional provision.

B.

Our second phase of inquiry, and obviously the more difficult, involves the meaning *691 **362 of two phrases in W.Va. Const. art. VI, § 52: "Revenue ... shall, after deduction of ... [1] cost of administration and collection ... be appropriated and used solely for [2] construction, reconstruction, repair, and maintenance of public highways[.]" The two phrases outline the expenditures authorized under W.Va. Const. art. VI, § 52. Since we have concluded all six statutes involve revenue which is derived from motor vehicles, then the expenditures

authorized by the six statutes shall only be used for one of the purposes outlined in W.Va. Const. art. VI, § 52.

[3] Initially, we should address the meaning of the phrase "cost of administration." The appellees argue that the clause "cost of administration" only refers to the costs of administering the state road fund. We disagree.

[4] At the outset we note that "[q]uestions of constitutional construction are in the main governed by the same general rules as those applied in statutory construction." *State ex rel. Brotherton v. Blankenship*, 157 W.Va. 100, 108, 207 S.E.2d 421, 427 (1973). In syllabus point 2 of *State v. Elder*, 152 W.Va. 571, 165 S.E.2d 108 (1968), we stated: "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Therefore, if the language in a constitutional provision is clear and without ambiguity, the plain meaning is to be accepted.

We find the clause "cost of administration" to be clear and without ambiguity. In *State ex rel. State Building Commissioner v. Moore*, 155 W.Va. 212, 229, 184 S.E.2d 94, 104 (1971), we pointed out that W.Va.Code, 17-3-1 [1967] implemented W.Va. Const. art. VI, § 52 and that W.Va.Code, 17-3-1 [1967] states, in part, that one of the purposes of the state road fund is "to pay the expenses of the administration of the road department[.]" (emphasis omitted). Since W.Va.Code, 17-3-1 [1967] was originally enacted, the road department has been dissolved and the Division of Motor Vehicles has taken over many of its duties. [FN6] W.Va.Code, 17A-2-22 [1951] was enacted to ensure that the Division of Motor Vehicles was properly funded: "The expense of the administration of the motor vehicle department shall be appropriated for that purpose from the state road funds." Obviously, the legislature has determined that the cost of administering the duties of the Division of Motor Vehicles should be paid from the state road fund.

FN6. For example, W.Va.Acts 1920-21, c. 112, § 15 puts the state road commission in "charge of the administration of the vehicle laws of this State, including the collection of all license fees[.]" According to the appellant's brief, in 1933 the powers of the state road commission were transferred to the state road department. Today,

those duties are now imposed on the Division of Motor Vehicles. E.g., W.Va.Code, 17A-3-3 [1984].

As we pointed out earlier, the purpose of art. VI, § 52 is to prevent the diversion of highway funds. Using the state road fund to pay the cost of administering the duties of the Division of Motor Vehicles would not circumvent the purpose of W.Va. Const. art. VI, § 52 since the duties of the Division of Motor Vehicles are directly related to our public highways. Therefore, common sense allows us to conclude that the clause "cost of administration" in W.Va. Const. art. VI, § 52 means the cost of administering the duties of the Division of Motor Vehicles.

[5] Second, we address the meaning of the phrase "construction, reconstruction, repair and maintenance of public highways." The appellants argue that "maintenance of public highways" includes activities which make our public highways safer. We agree.

We have construed the phrase "construction, reconstruction, repair and maintenance of public highways" on two noteworthy occasions in the past. The first occasion was in *State ex rel. Appalachian Power Co. v. Gainer*, supra. In *Gainer* this Court held that the cost of relocating public utility facilities in connection with a federal highway project could be paid from the state road fund and that such payment was an obligation incurred in the construction of public highways. Although this **364 *692 Court did give great weight to the legislative declaration in W.Va.Code, 17-4-17b [1970] that the cost of relocating utility facilities is a cost of highway construction, this Court noted "that the provision creating the road fund contemplates more than actual construction, reconstruction or repair of public highways in a strict sense of such terms." *Id.* 149 W.Va. at 754, 143 S.E.2d at 361.

The second occasion was in *State ex rel. State Building Commissioner v. Moore*, 155 W.Va. at 230, 184 S.E.2d at 105, in which we held:

that the cost of the construction, maintenance and operation of an office building and related facilities for the sole and exclusive use and occupancy of the West Virginia Department of Highways constitutes a reasonable, necessary and proper incident of the construction, reconstruction, repair

and maintenance of the public highway system of the state in conformity with the provisions, intent and purpose of Section 52 of Article VI of the Constitution of West Virginia ... [and] that such cost may properly be paid from the State Road Fund[.]

(emphasis added). In *Gainer and Moore* we made it clear that the phrase "construction, reconstruction, repair and maintenance of public highways" means more than the actual physical construction of the highway. This Court, therefore, has on previous occasions found that the costs of activities which are directly related to the construction, reconstruction, repair and maintenance of public highways are payable from the state road fund.

However, whether highway safety is sufficiently related to maintenance of public highways is a question of first impression. Although we have found that "construction, reconstruction, repair and maintenance of public highways" means something more than actual physical construction, we will not circumvent the purpose of W.Va. Const. art. VI, § 52 by finding purposes for the expenditure of revenue which are not authorized by the constitutional provision. On the other hand, we will not unduly burden the legislature with a narrow construction which will add to the already difficult financial condition of this State. With that background, we must address whether highway safety is sufficiently related to "maintenance" of public roads. This issue depends upon the meaning of the word "maintenance" in the constitutional provision.

In *Pauley v. Kelly*, 162 W.Va. 672, 699, 255 S.E.2d 859, 874 (1979), we stated:

There are four traditional methods of judicial definitions of words used in statutes and constitutions and not specifically defined in them: dictionary definitions current at the time, and those now extant; pronouncements by courts; reliable extra-judicial commentary; and definitions set or [inferable] from debates and proceedings of the bodies that drew the documents.

We have both a dictionary definition and pronouncements by other courts to guide us.

Webster's Third New International Dictionary 1362 (1970) defines "maintenance" as "the labor of keeping something (as buildings or equipment) in a

state of repair or efficiency...." The use of the word "maintenance" in W.Va. Const. art. VI, § 52 indicates that it means to keep our highways efficient since the constitutional provision specifically uses the term "repair." A primary way of keeping our highways efficient is to promote safety by enforcing traffic regulations or by requiring safety courses. In fact, the federal government's definition of maintenance in 23 U.S.C. § 101(a) (1988) which follows, indicates that the word maintenance means more than just keeping the physical aspects of a highway in repair: "The term 'maintenance' means the preservation of the entire highway, including surface, shoulders, roadsides, structures and such traffic-control devices as are necessary for its safe and efficient utilization."

Courts from other jurisdictions which have considered this issue have interpreted the term maintenance to mean more than the repair or upkeep of the physical aspects of a highway. For instance, in *Rich v. Williams*, 81 Idaho 311, 341 P.2d 432 (1959) **365 *693 the court held that the construction of an office building for the joint use of the Department of Highways and the Department of Law Enforcement constituted "maintenance of public roads." Although the appellees correctly point out that Idaho Const. art. VII, § 17, the comparable constitutional provision, is broader than our constitutional provision since it states that the state road fund can only be used for the "construction, repairs, maintenance and traffic supervision," the Idaho Court in *Rich* relied on the meaning of the term maintenance and not the phrase traffic supervision when making its decision. (emphasis added). The Idaho Court concluded that the term maintenance encompassed any activity related to ensuring an efficient road system.

Similarly, in *Keck v. Manning*, 313 Ky. 433, 231 S.W.2d 604 (1950) the court held that the phrase "construction and maintenance" included the printing and distribution of road maps, booklets, photographs, and advertisements of the state's highways since that phrase was broad enough to include everything connected with safety and convenience of traffic. Although section 230 of the Kentucky Constitution is broader than our constitutional provision since state road funds can be used to "[enforce] state traffic and motor vehicle laws [,]" the court in Kentucky relied on the phrase

"construction and maintenance" of highways in order to conclude that expenses for activities incident to safety could be paid for out of the road fund.

Therefore, other courts have construed the term maintenance to mean more than the physical repair or upkeep of the public highways. However, we disagree with the broad application of the term "maintenance" by the courts in Rich and Keck. If the purpose of the constitutional provision is to prevent the diversion of highway funds, then the use of the funds must be directly related to the efficiency of the highway and not remotely related. We do not find, as the court in Rich did, that the construction of an office building for the use of the Department of Law Enforcement to be directly related to the efficiency of the highway. Nor do we agree with the court in Keck that the word "maintenance" encompasses anything incidental to an efficient highway system. The courts in Rich and Keck have given a broad interpretation to the word "maintenance." We find their interpretation of "maintenance" circumvents the purpose of W.Va. Const. art. VI, § 52. Therefore, we choose to take a more restrictive, but nevertheless a common sense approach to the interpretation of the word "maintenance." Although we do find that the term "maintenance" encompasses safety activities which are necessary for an efficient road system, under our common sense approach we find that the safety activity must be directly related to the efficiency of the highway. Our holding today in no way gives the legislature permission to creatively find ways to divert highway funds.

Now, we will examine each statute to see if the expenditures authorized are for one of the purposes outlined in W.Va. Const. art. VI, § 52.

i.

[6] W.Va.Code, 15-2-12(i) [1990] states:

The superintendent [of Public Safety] shall be reimbursed by the division of motor vehicles ... for services performed by such members [of the Division of Public Safety] relating to the duties and obligations of the division of motor vehicles set forth in chapters seventeen ..., seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code.

(emphasis added). The Division of Motor Vehicles

has reimbursed the Department of Public Safety for the following activities pursuant to W.Va.Code, 15-2-12(i) [1990]: road patrol, traffic, traffic court, operator examinations, and assisting the Division of Motor Vehicles in its administrative duties. [FN7] **366 *694 We find that the road patrol, traffic, and traffic court activities of the Department of Public Safety directly affect the safety of our highways. Those activities are necessary in order to ensure that the public abides by laws which directly enhance the safety of our highways. Therefore, the reimbursements for the road patrol, traffic, and traffic court activities of the Department of Public Safety are expenditures authorized by W.Va. Const. art. VI, § 52 since they are necessary for the maintenance of an efficient highway system.

FN7. In the "Defendants' Answer to Plaintiffs' First Request for Admission" the appellants admitted that the activities listed on the invoices submitted to the Division of Motor Vehicles included the following:

1. road patrol: includes all time actually spent by the Department of Public Safety on patrol, including radar operation, but does not include hours spent by the Department of Public Safety personnel in traveling to specific assignments;
2. traffic: includes accident investigations, interviews of accident participants, completion of accident reports, directing and escorting traffic, serving traffic warrants, presenting safety talks, and assistance of motorists;
3. traffic court: includes all hours spent by the Department of Public Safety personnel in court proceedings involving traffic violations, as well as all travel to and from those proceedings;
4. operator examinations: includes all Department of Public Safety hours spent conducting operator examinations and conducting driver clinic interviews; and
5. assisting the Division of Motor Vehicles: includes all hours spent in issuance of Department of Motor Vehicles forms, one trip permits, VIN verification, serving revocation orders and assisting the public with problems relating to licensure and registration.

We also find that the reimbursements for assisting the Division of Motor Vehicles to be constitutional since those activities involve the licensing and registration functions of the Division of Motor Vehicles. As we pointed out earlier, any duty of the Division of Motor Vehicles is the "cost of administration." Therefore, reimbursements to the Department of Public Safety for activities involving

the duties of the Division of Motor Vehicles are the "cost of administration," and are therefore constitutional. [FN8]

FN8. We point out that although the appellees' complaint that the reimbursements for the patrol and traffic enforcement duties of the Department of Public Safety exceed the scope of W.Va.Code, 17-3-1 [1967] was not raised on appeal, the issue would be resolved by our finding that maintenance includes activities directly related to highway safety since W.Va.Code, 17-3-1 [1967] specifically states, in part, that the monies in the state road fund may be used "to pay the cost of maintenance[.]"

ii.

[7] W.Va.Code, 17C-16-5 [1987] states, in pertinent part:

The superintendent of the department of public safety shall be responsible for the inspection as provided in this article and shall prescribe requirements and qualifications for official inspection stations. He shall select and designate such stations and shall issue permits therefor and furnish instructions and all necessary forms thereto for the inspection of vehicles as herein required and the issuance of official certificates of inspection and approval.... A charge of one dollar per sticker shall be charged by the department of public safety to the inspection station, and the funds so received shall be deposited into the state treasury and credited to the account of the department of public safety for application in the administration and enforcement of the provisions of this article. Any balance remaining in the fund on the last day of June of each fiscal year, not required for operating expenses, construction, repairs or alterations of police barracks for the ensuing fiscal year and for the administration and enforcement of the provisions of this article, shall be transferred to the state road fund.

(emphasis added). This section concerns inspection sticker fees. To the extent the fees collected are used to enforce and administer the provisions of W.Va.Code, 17C-16-5 [1987], they are the cost of administration since the statute provides funds to carry out the duties of the Division of Motor Vehicles. Therefore, the statute is constitutional.

[8] However, the use of the fees to operate, repair, or construct police barracks is not proper since the

fees are not being used for one of the purposes outlined in W.Va. Const. art. VI, § 52. Although the state police do perform activities which directly affect the safety of highways, the construction and operation of police barracks is not directly related to maintaining **367 *695 our public highways. We want to make it clear that our holding that maintenance of public highways includes activities directly related to ensuring highway safety is not to be interpreted as giving the legislature permission to fund any activity which is remotely connected to highway safety. The construction and operation of police barracks is clearly not directly related to ensuring highway safety. Therefore, the use of fees for the construction and operation of police barracks violates W.Va. Const. art. VI, § 52.

iii.

[9] W.Va.Code, 17A-3-3(a)(7) [1984] provides:

(7) Each such application for registration shall be accompanied by the fees hereafter provided, and an additional fee of one dollar for each motor vehicle for which the applicant seeks registration, such fee to be deposited in a special revolving fund for the operation by the [Division of Motor Vehicles] of its functions established by the provisions of article two-A [§ 17D-2A-1 et seq.], chapter seventeen-D of this Code: Provided, That July one, one thousand nine hundred eighty-five, the additional fee will reduce to and remain at fifty cents.

(emphasis added). This code section allows the Division of Motor Vehicles to collect a fee which is to be used to administer W.Va.Code, 17D-2A-1, et seq. which involves the compulsory insurance program. The Division of Motor Vehicles is responsible for administering the compulsory insurance program. For instance, W.Va.Code, 17D-2A-8 [1982] authorizes the commissioner of the Division of Motor Vehicles to promulgate rules which are necessary for "the administration, operation and enforcement of the provisions of this article [chapter 17D, article 2A of the W.Va.Code, which involves the compulsory insurance program.]" Accordingly, we find that W.Va.Code, 17A-3-3(a)(7) [1984] is constitutional since it involves the cost of administering the duties of the Division of Motor Vehicles.

iv.

[10] W.Va.Code, 17B-1D-7 [1990] states:

(a) There is hereby created a special fund in the state treasury which shall be designated the 'motorcycle safety fund.' The fund shall consist of all moneys received from motorcycle driver licensing fees except instruction permit fees, one half of the moneys received from the motorcycle safety fee assessed with each motorcycle registration under section three-b [§ 17A-10-3b], article ten, chapter seventeen-a of this code and any other moneys specifically allocated to the fund. The fund shall not be treated by the auditor and treasurer as part of the general revenue of the state. The fund shall be a special revolving fund to be used and paid out upon order of the commissioner of motor vehicles solely for the purposes specified in this chapter.

(b) The fund shall be used by the division of motor vehicles to defray the cost of implementing and administering the motorcycle safety education program established in section two [§ 17B-1D-2], article one-d of this chapter. Moneys in the special revolving fund may also be used to defray the cost of implementing and administering the motorcycle driver licensing program.

(emphasis added). The fees authorized by this code section are to be used to create a motorcycle safety education program and to administer a motorcycle driver licensing program. The motorcycle safety education program is to be administered by the commissioner of the Division of Motor Vehicles. W.Va.Code, 17B-1D-2 [1990]. The motorcycle licensing program is also to be administered by the Division of Motor Vehicles. W.Va.Code, 17B-2-7(b) [1981]. [FN9] Therefore, the use of the fees authorized by W.Va.Code, 17B- 1D-7 [1990] does not **368 *696 violate W.Va. Const. art. VI, § 52 since the fees are to be used to administer a duty of the Division of Motor Vehicles and are, therefore, the "cost of administration."

FN9. W.Va.Code, 17B-2-7(b) was amended in 1992 though the amendment does not affect our discussion.

v.

[11] W.Va.Code, 17A-4-10(c) [1990] states:

(c) The division shall charge a fee of fifteen dollars for the issuance of each salvage certificate but shall not require the payment of the five percent privilege tax. However, upon application

for a certificate of title for a reconstructed vehicle, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder is exempt from the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of thirty-five dollars per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the state treasurer's office and may be expended by the division to carry out the provisions of this article. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed twenty-five dollars for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(emphasis added). We hold that the use of the fees authorized by W.Va.Code, 17A-4-10(c) [1990] does not violate W.Va. Const. art. VI, § 52 since the fees are to be used to administer a duty of the Division of Motor Vehicles, and are, therefore, the "cost of administration."

vi.

[12] W.Va.Code, 17A-6B-3 [1990] states:

(a) The initial application fee for a certificate to engage in the license service business is twenty-five dollars. The renewal fee for such certificate is twenty-five dollars.

(b) There is hereby created in the treasury a special fund, named the 'motor vehicle license service administration fund,' into which shall be paid all of the initial licensing fees, the renewal licensing fees, and certified copies fees. The commissioner of motor vehicles shall use the moneys in this account to administer and enforce the provisions of this article.

(emphasis added). We hold that W.Va.Code, 17A-6B-3 [1990] does not violate W.Va. Const. art. VI, § 52 since the fees authorized by the statute are used to administer a duty of the Division of Motor Vehicles.

Accordingly, we hold that the only purposes for which the funds described in W.Va. Const. art. VI, § 52 may be spent are for the "cost of administration and collection" and for the cost of "construction, reconstruction, repair and maintenance of public

highways." The term "cost of administration" includes the cost of administering the duties of the Division of Motor Vehicles. The term "maintenance" includes the following activities which are directly related to ensuring the safety of our public highways: the road patrol, traffic, and traffic court activities of the Department of Public Safety; and the motorcycle safety and licensing program, but the term "maintenance" will not be construed to include activities which are remotely connected to highway safety such as the construction and operation of police barracks.

III.

[13][14] Next, we focus our attention on W.Va.Code, 15-2-12(i) [1990], which states:

(i) The superintendent shall be reimbursed by the division of motor vehicles for salaries and employee benefits paid to members of the division of public safety, and shall either be paid directly or reimbursed by the division of motor vehicles for all other expenses of such group of members in accordance with the actual costs determined by the superintendent, for services performed by such members relating to the duties and obligations *697 **369 of the division of motor vehicles set forth in chapters seventeen [§§ 17-1-1 et seq., 17A-1-1 et seq., 17B-1-1 et seq., 17C-1-1 et seq. and 17D-1-1 et seq.], seventeen-a, seventeen-b, seventeen-c and seventeen-d of this code.

(emphasis added). The issue now before us is whether certain payments made by the Division of Motor Vehicles to the Department of Public Safety for the following activities exceed the scope of payments authorized by W.Va.Code, 15-2-12(i) [1990]: road patrol, traffic, traffic court, operator examinations, and assistance to the Division of Motor Vehicles with its administrative duties. In the preceding discussion we found that the payments made by the Division of Motor Vehicles to the Department of Public Safety pursuant to W.Va.Code, 15-2-12(i) [1990] to be constitutional since the purpose of the payment was to maintain an efficient highway system and to pay the "cost of administration." The issue now before us will be easily resolved since we have already found that the activities of the Department of Public Safety are necessary in order to protect our highway users.

The appellees argue that the activities listed on the invoices to the Division of Motor Vehicles are solely

the authorized duties of the Department of Public Safety, therefore, the activities, with the exception of operator examinations, [FN10] are not related to the duties of the Division of Motor Vehicles within the meaning of W.Va.Code, 15-2-12(i) [1990]. We disagree.

FN10. The circuit court found that Department of Public Safety invoices to the Division of Motor Vehicles for operator examinations are specifically authorized under W.Va.Code, 15-2-12(h) [1990].

The basis of the appellee's argument is W.Va.Code, 17C-2-3 [1982] which states: "[i]t shall be the duty of the department of public safety and its members to enforce the provisions of this chapter [which involves traffic regulations and laws] and other laws of this State governing the operation of vehicles upon the streets and highways of this State...." We agree that the activities listed on the invoices involve enforcing traffic regulations which is the duty of the Department of Public Safety under W.Va.Code, 17C-2-3 [1982]. However, W.Va.Code, 15-2-12(i) [1990] simply states that the Department of Public Safety shall be reimbursed for services "relating to the duties and obligations of the division of motor vehicles[.]" (emphasis added). W.Va.Code, 15-2-12(i) [1990] does not state that the Department of Public Safety must be performing services which are the duties of the Division of Motor Vehicles.

This issue hinges on what the legislature meant by the phrase "relating to" in W.Va.Code, 15-2-12(i) [1990]. In *Amick v. C & T Development Co., Inc.*, 187 W.Va. 115, 118, 416 S.E.2d 73, 76 (1992), this Court stated "that generally the words of a statute are to be given their ordinary and familiar significance and meaning, and regard is to be had for the general and proper use of such words." The ordinary meaning of "relating to" is that there is a connection between two subjects, not that the subjects have to be the same. For instance, *Black's Law Dictionary* 1158 (5th ed. 1979) gives the following definition for relate: "To stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with; with 'to.' "

Therefore, under W.Va.Code, 15-2-12(i) [1990] services by the Department of Public Safety only need to be connected to the duties of the Division of Motor Vehicles before the Department of Public

Safety can be reimbursed. We find that the duties of the two agencies are connected because the activities of one has a bearing on the activities of the other.

For example, the Division of Motor Vehicles' involvement with the traffic laws and regulations that the Department of Public Safety is to enforce is reflected in chapter 17C of the W.Va.Code. Specifically, the Department of Public Safety enforces W.Va.Code, 17C-4-1 [1951] which concerns accidents involving death or personal injuries. However, it is the commissioner of the Division of Motor Vehicles who revokes **370 *698 the driver's license of a person convicted for failing to stop and cooperate after being involved in a motor vehicle accident which results in injuries or death under W.Va.Code, 17C-4-1(c) [1951].

Another example involves the "point system" set forth by the Division of Motor Vehicles in 91 W.Va.C.S.R. §§ 5-7.1 to 5-7.15 (1992). The regulations outline a recordkeeping system whereby the Division of Motor Vehicles assigns points for traffic convictions. If a person receives a certain amount of points the Division of Motor Vehicles will suspend that person's license. The Department of Public Safety's enforcement of traffic regulations results in traffic convictions which the Department of Public Safety reports to the Division of Motor Vehicles so that the Division of Motor Vehicles can determine whether or not to revoke a person's driver's license. Therefore, the Department of Public Safety aids the Division of Motor Vehicles in determining who should have the privilege of driving on our highways.

Similarly, the Department of Public Safety enforces W.Va.Code, 17C-5-7 [1986] which involves the steps to be taken if a person arrested for DUI refuses to submit to a chemical test. Under W.Va.Code, 17C-5-7 [1986], the Department of Public Safety has the authority to notify the Division of Motor Vehicles of the person's refusal to submit to a chemical test. W.Va.Code, 17C-5-7 [1986] also gives the Division of Motor Vehicles the authority to revoke a person's driver's license for refusing to submit to a chemical test. The legislature envisioned the Department of Public Safety and the Division of Motor Vehicles working together in order to stop people from driving under the influence of alcohol, controlled substances, or drugs. In recent times our society has increasingly

become aware of the dangers posed by a drunk driver. We point out that in order to protect our highway users from the dangers posed by a drunk driver, it is necessary to adequately fund the road patrol activities of the Department of Public Safety. As we noted in our preceding discussion, the term "maintenance" in W.Va. Const. art. VI, § 52 includes activities which directly ensure highway safety. Clearly, patrolling the highways in order to remove drunk drivers directly ensures highway safety.

Therefore, it is clear that both agencies need each other in order to carry out the administration of the laws in chapters 17A through 17D of the West Virginia Code. The Division of Motor Vehicles grants a license conditioned on the observance of laws governing highway safety which the Department of Public Safety enforces.

Accordingly, we hold that the reimbursements by the Division of Motor Vehicles to the Department of Public Safety for the following activities: road patrol, traffic, traffic court, operator examinations, and assistance to the Division of Motor Vehicles with its administrative duties are authorized by W.Va.Code, 15-2-12(i) [1990] because the above activities are "related" to the duties of the Division of Motor Vehicles since the Department of Public Safety is responsible for enforcing traffic laws and regulations which the Division of Motor Vehicles has the duty to administer.

IV.

We hold that W.Va.Code, 15-2-12(i) [1990]; 17A-3-3(a)(7) [1984]; 17B-1D-7 [1990]; 17A-4-10(c) [1990] and 17A-6B-3(b) [1990] are constitutional under W.Va. Const. art. VI, § 52. We hold that W.Va.Code, 17C-16-5 [1987] violates W.Va. Const. art. VI, § 52 to the extent it authorizes the use of revenue collected from motor vehicles to operate, construct or repair police barracks. Furthermore, we find that the reimbursements by the Division of Motor Vehicles to the Department of Public Safety for activities described as road patrol, traffic, traffic court, operator examinations, and assisting the Division of Motor Vehicles with its administrative functions do not exceed the scope of W.Va.Code, 15-2-12(i) [1990]. Based upon the foregoing, the December 4, 1992 order of the Circuit Court of Kanawha County

is affirmed, in part, and reversed, in part.

Affirmed, in part; reversed, in part.

**371 *699 BROTHERTON, Justice, dissenting:

"Our cup runneth over!" exclaimed the Executive and Legislative branches of our State government after reading the majority opinion. Never has the "horn of plenty" produced such a cornucopia of gifts, all delivered sua sponte and unexpectedly by a judiciary, which, incidentally, is elected and sworn to uphold the Constitution of the State of West Virginia.

This case evolves from legislation enacted during the 1990 legislative session to give salary increases to the uniformed members of the Department of Public Safety. I do not dispute the need for a salary increase. What I do dispute is the method by which the increase was funded. Because of budgetary constraints, the Legislature felt it could not fund the salary increases out of the general revenue budget. Consequently, legislation was enacted that would allow the Department of Motor Vehicles to pay the salary increases out of monies collected from the highway user tax on gasoline. [FN1] The Department of Public Safety would submit vouchers to the DMV for time that Department members spent providing "highway safety activities" on the state highways. These vouchers were not to exceed the amount the Legislature had determined was sufficient to pay the salary increases. To aid in this budgetary manipulation, the Legislature included a line item in the Department of Motor Vehicles' budget which was identified simply as "unclassified."

FN1. See W.Va.Code §§ 15-2-12(h) and (i), which provide:

(h) The superintendent may also assign members of the division to administer tests for the issuance of commercial drivers' licenses, operator and junior operator licenses as provided for in section seven [§ 17B-2- 7], article two, chapter seventeen-b of this code: Provided, That the division of motor vehicles shall reimburse the division of public safety for salaries and employee benefits paid to such members, and shall either pay directly or reimburse the division for all other expenses of such group of members in accordance with actual costs determined by the superintendent. (i) The superintendent shall be reimbursed by the division of motor vehicles for salaries and employee

benefits paid to members of the division of public safety, and shall either be paid directly or reimbursed by the division of motor vehicles for all other expenses of such group of members in accordance with actual costs determined by the superintendent, for services performed by such members relating to the duties and obligations of the division of motor vehicles set forth in chapters seventeen, seventeen-a, seventeen-b, seventeen-c and seventeen-d [§ 17-1-1 et seq., § 17A-1-1 et seq., § 17B-1-1 et seq., § 17C-1-1 et seq. and § 17D-1-1 et seq.] of this code.

After this legislation was enacted, the petitioners brought this action, in which they alleged that the use of the gasoline tax for the Department salary increase was unconstitutional because it violated restrictions set forth under Article VI § 52 of the West Virginia Constitution which specify that gasoline and other motor fuel excise and license taxes are to be used solely for construction, reconstruction, repair, and maintenance of public highways.

In his 1993 State of the State message to the Legislature, the Governor emphasized the need for this State to come up with large sums of highway construction monies in order to maximize the amount of matching funds West Virginia would receive from the federal government. This was to be achieved by legislating a \$.05 per gallon gasoline tax. Needing full support for the gasoline tax, the 1994 budget bill presented to the Legislature at the conclusion of the Governor's State of the State message completely reversed the prior funding scheme and provided that the Department of Public Safety salary increases be paid out of the general revenue part of the budget [FN2] and took no funds from the highway users taxes. In other words, the salary increase was to come from general revenue funds and not the constitutionally restricted gasoline tax. This deviation would hopefully secure the petitioners support for the proposed \$*70(**372 .05 a gallon increase in the gasoline tax.

FN2. See House Bill 2100, the budget bill, introduced in the House of Delegates on February 10, 1993. The same budget bill was introduced in the Senate as Senate Bill 50. See also, Department of Public Safety Account No. 5700, line item for salaries, \$34,974,582, and Division of Motor Vehicles Account No. 6710, unclassified item, \$4,313,697. (The Public Safety pay raise for 1993 was paid from the Department of Motor Vehicles'

account and the unclassified item was listed at \$10,913.69.)

But now comes the reason for the exasperation expressed in the first paragraph of this dissent. The majority opinion, which was filed March 25, 1993, declared constitutional the 1990 legislative action which provided that money could be diverted from the constitutionally protected gasoline tax. As a result, a \$6.4 million windfall fell into the arms of a legislature and executive desperate for money to balance the fiscal year 1994 budget without raising more taxes.

The fiscal year budget finally passed during the first extraordinary session of the Legislature in May, 1993, reflected the results of the majority opinion. The salary increases would not come from the general revenue budget as originally proposed in February, but instead were to be paid out of the DMV's gasoline tax revenues. The "unclassified" line item in the DMV budget was increased, while the line item in the Department of Public Safety budget to pay the salary increases was reduced. [FN3] Voila!! Their cup runneth over. [FN4]

FN3. Enrolled Committee Substitute for H.B. 105, the 1994 budget bill, was passed by the Legislature on May 27, 1993, effective from passing, during the First Extraordinary Session of the 71st Legislature; Enrolled Committee Substitute for H.B. 105 appropriated to the Division of Public Safety Account No. 5700, for fiscal year 1994, \$25,896,586 (some \$9,000,000 less than was requested in the budget bill submitted in February, 1993), which had been money for the pay increase; and Enrolled Committee Substitute for H.B. 105 appropriated to the Division of Motor Vehicles Account No. 6710, for fiscal year 1994, unclassified item \$10,435,396. The difference of \$6,121,699 from the original budget bill introduced on February 10, 1993, and the final budget bill enacted was to pay the Department of Public Safety salary increase out of the gasoline tax revenues.

FN4. The majority, on page 9 of their opinion, stated that for the purposes of the opinion the funds expended from the DMV pursuant to W.Va.Code § 15-2-12(i) (1990) involve funds described in the constitutional amendment (gasoline revenues).

But enough about the rapture that the Executive and Legislative branches are enjoying, and more about the serious fissures the majority opinion creates.

Article VI, § 52 of the West Virginia Constitution, adopted by a vote of the citizens of this State in November, 1942, states that:

Revenue from gasoline and other motor fuel excise and license taxation, motor vehicle registration and license taxes, and all other revenue derived from motor vehicles or motor fuels shall, after deduction of statutory refunds and cost of administration and collection authorized by legislative appropriation, be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and also the payment of the interest and principal on all road bonds heretofore issued or which may be hereafter issued for the construction, reconstruction or improvement of public highways, and the payment of obligations incurred in the construction, reconstruction, repair and maintenance of public highways. (Emphasis added.)

The underlined language of this amendment is the subject of a lengthy and tortured interpretation in the majority opinion. I do not see why. In syllabus point 1 of this Court's unanimous opinion in Jarrett Printing Company v. Ronald Riley, et al., 188 W.Va. 393, 424 S.E.2d 738 (1992), filed only four months before the majority opinion, this Court once again reiterated the long accepted principle of constitutional interpretation:

"Where a provision of a constitution is clear in its terms and of plain interpretation to any ordinary and reasonable mind, it should be applied and not construed." Syl. pt. 3, State ex rel. Smith v. Gore, 150 W.Va. 71, 143 S.E.2d 791 (1965).

There are few constitutional provisions plainer than Article VI, § 52. It is not written in Chaucerian English or the English used in 1863, or any version of the English language that might possibly be subject to interpretation. It is written in the English of 1942, the year the amendment was adopted, which happens to be the very same English that we still speak, read, and write today. A high school student *701 **373 would have no trouble reading the amendment and explaining the meaning of the words "construction, reconstruction, repair and maintenance." Still, the majority was not deterred, and after fifty-one years it changed the definition of "maintenance" to justify the actions of a legislative body which was desperate to "find" money to avoid raising taxes.

The majority cites as authority for their decision syllabus point 4 of *State ex rel. Smith v. Kelly*, 149 W.Va. 381, 141 S.E.2d 142 (1965):

"Though it is a cardinal rule of constitutional construction to give effect to the intent of the framers of the Constitution and the people who adopted it, new and changing conditions not existing at the time the Constitution was adopted should be looked to and applied in the interpretation of a procedural provision of the Constitution." Point 4 Syllabus, *State ex rel. Morgan et al. v. O'Brien*, 134 W.Va. 1, 60 S.E.2d 722. (Emphasis added.)

To support its option, the majority finds "new and changing conditions" in the building of interstate highways, creating a greater need for highway safety. West Virginia had a vast network of highways in 1942, and the constitutional amendment adopted by the people in 1942 was to construct a new "primary" road system that would meet the needs of an increasingly mobile population, all to be constructed and financed from "road user" taxes.

The majority's use of syllabus point 4 of *State ex rel. Smith v. Kelly*, 149 W.Va. 381, 141 S.E.2d 142 (1965), as authority for interpreting the plain language of Article VI, § 52 creates a result quite different from what was originally intended, which was for gasoline tax revenues to be used solely for the construction, reconstruction, repair and maintenance of public highways. The majority's result permits funds to be diverted from gasoline tax revenues in order to pay for the costs of highway safety provided by the West Virginia Department of Public Safety on state highways, which includes road patrol, traffic, including accident investigation, preparing accident reports, serving traffic warrants, time spent at traffic court involving highway violations, operators' examinations, and assisting the Division of Motor Vehicles. [FN5]

FN5. These costs are not recoverable from the Federal Highway Trust Fund as part of the federal government's share of matching money for construction of highways.

Is the majority telling us that these things, which are essential to providing highway safety, are "new and changing conditions" which were not a part of providing highway safety way back in 1942? Surely, these same highway safety costs were incurred in 1942, when Article VI, § 52 was

adopted. Regardless, fifty-one years later, four Justices of this Court redefine "maintenance" to include "highway safety," which encompasses all activities performed by the Department of Public Safety or associated with activities performed by the Department of Public Safety on State highways. Does it also include the proportionate cost of the patrol car that is used in road patrol and the proportionate cost of a helicopter or airplane that is sometimes used in traffic surveillance?

The judicial cornucopia that is the majority opinion also includes other gifts. The majority opinion declared constitutional the DMV's use of money for implementation of W.Va.Code § 17A-4-10(c), W.Va.Code § 17A-6B-3 (1990), and duties of the Department of Public Safety set out under W.Va.Code § 17C- 1-1 et seq., W.Va.Code § 17A-3-3(a)(7) (1984), W.Va.Code § 17B-1D-7 (1990); W.Va.Code § 17A-4-10(c) (1990), and W.Va.Code § 17A-6B- 3(b) (1990). The majority opinion states that the DMV's expenditure of monies in reimbursing the Department of Public Safety for their proven costs in implementing these Code sections is constitutional under Article VI, Section 52 of the West Virginia Constitution.

The majority finds some of these expenditures to be "administrative costs" authorized by Article VI, Section 52 of the West Virginia Constitution. Again, it is difficult to understand this rationale. The constitutional amendment clearly states:

All ... revenue derived from motor vehicles ... shall, after deduction of statutory *702 **374 refunds and cost of administration and collection authorized by legislative appropriation, be appropriated and used solely for construction, reconstruction, repair and maintenance of public highways, and also the payment of the interest and principal on all road bonds heretofore issued....

"Cost of administration," as set out in Article VI, § 52, refers to "deduction of statutory refunds and cost of administration and collection of the tax", for the payment of the bonds issued to provide the revenue for the construction, reconstruction, repair and maintenance of public highways. Some of these costs may be legitimate under the amendment, but to lump those expenditures under the umbrella of maintenance and administrative costs as part of highway safety evidences the majority's intent to change the meaning of the constitutional amendment to meet expenditures which were not contemplated

by the voters in 1942 when the constitutional amendment was adopted. [FN6]

FN6. The majority opinion held that the expenditures of highway users funds for the construction of Department of Public Safety police barracks was not an activity that was connected to highway safety and was, therefore, unconstitutional under Article VI, Section 52 of the West Virginia Constitution.

The haunting question created by the majority opinion is whether the municipal police and deputy sheriffs can now ask the Legislature for equal treatment in view of the fact that they perform the same so-called "maintenance = highway safety duties," as the Department of Public Safety, and on the very same highways. The municipal police and deputy sheriffs perform patrol and traffic court activities on State highways passing through the various municipalities and counties. Their jurisdiction over these activities is concurrent in most cases, with the Department of Safety. I am sure that the answer to this question would be that the Legislature would never do such a thing. However, be they public or private, special interest groups are the gasoline that fuels the legislative machine. Now that one group, like the camel, has

gotten its nose under the tent, how long will it be before other camels start nosing around? It is amazing what can happen after a Pandora's "tent" is opened.

Roads and education--education and roads--are two budgetary mainstays essential to providing a productive future for our present and future citizens. To dilute the taxes already dedicated to the construction, reconstruction, repair and maintenance of that road system is tragic. And to change the plain meaning of a well-defined word in order to satisfy a legislative act jeopardizes the future of the highway system of this State and creates a doubt in the mind of the voter when he or she votes for a constitutional amendment. Our citizens do not need further cause for any deeper cynicism about their government and the future of this State.

Why have a constitution if the plain meaning of its language can be so easily subverted and redefined to conform to legislative needs? Does the end justify the means? I don't think so.

For these reasons, I dissent.

END OF DOCUMENT

APPENDIX D

Transmittal Letter to Agency

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

Building 1, Room W-314
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0610
(304) 347-4890
(304) 347-4939 FAX



Antonio E. Jones, Ph.D.
Director

June 27, 2000

Joe E. Miller, Commissioner
West Virginia Division of Motor Vehicles
Building 3, Room 113
1800 Kanawha Boulevard, East
Charleston, West Virginia 25317

Dear Commissioner Miller:

This letter is to confirm the exit conference scheduled for July 5, 2000 at 1:00 p.m. and to transmit a draft copy of the performance review of the Division of Motor Vehicles, *Motorcycle Safety Education Program*. We would appreciate your response by the close of business on July 6, 2000.

Thank you for your cooperation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harvey R. Burke".

Harvey R. Burke
Research Manager

Joint Committee on Government and Finance

Appendix E
Agency Response



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
Division of Motor Vehicles

1800 Kanawha Boulevard East • Building Three
Charleston, West Virginia 25317-0010

Cecil H. Underwood
Governor

Samuel H. Beverage, P. E.
Acting Secretary

Joe E. Miller
Commissioner

July 7, 2000

Mr. Harvey R. Burke
Research Manager
West Virginia Legislature
Performance Evaluation and
Research Division
Building 1, Room W-314
1900 Kanawha Blvd. E.
Charleston, WV 25305

RECEIVED

JUL 7 2000

**RESEARCH AND PERFORMANCE
EVALUATION DIVISION**

Dear Mr. Burke:

The following information is being provided as a response to the legislative audit in reference to the West Virginia Motorcycle Safety and Education Program.

ISSUE AREA 1: The DMV's lack of revenue and expenditures analysis and poor contract oversight have jeopardized the Motorcycle Safety Program.

- 1. The account balance for the Motorcycle Safety Education Program is expected to be depleted in December 2000.**

The Division concurs that the Motorcycle Safety Education Program funds will be depleted in December 2000. The current method of funding is not adequate to support the program. The Division receives \$2.00 per motorcycle registration to help fund the program. Registrations for motorcycles vary from year to year and are on the decline, which does not make for a dependable funding source. Two solutions exist: one, to increase the fees and second, augment the program with road funds. Both of these will be studied before a final recommendation is made.

304-558-3900 • TDD 1-800-742-6991 • 1-800-642-9066

2. Administrative costs by contractor have doubled.

The Division agrees that a financial audit of the program needs to be performed and will implement a plan to carry out this finding.

2a. Since DMV has not conducted a financial audit to determine if costs are reasonable, the DMV will not be able to bring expenses under control.

The Division is reviewing the invoices of Mr. Radcliff to determine if there was an overpayment. The appropriate action will be taken, depending on the findings. The Division will also review the process for approving invoices and make all necessary changes.

3. DMV Provides Equipment to the Contractor

The Division does not now provide Mr. Radcliff with equipment to carry out the program. Under the previous Commissioner and contract, Mr. Radcliff was lent certain equipment to carry out the program. With the rebid of the Motorcycle Safety Program contract, the Division changed the contract. The contract requires Mr. Radcliff to provide the materials to carry out the program. As for the equipment and motorcycles that Mr. Radcliff is using, it does not seem cost effective to require him to turn in the equipment and have him purchase new equipment.

4. DMV Limited Tuition Paid By Students

Under the previous Commissioner, the Division set the fee for the program at \$50.00, as opposed to a higher fee, to ensure that more motorists could take advantage of the program. Considering that the majority of funding received for this program is provided by the motorcycling public through registration and motorcycle endorsement fees, the Division did not want to price the program out of reach of people that cannot benefit from it.

4a. Once an individual completes training at a driving school, the individual must still take and pass the skills test in order to become a licensed motor vehicle operator. The State of West Virginia does not subsidize their training.

The Division agrees with this finding, however, the Motorcycle Safety Program does require that all participants successfully complete the program. The program includes a skills examination, which will continue.

5. DMV is considering using state road funds for the program.

The Division feels that state road funds can be used to cover the expenses of the program. In accordance with §17B-1-D-7(b), the funds shall be used by the Division of Motor Vehicles to defray, not cover, the cost of implementing and administering the Motorcycle Safety Program. Therefore, we feel that an additional funding source should also be established that would adequately fund the program.

6. No annual evaluation has been conducted.

The Division concurs with this finding, as the Division has relied upon an annual report and evaluation of the program by Mr. Radcliff. We will establish evaluation criteria for the program. To carry out an annual evaluation, the Division would need a full time Motorcycle Safety Coordinator, as suggested by the NHTSA Program Assessment. At this time, the duties fall under the Driver Licensing Manager, who carries many additional responsibilities.

Recommendation 1: The Division of Motor Vehicles needs to exercise greater diligence in monitoring contract expenses.

Agree The Division will establish procedures to monitor the expenses.

Recommendation 2: The Division of Motor Vehicles should consider raising tuition rates, motorcycle license fees and motorcycle safety fees attached to motorcycle registrations, or a combination thereof in order to meet program expenses in the future.

Agree The Division will pursue the legality of the use of Road Fund monies to support the Motorcycle Safety Program.


Recommendation 3: The Division of Motor Vehicles should develop an evaluation methodology and conduct its first yearly evaluation of the program for fiscal year 2000.

Agree The Division will implement a yearly evaluation.

The Division would like to add a fourth recommendation to the findings of the Legislative Auditor's Office. In review of the above recommendation and the recommendation from the National Highway Traffic Safety Administration (NHTSA), the Division would seek to hire a full time Motorcycle Safety Coordinator to ensure compliance with State and Federal Guidelines.

If you have any further questions regarding the information provided in this response, please feel free to contact my office.

Sincerely,


Joe E. Miller
Commissioner

