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OPINION	:	No. 11-601
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of	:	June 12, 2013
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THE HONORABLE PAUL SLAVIK, CHAIR OF THE STATE OFF-HIGHWAY MOTOR VEHICLE RECREATION COMMISSION, has requested an opinion on the following question:

When specified revenue sources—including off-highway vehicle registration fees, fees for using off-highway vehicular recreation facilities, and fuel taxes attributable to the use of off-highway vehicles—are designated by statute for deposit in the Off-Highway Vehicle Trust Fund for program-related purposes, may the Legislature redirect that money to other purposes by (a) loaning part of the Trust Fund corpus to the General Fund, or (b) diverting a portion of the fuel-tax revenues that would otherwise flow into the Trust Fund?

CONCLUSION

When the state’s General Fund has been depleted, the Legislature may loan money from the Off-Highway Vehicle Trust Fund’s principal to the General Fund as a budget-

balancing measure under certain conditions, which include prompt repayment of the loan and preservation of the core program for which the Trust Fund was created. The Legislature may also permanently divert and reallocate fuel-tax revenues previously allocated to the Trust Fund.

ANALYSIS

In the Off-Highway Motor Vehicle Recreation Act of 2003¹ and its statutory predecessors, the Legislature has designated certain revenue streams as funding sources for off-highway recreation involving motor vehicles. These include off-highway vehicle registration and identification fees, fees charged to users of the state's off-highway recreational parks and facilities, and a portion of the state's monthly fuel-tax revenue.² These revenues are to be deposited in the Off-Highway Vehicle Trust Fund ("Trust Fund"),³ which is dedicated to off-highway recreational vehicle purposes. The Trust

¹ Pub. Res. Code §§ 5090.01-5090.70.

² Pub. Res. Code § 5090.60. This statute provides:

The [Off-Highway Vehicle Trust Fund] consists of deposits from the following sources:

(a) Revenues transferred from the Motor Vehicle Fuel Account in the Transportation Tax Fund.

(b) Fees [registration fees] paid pursuant to subdivision (b) of Section 38225 of the Vehicle Code.

(c) Unexpended service fees.

(d) Fees [facility use fees] and other proceeds collected at state vehicular recreation areas, as provided in subdivision (c) of Section 5010.

(e) Reimbursements.

(f) Revenues and income from any other source required by law to be deposited in the fund.

See Pub. Res. Code § 5090.06 ("fund" means Off-Highway Vehicle Trust Fund); Veh. Code § 38225(c); Pub. Res. Code § 5010(c) (off-highway vehicular recreation facility use fees); Veh. Code §§ 38225-38230 (off-highway vehicle registration fees); Rev. & Tax. Code § 8352.6 (off-highway vehicle fuel taxes).

³ *See* Veh. Code § 38225(c):

All money transferred pursuant to Section 8352.6 of the Revenue and Taxation Code, all fees received by the department pursuant to subdivision (b), and all day use, overnight use, or annual or biennial use fees for state vehicular recreation areas received by the Department of

Fund supports efforts of the Division of Off-Highway Motor Vehicle Recreation to implement a program to support off-highway vehicle recreation and acquire, administer, restore, and protect lands for these purposes,⁴ as well as to finance “grants and cooperative agreements” associated with the program.⁵

We are asked whether the statutory dedication of revenues to these limited purposes (this “earmarking” of the revenue, in other words)⁶ is so exclusive and so restrictive as to preclude the Legislature, in subsequent budget years, from redirecting that revenue to other programs and purposes. We conclude that the Legislature may indeed transfer Trust Fund moneys to the General Fund for application to other purposes when the transfer is in the form of a loan from the Trust Fund, provided that certain conditions are met, and also that the Legislature may reallocate fuel-tax revenues to other purposes altogether.⁷

Background and Statutory Framework

California’s program for recreational off-highway motor vehicles began with the passage of the “Chappie-Z’berg Off-Highway Motor Vehicle Law of 1971,” which added Division 16.5 to the Vehicle Code, governing the use of off-road vehicles on land that is open and accessible to the public.⁸ This statutory scheme provides for the registration,

Parks and Recreation shall be deposited in the Off-Highway Vehicle Trust Fund, which is hereby created. There shall be a separate reporting of special fee revenues by vehicle type, including four-wheeled vehicles, all-terrain vehicles, motorcycles, and snowmobiles. All money shall be deposited in the fund, and, upon appropriation by the Legislature, shall be allocated according to Section 5090.61 of the Public Resources Code.

⁴ Pub. Res. Code § 5090.61(b). The Division of Off-Highway Motor Vehicle Recreation is in the Department of Parks and Recreation. Pub. Res. Code §§ 5090.05, 5090.30; *see also* Pub. Res. Code §§ 5090.32-5090.53 (duties and responsibilities of the division).

⁵ Pub. Res. Code §§ 5090.50; 5090.61(a).

⁶ To “earmark” is “to designate or set aside (funds) for a specific use or owner. . . .” *Webster’s 3d New International Dictionary* (2002) at 714; *see also Black’s Law Dictionary* (9th ed. 2009) at 584 (“To set aside for a specific purpose or recipient”).

⁷ Whether appropriation and expenditure of fuel-tax revenues may be subject to other statutory or constitutional restrictions is a matter beyond the scope of this opinion.

⁸ Veh. Code, Div. 16.5, §§ 38000-38506 (added 1971 Stat. ch. 1816 § 9).

identification, and other regulation of off-highway vehicles,⁹ and imposes fees for related services, vehicle identification, and special permits.¹⁰

Eleven years later, following a significant increase in the popularity of motorized off-highway recreation, and in response to mounting public concerns about damage to public lands and natural resources, the Legislature inserted complementary provisions in the Public Resources Code, enacting the 1982 Off-Highway Motor Vehicle Recreation Act (“OHMVR Act”).¹¹ This legislation addressed such matters as complying with environmental quality standards¹² and soil conservation standards;¹³ providing law enforcement on all system lands;¹⁴ protecting wildlife habitat¹⁵ and cultural and archaeological resources;¹⁶ closing and restoring damaged areas;¹⁷ and providing instruction to off-highway motorists in such matters as safety, trail etiquette, avoiding trespass, and preventing damage to lands and natural resources.¹⁸ The central purpose of this legislation was to protect public safety and to protect, repair, and restore public lands and natural resources, while facilitating the appropriate use of off-highway vehicles.¹⁹

The OHMVR Act was amended in 1987,²⁰ and again (to its current form) in 2002, when it was renamed “The Off-Highway Motor Vehicle Recreation Act of 2003.”²¹ The nine-member Off-Highway Motor Vehicle Recreation Commission (“OHMVR Commission”), created in 1982,²² “provides advice to the Division, reviews and

⁹ Veh. Code §§ 38010-38170.

¹⁰ *See e.g.* Veh. Code § 38225 (service fee); Veh. Code § 38230 (identification fee); Veh. Code §§ 38087.5, 38231, 38231.5 (special permit fees).

¹¹ 1982 Stat. ch. 994 § 11.

¹² Pub. Res. Code § 5090.32(e).

¹³ Pub. Res. Code § 5090.35(b).

¹⁴ Pub. Res. Code §§ 5090.32(c), (k); 5090.36.

¹⁵ Pub. Res. Code § 5090.35(c).

¹⁶ Pub. Res. Code § 5090.35(f).

¹⁷ *See e.g.* Pub. Res. Code §§ 5090.02(c)(4); 5090.35(b) and (c); 5090.43(c).

¹⁸ Pub. Res. Code § 5090.34(a).

¹⁹ Pub. Res. Code § 5090.35(a).

²⁰ 1987 Stat. ch. 1027 § 1.5.

²¹ 2002 Stat. ch. 563 § 2; *see* Pub. Res. Code §§ 5090.01-5090.70.

²² Pub. Res. Code § 5090.15; *see also* <http://ohv.parks.ca.gov>. Commission members

comments on Program implementation, encourages public input, and considers and approves general plans for State Vehicular Recreation Areas (SVRAs).”²³

Redirection of Trust Fund Moneys

The question before us was prompted by two pieces of legislation connected with the state’s Budget Act of 2010, both of which redirected moneys that would otherwise have flowed to or remained in the Trust Fund. Assembly Bill 95, explicitly enacted to address a “fiscal emergency” declared by the Governor,²⁴ provided for a direct monthly “transfer” to the General Fund of \$833,000 (about \$10 million per year) in fuel-tax revenue that had previously been designated for deposit in the Trust Fund.²⁵ Senate Bill 84 authorized a loan of up to \$21 million from the Trust Fund corpus to the General Fund.²⁶ Both measures were approved by the Governor and filed with the Secretary of State on March 24, 2011, and both took effect immediately.²⁷ We are informed that the entire authorized loan amount (\$21 million) was thereafter transferred to the General Fund and that the authorized monthly transfers of fuel-tax revenue have occurred every month since March 2011. Because these two forms of redirected revenue—the one-time loan from the Trust Fund and the monthly transfers of fuel-tax revenue—are distinctly different in nature and in net effect, we will address them separately, beginning with the loan.

are appointed to staggered four-year terms, and the membership “is intended to represent a broad range of groups including OHV recreation enthusiasts, biological or soil scientists, rural landowners, law enforcement, environmental protection organizations, and non-motorized recreation interests.” *Id.*; *see also* Pub. Res. Code § 5090.15(b).

²³ *Off-Highway Motor Vehicle Recreation Commission Program Report* at 2 (Jan. 2011); *see also* Pub. Res. Code § 5090.24.

²⁴ 2011 Stat. ch. 2 § 31:

This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

²⁵ *See* 2011 Stat. ch. 2 § 27 (Assem. 95) (adding subdivision (a)(2) to Rev. & Tax Code § 8352.6).

²⁶ 2011 Stat. ch. 13 § 12 (Sen. 84). Section 12 added Item 3790-011-0263 to Section 2.00 of the Budget Act of 2010.

²⁷ *See* 2011 Stat. ch. 2 § 32; 2011 Stat. ch. 13 § 24.

Loan from Trust Fund to General Fund

As noted above, Senate Bill 84 added an item to the Budget Act of 2010 authorizing the transfer of \$21 million from the Trust Fund corpus, as a loan, to the General Fund. This item included a date certain for repayment to the Trust Fund, and provided that the loan, or some part thereof, should be repaid sooner if the Trust Fund “has a need for the moneys” or if the account to which the money was transferred no longer has a need for it.²⁸ Budget Item 3790-011-0263 thus provided:

For transfer by the Controller, upon order of the Director of Finance,
from the Off-Highway Vehicle Trust Fund to the General Fund as a loan
.....

Provisions:

1. The Director of Finance may transfer up to \$21,000,000 as a loan to the General Fund, which shall be repaid by June 30, 2014. The Director of Finance shall order the repayment of all or a portion of this loan if he or she determines that either of the following circumstances exists: (a) the fund or account from which the loan was made has a need for the moneys, or (b) there is no longer a need for the moneys in the fund or account that received the loan. This loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer.²⁹

Legislative loans of money from special funds to the General Fund are not uncommon.³⁰ Indeed, Senate Bill 84 itself authorized loans from many other special funds, including, for example, the State Highway Account, Transportation Tax Fund,³¹ the Renewable Resource Trust Fund,³² the California Used Oil Recycling Fund;³³ the

²⁸ 2011 Stat. ch. 13 § 12.

²⁹ *Id.*

³⁰ *See e.g. Serv. Employees Internat. Union, Local 1000 v. Brown*, 197 Cal. App. 4th 252, 268 at n. 8 (2011) (“It is a longstanding practice for special funds to be involuntarily borrowed by the General Fund. . . . As a ready source of cash, these borrowings have become an integral component of the budgetary calculus”)

³¹ 2011 Stat. ch. 13 § 6.

³² *Id.* at § 7.

³³ *Id.* at § 8.

Electronic Waste Recovery and Recycling Account, Integrated Waste Management Fund;³⁴ and the Oil Spill Response Trust Fund.³⁵

As a general matter, such transfers appear to be permitted under Government Code section 16310, which provides, in pertinent part:

(a) When the General Fund in the Treasury is or will be exhausted, the Controller shall notify the Governor and the Pooled Money Investment Board. The Governor may order the Controller to direct the transfer of all or any part of the moneys not needed in other funds or accounts to the General Fund from those funds or accounts, as determined by the Pooled Money Investment Board, including the Surplus Money Investment Fund or the Pooled Money Investment Account. All moneys so transferred shall be returned to the funds or accounts from which they were transferred as soon as there are sufficient moneys in the General Fund to return them. No interest shall be charged or paid on any transfer authorized by this section, exclusive of the Pooled Money Investment Account, except as provided in this section. This section does not authorize any transfer that will interfere with the object for which a special fund was created or any transfer from the Central Valley Water Project Construction Fund, the Central Valley Water Project Revenue Fund, or the California Water Resources Development Bond Fund.

(b)

(c) Notwithstanding any other provision of law, except as described in subdivision (d), all moneys in the State Treasury may be loaned for the purposes described in subdivision (a).

(d) Subdivision (c) shall not apply to any of the following:

(1) The Local Agency Investment Fund.

(2) Funds classified in the State of California Uniform Codes Manual as bond funds or retirement funds.

(3) All or part of the moneys not needed in other funds or accounts for

³⁴ *Id.* at § 9.

³⁵ *Id.* at § 10.

purposes of subdivision (a) where the Controller is prohibited by the California Constitution, bond indenture, or case law from transferring all or any part of those moneys.³⁶

Similar loans have been employed by the Legislature as a budget-balancing technique in previous budget years, and recent legal challenges to loans of this nature have resulted in judicial decisions that guide our analysis here. In one case, the court upheld a 2008 loan to the General Fund from the Contingent Fund of the Medical Board of California;³⁷ in another, the court upheld a series of loans—occurring in 2002, 2003, 2008, and 2009—from the Beverage Container Recycling Fund to the General Fund.³⁸ Both decisions relied on Government Code section 16310 and on a 1934 California Supreme Court decision, *Daugherty v. Riley*,³⁹ in concluding that such temporary loans are permissible so long as certain conditions are met. These conditions are: the General Fund must be exhausted, the core mission of the special fund must be preserved, and the loan must provide for prompt repayment. The following passage from *California Medical Association v. Brown* captures this reasoning:

The *Daugherty* case [rejecting such a loan] is distinguishable from this case because it involved permanent appropriations, when the General Fund had a surplus, that left the agency unable to function, rather than a loan of money not needed for performance of the agency's regulatory responsibilities when the General Fund was exhausted. But the dicta in *Daugherty* about the permissibility of loans under former Political Code section 444, which provided for loans to the General Fund on essentially the same terms as current Government Code section 16310, supports defendants' position. [Citation.] Subject to the conditions now specified in Government Code section 16310—exhaustion of the General Fund, no interference with the object for which the special fund was created, return of the money as soon as feasible—*Daugherty* indicated that money in Special Funds could be loaned to shore up the General Fund. (*Daugherty, supra*, 1 Cal.2d at p. 309.) Such loans were lawful notwithstanding the

³⁶ Government Code section 16310(b) provides for payment of interest on certain transfers, and describes how such interest is to be computed.

³⁷ *Cal. Med. Assn. v. Brown*, 193 Cal. App. 4th 1449 (2011).

³⁸ *Tomra Pacific, Inc. v. Chiang*, 199 Cal. App. 4th 463 (2011).

³⁹ *Daugherty v. Riley*, 1 Cal. 2d 298 (1934).

“trust fund” nature of special funds that were collected and segregated for the exclusive use of a regulatory agency. (*Id.* at pp. 308–309.)⁴⁰

In both *California Medical Association* and *Tomra Pacific*, the special-fund source of the challenged loan had all the attributes of a trust fund.⁴¹ Here, the \$21 million loan from the Trust Fund appears to satisfy all of the criteria set forth in Government Code section 16310 and described in *California Medical Association* and *Tomra Pacific*. The budget item in question was enacted in response to a massive deficit in the General Fund; it includes specific repayment terms; and it provides for expedited repayment in the event that the Trust Fund “has a need for the moneys.”⁴²

We believe that these circumstances are sufficient to support a conclusion that the \$21 Million loan is valid. But there is more: As we have noted, the trust funds at issue in *California Medical Association* and *Tomra Pacific* included terms specifically *prohibiting* loans or transfers of the corpus to the General Fund. Here, in contrast, Vehicle Code section 38225, which creates the Off-Highway Vehicle Trust Fund,⁴³ expressly contemplates that money from the fund may from time to time be “temporarily transferred by the Legislature . . . to the General Fund.”⁴⁴ In our view, this provision,

⁴⁰ *Cal. Med. Assn.*, 193 Cal. App. 4th at 1458; *accord Tomra Pacific*, 199 Cal. App. 4th at 489.

⁴¹ In *California Medical Association*, the special fund’s revenue came from licensing fees charged to regulated physicians and surgeons, 193 Cal. App. 4th at 1453, and the statute creating that special fund not only restricted expenditures to program-related costs, but expressly provided that “[n]o surplus . . . shall be deposited in or transferred to the General Fund.” *Id.* at 1454 (quoting Bus. & Prof. Code § 2445) (emphasis added). The Beverage Container Recycling Fund at issue in *Tomra Pacific* was similarly restricted by statute, including a provision (added in 2009) that the money in the fund “should not be used, loaned, or transferred for any other purpose.” 199 Cal. App. 4th at 479 (quoting Pub. Res. Code § 14580(e)) (emphasis added).

⁴² 2011 Stat. ch. 13 § 12 (Sen. 84); *cf. Cal. Med. Assn.*, 193 Cal. App. 4th at 1451 (challenged budget item stipulated that loan repayments be made to ensure that programs supported by trust fund not be adversely affected by loan); *Tomra Pacific*, 199 Cal. App. 4th at 489-492 (same).

⁴³ Veh. Code § 38225(c).

⁴⁴ Veh. Code § 38225(d). Subdivision (d) provides:

Any money temporarily transferred by the Legislature from the Off-Highway Vehicle Trust Fund to the General Fund shall be reimbursed, without interest, by the Legislature within two fiscal years of the

added in 2007,⁴⁵ powerfully underscores the legitimacy of the Legislature’s \$21 million loan in 2011.

Monthly Revenue Transfers Totaling \$10 Million Per Year

As we noted above, Assembly Bill 95 directly “transferred” to the General Fund a monthly sum of \$833,000—roughly \$10 million per year—from a revenue stream that would otherwise have flowed to the Trust Fund. The Legislature achieved this transfer by adding a new subdivision to Revenue and Taxation Code section 8352.6, the statute that provides for a monthly transfer of money from the Motor Vehicle Fuel Account to the Trust Fund in an amount that is deemed attributable to taxes on fuel used for off-highway motor vehicle operation.⁴⁶ The new subdivision requires that some of that money be withheld and diverted to the General Fund instead:

The Controller shall withhold eight hundred thirty-three thousand dollars (\$833,000) from this monthly transfer, and transfer that amount to the General Fund.⁴⁷

This form of transfer is nothing like a short-term loan: there is no end date or dollar limit to the redirected flow of money, and there are no provisions for repayment to the Trust Fund. Thus, except that it came in response to a depleted General Fund, this ongoing monthly transfer meets none of the criteria set forth in Government Code section 16310 and discussed in *California Medical Association* and *Tomra Pacific*.⁴⁸ Instead,

transfer.

⁴⁵ 2007 Stat. ch. 541 (Sen. 742) § 24.

⁴⁶ Rev. & Tax. Code § 8352.6(a)(1). This provision states:

Subject to Section 8352.1, on the first day of every month, there shall be transferred from moneys deposited to the credit of the Motor Vehicle Fuel Account to the Off-Highway Vehicle Trust Fund created by Section 38225 of the Vehicle Code an amount attributable to taxes imposed upon distributions of motor vehicle fuel used in the operation of motor vehicles off highway and for which a refund has not been claimed. Transfers made pursuant to this section shall be made prior to transfers pursuant to Section 8352.2.

See also Rev. & Tax. Code § 8352.6(b) (methodology for calculating off-highway portion of fuel-tax receipts).

⁴⁷ Rev. & Tax. Code § 8352.6(a)(2).

⁴⁸ In both *California Medical Association* and *Tomra Pacific*, the courts emphasized

this redirection of revenue might well remain in effect even after the General Fund’s solvency is restored and regardless of any deleterious consequences to the core mission of the Trust Fund. Indeed, the legislative purpose of the transfer was “to implement a reduction to the Off-Highway Vehicle program,”⁴⁹ consistent with the Legislature’s overall scaling back of state programs and costs in the face of enormous budget deficits.⁵⁰ Is this transfer a lawful reallocation of revenue? We conclude that it is.

The Legislature’s authority to make law is broad indeed. As the California Supreme Court has observed:

... Unlike the federal Constitution, which is a grant of power to Congress, the California Constitution is a limitation or restriction on the powers of the Legislature. Two important consequences flow from this fact. First, the entire law-making authority of the state, except the people’s right of initiative and referendum, is vested in the Legislature, and that body may exercise any and all legislative powers which are not expressly or by necessary implication denied to it by the Constitution. In other words, “we do not look to the Constitution to determine whether the Legislature is authorized to do an act, but only to see if it is prohibited.”

Secondly, all intendments favor the exercise of the Legislature’s plenary authority: “If there is any doubt as to the Legislature’s power to act in any given case, the doubt should be resolved in favor of the Legislature’s action. Such restrictions and limitations [imposed by the Constitution] are

the promise of prompt repayment as a critical feature in establishing the legitimacy of the disputed transfers. *See Cal. Med. Assn.*, 193 Cal. App. 4th at 1458, 1461; *Tomra Pacific*, 199 Cal. App. 4th at 479-480, 488-489. Conversely, the *Daugherty* Court’s rejection of the disputed 1929 and 1931 transfers was premised primarily on the *absence* of any repayment provision and the ostensibly permanent nature of the challenged transfers, as well as the devastating impact that the transfers would eventually have on the department for which the revenue had been earmarked. *Daugherty*, 1 Cal. 2d at 309-310; *see also Cal. Med. Assn.*, 193 Cal. App. 4th at 1457-1458.

⁴⁹ *See e.g.* Bill Analysis, Assembly Concurrence in Senate Amendments to Assem. 95, at 1, ¶ 5 (Mar. 17, 2011).

⁵⁰ The Legislature’s conclusion—i.e., that projected state revenues would simply not sustain all existing governmental programs and services—is reflected in other passages of Assembly Bill 95 as well, including provisions addressing the anticipated closures or partial closures of selected units of the state park system, or reductions of services therein, to achieve budget reductions. *See* 2011 Stat. ch. 2 § 25; Pub. Res. Code § 5007.

to be construed strictly, and are not to be extended to include matters not covered by the language used.” Conversely, a constitutional amendment removing those restrictions and limitations should, in cases of doubt, be construed liberally “in favor of the Legislature’s action.”⁵¹

We are mindful also of the related principle of statutory construction that “[a] statute should be construed whenever possible so as to preserve its constitutionality.”⁵² That is to say, “when the terms of a statute . . . may reasonably be construed to avoid conflict with a constitutional provision, they will be so read.”⁵³ At the same time, we note there are two significant limitations on the Legislature’s prerogatives that may inform our analysis here. First, the Legislature’s exercise of authority must conform to the terms of our state Constitution⁵⁴—terms which the Legislature may amend only if the proffered revision is approved by a super-majority vote in both houses and is ratified by a vote of the people.⁵⁵ Second, a sitting Legislature may not bind, or hamper the discretion of, future state Legislatures⁵⁶—a limitation that applies particularly with respect to their power to make or refrain from making future appropriations.⁵⁷ That is to say, the

⁵¹ *Methodist Hosp. of Sacramento v. Saylor*, 5 Cal. 3d 685, 691 (1971) (citations omitted).

⁵² *Dyna-Med, Inc. v. Fair Empl. & Hous. Commn.*, 43 Cal. 3d 1379, 1387 (1987) (citations omitted).

⁵³ *Bldg. Material & Constr. Teamsters’ Union v. Farrell*, 41 Cal. 3d 651, 665 (1986) (citations omitted).

⁵⁴ See e.g. *People v. Navarro*, 7 Cal. 3d 248, 260 (1972) (“[w]herever statutes conflict with constitutional provisions, the latter must prevail”); *Strauss v. Horton*, 46 Cal. 4th 364, 395 (2009) (“A California statute, of course, is invalid if it conflicts with the governing provisions of the California Constitution”).

⁵⁵ Cal. Const. art. XVIII, §§ 1, 4; see also e.g. *Coral Constr. v. City & Co. of San Francisco*, 50 Cal. 4th 315, 361 (2010) (dissenting/concurring opn. of Moreno, J.) (Legislature can amend state Constitution only by securing two-thirds approval of proposed amendment by both houses and then placing measure on ballot and having it garner a majority of votes).

⁵⁶ E.g. *City and Co. of San Francisco v. Cooper*, 13 Cal. 3d 898, 929 (1975) (“no legislative board, by normal legislative enactment, may divest itself or future boards of the power to enact legislation within its competence”); *In re Collie*, 38 Cal. 2d 396, 398 (1952); *People’s Advoc., Inc. v. Super. Ct.*, 181 Cal. App. 3d 316, 328-329 (1986) (“[n]either house of the Legislature may bind its own hands or those of future Legislatures by adopting rules not capable of change”).

⁵⁷ Cal. Const. art. IV, § 1; see also e.g. *Co. of Los Angeles v. Comm’n. on State*

authority to appropriate tax revenues “resides with the Legislature under the doctrine of separation of governmental powers,” and the Legislature “is not obligated to enact the same appropriations year after year.”⁵⁸ This latter doctrine appears to be reflected in the statutes creating the Motor Vehicle Fuel Account in the Transportation Tax Fund (formerly, the “Motor Vehicle Fuel Fund”) and designating how those funds are to be applied.⁵⁹ That detailed distribution scheme, which includes both the initial designation of tax revenues for the Trust Fund⁶⁰ and the 2011 redirection of a portion thereof away from that fund,⁶¹ is prefaced by this caveat:

*Subject to the provisions of any budget bill heretofore or hereafter enacted, the money deposited to the credit of the Motor Vehicle Fuel Account is hereby appropriated for expenditure, allocation, or transfer as provided in this chapter.*⁶²

Having these principles in mind, we examine the \$10 million annual transfer effected by Assembly Bill 95, which diverts, for an indefinite period of time, a significant portion of the monthly fuel-tax revenue stream that had previously flowed into the Trust Fund. This is not the same as a removal of money from the Trust Fund corpus; rather, it is the redirection and reallocation of money that has not yet been deposited in that fund. Thus, conditions and limitations governing loans from a special fund, such as program preservation and repayment obligations, may not apply to transfers of this nature.

We have considered similar transfers in previous opinions. In a 1992 opinion, for example, we were asked whether the Legislature could, by enacting a new statute, lawfully transfer to the General Fund certain revenue that had theretofore been earmarked for deposit into a special “fish and wildlife propagation fund.”⁶³ We concluded that the redirection of that revenue stream (generated by various fish-and-game fines, penalties, and forfeitures), with no promise of repayment, was not permitted. However, our

Mandates, 32 Cal. App. 4th 805, 820 (1995).

⁵⁸ *Co. of Los Angeles*, 32 Cal. App. 4th at 820 (citing Cal. Const. art. IV, § 1). *See also* 63 Ops.Cal.Atty.Gen. 367, 370 (1980) (“Legislature could not promise now to appropriate a sum of money several years hence”).

⁵⁹ Rev. & Tax. Code §§ 8351-8360.

⁶⁰ Rev. & Tax. Code § 8352.6(a)(1).

⁶¹ Rev. & Tax. Code § 8352.6(a)(2).

⁶² Rev. & Tax. Code § 8352 (emphasis added).

⁶³ 75 Ops.Cal.Atty.Gen. 106 (1992).

conclusion there turned on a provision of the state Constitution expressly stating that such revenue may be used only for activities relating to “the protection or propagation of fish and game.”⁶⁴ Hence, the opinion’s reasoning is not persuasive here, where there is no analogous constitutional restriction on expenditures.

Similarly, in a 1988 opinion regarding the proper uses for interest earned on the investment of certain moneys of the State Teachers’ Retirement Fund, our conclusion turned on the constitutional underpinnings of the fund.⁶⁵ Citing article XVI, section 17, of the California Constitution, we observed that “the assets of a public pension or retirement system are constitutionally designated as trust funds for exclusive purposes, and may not be otherwise defined or applied by statute.”⁶⁶ The concluding paragraph of the opinion states that, “Where a trust is constitutionally established for a designated purpose, neither the principal nor its proceeds may be statutorily diverted.”⁶⁷ We repeated and applied that principle in a companion 1988 opinion concerning the proper crediting of interest earned on investments of certain money that had been temporarily withdrawn from the Public Employees’ Retirement Fund, or that was earmarked for that fund but had not yet been deposited therein.⁶⁸

⁶⁴ 75 Ops.Cal.Atty.Gen. at 108, quoting Cal. Const. art. XVI, § 9. As we explained:

The transfer of fish and game fines into the state’s General Fund would not satisfy the Constitution, since such deposits would be available to pay the state’s general expenses and would no longer be available exclusively to fund fish and game activities.

Id. at 112.

⁶⁵ 71 Ops.Cal.Atty.Gen. 89 (1988).

⁶⁶ 71 Ops.Cal.Atty.Gen. at 93.

⁶⁷ 71 Ops.Cal.Atty.Gen. at 96 (emphasis added); *see also Veterans of Foreign Wars v. State*, 36 Cal. App. 3d 688, 695-696 (1974) (claim that Legislature may redirect funds and “dispose of its own monetary creation” fails where revenue was derived from bond issues ratified by voters per Constitution [Cal. Const. art. XVI, § 1], giving statutes “a special character”).

⁶⁸ 71 Ops.Cal.Atty.Gen. 81, 85-88 (1988); *see also Valdes v. Cory*, 139 Cal. App. 3d 773, 788 (1983) (PERS funds may be appropriated only for benefit of PERS members because funds received into special PERS fund are in the nature of “continuing appropriation” for specific purpose); 89 Ops.Cal.Atty.Gen. 232, 237 (2006) (“It is well established that the assets of a public employee trust may not be appropriated for general purposes”).

The Trust Fund at issue here, however, does not appear to us to be established, defined, or restricted by any provision of California’s Constitution, nor has its fuel-tax revenue stream ever been accorded “special character” by virtue of voter ratification.⁶⁹ Rather, the Trust Fund is a creature of statute, established by the Legislature alone.⁷⁰ Accordingly, and particularly in light of the express statutory admonition that the fuel-tax revenue is “[s]ubject to the provisions of any budget bill . . . hereafter enacted,”⁷¹ we believe that the 2010 redirection of a portion of the Trust Fund’s fuel-tax revenue was within the Legislature’s sound discretion.

For the foregoing reasons, we conclude that, when the state’s General Fund has been depleted, the Legislature may loan money from the Trust Fund’s principal to the General Fund as a budget-balancing measure under certain conditions, which include prompt repayment of the loan and preservation of the core program for which the Trust Fund was created. The Legislature may also permanently divert and reallocate fuel-tax revenues previously allocated to the Trust Fund.

⁶⁹ *Cf. Veterans of Foreign Wars*, 36 Cal. App. 3d at 695-696.

⁷⁰ *See* Veh. Code § 38225(c); Pub. Res. Code § 5090.60; *see also* Pub. Res. Code §§ 5010(c), 5090.06; Veh. Code §§ 38225-38230; Rev. & Tax. Code § 8352.6.

⁷¹ Rev. & Tax. Code § 8352.