

Draft

MEMORANDUM

DATE: December 8, 2008

TO: Jeff Caldwell

FROM: Scott Lockwood, Assistant Attorney General
Transportation and Public Construction Division

SUBJECT: **Use of TNB Tolls to Fund Bridge Construction**

Question Presented

You recently asked our division whether toll charges received from operation of the Tacoma Narrows Bridge (TNB) and deposited into the Tacoma Narrows' Toll Bridge Account can be used to directly pay for ongoing bridge construction items to avoid the cost of issuing additional construction bonds?

Brief Answer

Current legislation relating to TNB funding does not authorize the use of tolls to directly pay for capital construction.

Background

I understand that although the TNB has been open to the toll paying public since July 2007, construction of the project is not yet complete. There are a number of items to be finished, including some sound abatement walls, expansion joint work and the elimination of a temporary crossover lane used to route traffic during construction.

You indicate that these construction items are not additions to the completed bridge. Rather, they were either included in the original contract, or added by change order, and that have yet to be finished. You further indicate that the Department has the authority to sell additional bonds as necessary to complete these construction items. I understand that, if legally permitted, it would be more cost effective to use toll revenues directly for these remaining construction items rather than to issue additional bonds.

Legal Analysis

Washington law requires all tolls or other revenue received from the operation of any toll bridge constructed with the proceeds of state issued bonds be paid to the department of the state treasurer for deposit into a segregated special trust account. RCW 47.46.130; RCW 47.56.160.

The special trust account for the TNB was established in accordance with RCW 47.56.165 to be known as the *Tacoma Narrows' Toll Bridge Account*. This same statute identifies the types of funds to be deposited and its uses.

Rules of statutory construction provide that when a statute's meaning is plain on its face, then that meaning must be given effect as an expression of legislative intent. *Dept' of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1 43 P.3d 4 (2002). I believe the answer to your question can be discerned from the plain meaning of the language of RCW 47.56.165.

Subsection (1) of RCW 47.56.165 provides that the account receive funds from more than one source. Specifically, the account consists of deposits from: (a) all proceeds of bonds issued for construction of the TNB plus any capitalized interest; (b) all of the toll charges and other revenues received from the operation of the TNB; (c) interest earned from the deposit or investment of those revenues; (d) proceeds from the sale of surplus project property; and (e) liquidated damages collected from the contractor.¹

The statute then sets forth two separate subsections to describe how separate categories of funds within the account may be used.

Subsection (2) identifies "proceeds of bonds" and directs that those funds shall be used in accordance with RCW 47.46.130 for activities relating to the financing and construction of the bridge and its approaches.² It is my opinion that the plain meaning of subsection (2) requires that proceeds of bonds be used for construction and those referenced activities incident to construction.

¹ "(1) Deposits to the account must include:

- (a) All proceeds of bonds issued for construction of the Tacoma Narrows public-private initiative project, including any capitalized interest;
- (b) All of the toll charges and other revenues received from the operation of the Tacoma Narrows bridge as a toll facility, to be deposited at least monthly;
- (c) Any interest that may be earned from the deposit or investment of those revenues;
- (d) Notwithstanding RCW 47.12.063, proceeds from the sale of any surplus real property acquired for the purpose of building the second Tacoma Narrows bridge; and
- (e) All liquidated damages collected under any contract involving the construction of the second Tacoma Narrows bridge."

² "(2) Proceeds of bonds shall be used consistent with RCW 47.46.130, including the reimbursement of expenses and fees incurred under agreements entered into under RCW 47.46.040 as required by those agreements."

Subsection (3) then addresses the use of toll charges, other revenues and interest, and specifies that these funds be used to “pay any required costs of financing³, operation, maintenance, and management and necessary repairs of the facility;” and repay amounts to the motor vehicle fund as required under RCW 47.46.140.⁴

Thus, the Legislature used the word “construction” when it identifies the items to be paid from bond proceeds, but omitted “construction” from the list of items in subsection (3). For purposes of statutory construction, where the Legislature uses language in one instance but different language in another in dealing with similar subjects, a difference in legislative intent is indicated. *Lundberg ex rel. Orient Foundation v. Coleman*, 115 Wn. App. 172, 60 P.3d 595 (2002).

Conclusion

I conclude that the Legislature did not intend for toll collections to be used to directly pay for completion of the bridge construction. The legislative scheme adopted by the Legislature authorized construction to be financed through the sale of bonds and specifically requires bond proceeds be used for construction. The Legislature authorized the use of toll collections for finance, operations, maintenance and repair of the bridge, but did not include construction.

This memorandum is the legal opinion of the author. It does not constitute a formal opinion of Attorney General.

³ According to Black’s Law Dictionary, “finance” means: to supply with funds through the issuance of stocks, bonds, notes, or mortgages; to provide with capital or loan money as needed to carry on business. *Black’s Law Dictionary* 568 (5th rev. ed. 1979).

⁴ (3) Toll charges, other revenues, and interest may be used to:

(a) Pay any required costs of financing, operation, maintenance, and management and necessary repairs of the facility; and

(b) Repay amounts to the motor vehicle fund as required under RCW 47.46.140.