

NO. SAC. 7991

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

THOMAS BRADLEY, Mayor of the City of Los Angeles;
EDMUND D. EDELMAN, a Councilman in the City of Los
Angeles; CITY OF RIVERSIDE, a municipal corporation,
Petitioners,

v.

CALIFORNIA HIGHWAY COMMISSION; CALIFORNIA STATE
LEGISLATURE; CALIFORNIA DEPARTMENT OF TRANSPORTATION;
JAMES A. MOE, in his official capacity as Director of
California Department of Transportation; CALIFORNIA
STATE TRANSPORTATION BOARD; HOUSTON I. FLOURNOY, in
his official capacity as California State Controller,
Respondents.

PETITION FOR A WRIT OF MANDATE
WITH MEMORANDUM OF POINTS AND AUTHORITIES

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MARY D. NICHOLS
CARLYLE W. HALL, JR.
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3 SUPREME COURT OF THE STATE OF CALIFORNIA

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6 Angeles; CITY OF RIVERSIDE, a municipal corporation,
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Respondents.

) PETITION FOR A WRIT OF MANDATE

TO THE HONORABLE JUSTICE DONALD RICHARD WRIGHT, CHIEF JUSTICE,
AND TO THE HONORABLE ASSOCIATE JUSTICES:

Petitioners Thomas Bradley, Mayor of the City of Los Angeles, Edmund D. Edelman, a Councilman in the City of Los Angeles, and the City of Riverside, petition the Honorable Chief Justice Donald Richard Wright and the Associate Justices of the Supreme Court of the State of California for a writ of mandate directed to respondents California Highway Commission; California State Legislature; California Department of Transportation; James A. Moe in his official capacity as Director of California Department of Transportation; California State Transportation Board; Houston I. Flournoy in his official capacity as California State Controller (hereinafter "respondents"), and each of them.

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I

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2 This action seeks a writ of mandate directing respon-
3 dents to consider requests for funds governed by Article XXVI,
4 §§1,2 of the California Constitution (hereinafter "Article XXVI"),
5 by interested county and city governmental entities and to make
6 said funds available in appropriate cases for use in the develop-
7 ment and maintenance of mass rapid transit and other alternative
8 transportation systems. Respondents have refused to make funds
9 governed by Article XXVI available to county and city govern-
10 mental entities for any use other than the building and
11 maintenance of streets, roads and freeways designed to carry
12 motor vehicles (cars, trucks and buses) and structures directly
13 incident thereto. They have taken the position that the language
14 and purpose of Article XXVI prohibits the use of these funds
15 for any purpose other than the development of such streets,
16 roads, freeways or structures directly incident thereto. Exhibits
17 "4" and "5" hereto. Petitioners contend that such a restricted
18 interpretation of the meaning and purpose of Article XXVI is
19 erroneous, and that Article XXVI in fact contemplates the use
20 of moneys from gas taxes and vehicle registration fees for the
21 development and maintenance of any public thoroughfare open to
22 public use, including mass rapid transit and other alternative
23 transportation systems.

24 Respondents possess the duty and the authority under
25 Article XXVI to consider requests by cities and counties for the
26 use of these moneys for development of any public thoroughfare
27 open to public use, including mass rapid transit and other
28 alternative transportation systems, and to make said funds

1 available in appropriate cases, which authority they refuse to
2 exercise and which duty they refuse to perform. The failure of
3 respondents to fulfill this duty has retarded the development
4 of mass rapid transit and other alternative transportation
5 systems designed to alleviate problems of air pollution, traffic
6 congestion and urban sprawl and to reduce the amount of energy
7 consumed by transportation and therefore to help alleviate the
8 energy problems now faced by this county and is now seriously
9 hindering efforts of petitioner City of Riverside, the City of
10 Los Angeles and other cities to comply with the dictates of the
11 Clean Air Act of 1970, 42 U.S.C. §1857.

12
13 II

14 This action is properly brought in the California
15 Supreme Court as a matter of original jurisdiction because the
16 issue presented is of great public importance and concern and
17 must be quickly resolved. Solutions to the problems of urban
18 transportation vitally affect the public interest. At this
19 time, city and county government entities are in urgent need of
20 sources of funds for the development of mass rapid transit and
21 other alternative transportation systems. The Clean Air Act of
22 1970, 42 U.S.C. §1857, requires that by 1977, the healthful air
23 quality levels mandated by that Act must be achieved. Pursuant
24 thereto, the United States Environmental Protection Agency
25 (hereinafter "EPA") has proposed and will adopt regulations
26 that require automobile traffic in the South Coast Air Quality
27 Control Basin (in which all petitioners reside) to be reduced by up
28 to 90%. A variety of measures, including reservation of freeway

1 lanes for mass transit and carpools, reduction in parking
2 spaces, and rationing of gas to distributors within the region
3 will be required to make these proposals work. However, EPA
4 has pointed out that the statutory mandate cannot be achieved
5 unless alternative public transit systems are made available
6 without delay. 38 Fed. Reg. 17683 (July 2, 1973).

7 Air pollution and transportation problems have reached
8 crisis proportions. On July 26, 1973, for example, the EPA
9 asked all federal offices in Los Angeles, San Bernardino and
10 Riverside counties voluntarily to close for the day in order to
11 prevent air pollution from reaching even more dangerous levels.
12 The design and construction and maintenance of mass rapid transit
13 systems is a lengthy process which must begin now if solutions
14 to this crisis are to be found. However, the large sums of
15 money needed for such systems are difficult to secure. Funds
16 which at this moment should be available for use by cities and
17 counties to solve their pollution and transportation problems,
18 are being withheld by respondents because of their misinterpre-
19 tation of Article XXVI. Petitioners ask this Court to issue
20 its writ of mandate requiring respondents to consider requests
21 for the use of moneys governed by Article XXVI in the develop-
22 ment of alternative transportation systems, including mass rapid
23 transit, and to allocate moneys governed by Article XXVI for such
24 purposes in all appropriate cases, and to inform all county and
25 city governmental entities throughout the state by public
26 announcement that all such requests will be considered on their
27 merits.

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III

Petitioner THOMAS BRADLEY, Mayor of the City of Los Angeles, has long been vitally interested in the creation of a mass rapid transit system in the Los Angeles area. He has made the development of such a transportation system for the South Coast Basin an item of highest priority in his administration. Without access to funds governed by Article XXVI, his efforts, as both a city official and a citizen, to secure a solution to Los Angeles' pollution and transportation problems will be impaired. He is thus adversely affected by respondents' failure to perform their official duty. He testified before the EPA on March 6, 1973, that the development of a mass rapid transit system is necessary if the City of Los Angeles is to comply with the demands imposed on it by the Clean Air Act, and stated that without funds from gas taxes and vehicle registration fees, the City will find it impossible to timely develop such a system.

IV

Petitioner EDMUND D. EDELMAN has been a City Councilman in the City of Los Angeles since 1965 and has consistently advocated development of a balanced transportation system, including mass rapid transit, for the City. Respondents' unlawful restrictions on the use of funds governed by Article XXVI impair his ability as both a citizen and a city official to foster the development of such transportation and, thus, he is adversely affected by respondents' failure to fulfill their duty. As an individual citizen and resident of Los Angeles who lives in the Western part of Los Angeles and commutes approximately

1 10 miles each way to work in downtown Los Angeles, he would
2 benefit directly from the issuance of the writ of mandate in
3 this case by using any mass rapid transit system that may be
4 constructed and maintained out of funds governed by Article XXVI.

5
6 V

7 Petitioner CITY OF RIVERSIDE (hereinafter "Riverside")
8 is a charter city with a population of approximately 150,000.
9 Riverside is authorized to receive funds governed by Article
10 XXVI for whatever lawful purposes said funds may be used. Cal.
11 Str. & H. Code §2106. The City of Riverside has a critical
12 air pollution problem. Air pollution levels in Riverside ex-
13 ceeded standards set by the United States Environmental Protec-
14 tion Agency pursuant to the Clean Air Act, 42 U.S.C. §1857, on
15 more than 250 days in 1972. Professor Ralph d'Arge of the Depart-
16 ment of Economics of the University of California at Riverside
17 estimates annual cost of automobile-generated pollution to resi-
18 dents of Riverside is about \$8 million, primarily attributable
19 to added medical expenses and decreased property values. Costs
20 of Air Pollution, Unpublished Report, August, 1972. The City's
21 Environmental Quality Commission has reported that automobile
22 pollution is linked to increasing prevalence of heart and respira-
23 tory diseases, including emphysema and bronchitis, in Riverside.
24 Medical authorities have testified that a public health crisis
25 caused by air pollution exists in Riverside and patients with
26 chronic heart and lung ailments are being urged to leave the
27 area. See Affidavit of Gerschen L. Schaeffer on file in the
28 U.S. District Court for the Central District of California, Civ.

1 No. 72-2122-IH, Riverside v. Ruckelshaus. In order to comply
2 with federal air pollution standards, Riverside is now seeking
3 alternative modes of transportation to replace the private
4 automobile and wishes to use funds governed by Article XXVI
5 for the purpose of expanding its public transportation system.
6 Riverside is consequently particularly anxious to obtain funds
7 governed by Article XXVI for purposes of constructing and
8 maintaining a balanced transportation system including mass
9 transit and intends to seek said funds for those purposes upon
10 this Court's issuance of its writ of mandate in this case.
11 Furthermore, Riverside is vitally concerned that other cities
12 and counties in the South Coast Air Basin be able to develop
13 mass rapid transit and balanced transportation systems because
14 Riverside's air pollution and traffic problems are directly
15 affected by those in the other cities and counties in the basin.

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Respondent CALIFORNIA STATE LEGISLATURE has the power to "appropriate such moneys and to provide the manner of their expenditure by the State, counties, cities and counties, or cities for the purposes specified" by Article XXVI, and "to

1 enact legislation not in conflict with this article." Cal. Const.
2 Art. XXVI, §3. The Legislature adopts and abolishes routes
3 for the State Highway System. Cal. Str. & H. Code §§300-653.
4

5 VIII

6 Respondents CALIFORNIA DEPARTMENT OF TRANSPORTATION;
7 JAMES A. MOE, in his official capacity as Director of the
8 Department of Transportation; CALIFORNIA STATE TRANSPORTATION
9 BOARD; and HOUSTON I. FLOURNOY, in his official capacity as
10 California State Controller, are sued as necessary parties to
11 this action because their several duties include administration
12 of funds governed by Article XXVI:

13 A. The CALIFORNIA DEPARTMENT OF TRANSPORTATION is
14 authorized and directed to lay out and construct all state
15 highways between the termini designated by law and on the location
16 as determined by the California Highway Commission. Cal. Str. &
17 H. Code §90.

18 B. JAMES A. MOE, in his official capacity as Director
19 of the California Department of Transportation, serves as chief
20 administrative officer of the California Highway Commission. Cal.
21 Str. & H. Code §70.

22 C. The CALIFORNIA STATE TRANSPORTATION BOARD has the
23 duty to advise the Legislature in formulating and evaluating
24 state policy and plans for transportation programs within the
25 State. It has the specific duty to request and review reports
26 pertaining to public financial participation in transportation
27 development, planning, construction and operation. Cal. Gov.
28 Code §§1390.2-1390.6.

1 D. HOUSTON I. FLOURNOY, in his official capacity
2 as California State Controller, has the duty to apportion the
3 moneys in the State Highway Account, including funds controlled
4 by Article XXVI, on a monthly basis. Cal. Str. & H. Code §2103.

5
6 FIRST CAUSE OF ACTION

7
8 IX

9 Pursuant to Article XXVI, respondent California State
10 Legislature has the authority and the duty to consider requests
11 for funds governed by Article XXVI for use in the development
12 and maintenance of any public way open to public use, including
13 mass rapid transit and alternative transportation systems and
14 to make those funds available for such purposes in all appropriate
15 cases.

16
17 X

18 The law demands that respondent California State
19 Legislature consider requests from cities and counties for funds
20 governed by Article XXVI for use in the development of any public
21 way open to public use, including mass rapid transit, and make
22 those funds available for such purposes in all appropriate cases.

23
24 XI

25 Respondent California State Legislature has failed
26 to perform its duty and exercise the authority vested in it
27 pursuant to Article XXVI in that it has refused to consider any
28 requests for and has refused to appropriate moneys governed by

1 Article XXVI for mass transit and alternative transportation
2 systems. Respondent California State Legislature will continue
3 to refuse to consider appropriation of funds governed by Article
4 XXVI to highway purposes (such as mass transit and alternative
5 transportation systems) other than construction and maintenance
6 of roads adapted for automobiles unless this Court orders it
7 to do otherwise.

8
9 XII

10 Demand on respondent California State Legislature to
11 perform its duty and exercise its authority under Article XXVI
12 would be futile because said respondent has shown by its conduct
13 and public statements that any such demand would be refused. It
14 has interpreted and continues to interpret Article XXVI erro-
15 neously to prohibit use of monies governed thereby for any
16 purpose other than the construction and maintenance of streets,
17 roads and freeways designed to carry motor vehicles and structures
18 directly incident thereto.

19
20 XIII

21 Petitioners have no plain, speedy, adequate remedy in
22 the ordinary course of law. Unless a writ of mandate issues to
23 compel respondents to perform their duties, said duties will
24 remain unperformed, the meaning and purpose of Article XXVI will
25 continue to be erroneously interpreted, and cities and counties,
26 including Riverside and the City of Los Angeles, will be left
27 without funds for urban transportation systems including mass
28 rapid transit which they should be receiving now. The problem

1 is an urgent one that requires an immediate resolution.

2
3 SECOND CAUSE OF ACTION

4
5 XIV

6 Pursuant to Article XXVI and Cal. Str. & H. Code §75,
7 respondent California Highway Commission has the authority and
8 the duty to consider requests to select, adopt and determine
9 the location of mass rapid transit and alternative transpor-
10 tation systems as state highways and to allocate said funds for
11 such highway purposes in appropriate cases.

12
13 XV

14 The law demands that respondent California Highway
15 Commission consider requests to select, adopt and determine
16 the location of mass rapid transit and alternative transpor-
17 tation systems as state highways and to allocate said funds
18 for such highway purposes in appropriate cases.

19
20 XVI

21 Respondent California Highway Commission has failed
22 to perform its duty and exercise the authority vested in it
23 pursuant to Article XXVI and Str. & H. Code §75 in that it
24 has refused to consider any requests for and has refused to
25 allocate moneys governed by Article XXVI for mass transit
26 and alternative transportation systems. Respondent Califor-
27 nia Highway Commission will continue to refuse to consider
28 allocation of funds governed by Article XXVI to highway

1 purposes other than construction and maintenance of roads
2 adapted for automobiles unless this Court orders it to do
3 otherwise.

4
5 XVII

6 Demand on respondent California Highway Commission
7 to perform its duty and exercise its authority under Article
8 XXVI and Str. & H. Code §75 would be futile because said res-
9 pondent has shown by its conduct and public statements that
10 any such demand would be refused. It has interpreted and
11 continues to interpret Article XXVI and Str. & H. Code §75
12 erroneously to prohibit the use of moneys governed thereby
13 for any purpose other than the construction and maintenance
14 of roads adapted for automobiles.

15
16 XVIII

17 Petitioners repeat and incorporate herein by reference
18 each and every allegation contained in paragraph XIII hereinabove.

19
20 WHEREFORE, petitioners and each of them pray:

21 1. That this Court issue its alternative writ of
22 mandate directing respondents and each of them to consider all
23 requests for and make available in all appropriate cases to city
24 and county governments, and to the State Department of Transpor-
25 tation, moneys governed by Article XXVI to be used in developing,
26 constructing and maintaining any public way for public use,
27 including mass rapid transit and other alternative transportation
28 systems and to inform all county and city governmental entities

1 throughout the state by public announcement that all such
2 requests will be considered on their merits; or to show cause
3 before this Court at a specific time and place why they have
4 not done so;

5 2. That this Court issue its alternative writ of
6 mandate directing respondent California Highway Commission to
7 perform its duty under Str. & H. Code §75 to select, adopt and
8 determine the location of mass rapid transit and alternative
9 transportation systems as state highways and to allocate
10 governed by Article XXVI for mass rapid transit and alternative
11 transportation systems in appropriate cases.

12 3. That, on the hearing of this Petition for Writ
13 of Mandate and return thereto, if any, this Court issue its
14 peremptory writ of mandate directing that those matters listed
15 in paragraphs 1 and 2 above be done as quickly as possible;

16 4. For attorneys' fees, costs of this proceeding
17 and such other and further relief as this Court may deem proper.

18
19 Dated:

Respectfully submitted,

20 BRENT N. RUSHFORTH
21 MARY D. NICHOLS
22 CARLYLE W. HALL, JR.
23 A. THOMAS HUNT
24 JOHN R. PHILLIPS
25 FREDRIC P. SUTHERLAND

26 By *Brent N. Rushforth*
Brent N. Rushforth

27 By *Mary D. Nichols*
Mary D. Nichols

28 Attorneys for Petitioners

1 VERIFICATION

2
3 STATE OF CALIFORNIA)
4) ss.
5 COUNTY OF LOS ANGELES)

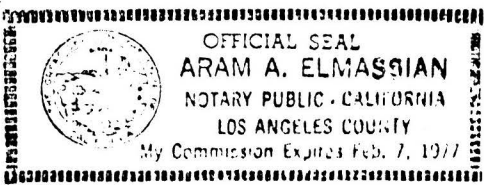
6 THOMAS BRADLEY, being first duly sworn, deposes and
7 says:

8 I am Thomas Bradley, Mayor of the City of Los Angeles
9 and Petitioner in the above-entitled action. I have read the
10 foregoing PETITION FOR A WRIT OF MANDATE and know the contents
11 thereof; and the same is true of my knowledge, except as to the
12 matters and things which are therein stated upon information and
13 belief, and as to those matters and things I believe them to be
14 true.

15
16
17 Thomas Bradley
18 THOMAS BRADLEY
19

20 Subscribed and sworn to before me
21 this 27th day of July, 1973.

22 Aram A. Elmassian
23 Notary Public



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IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

THOMAS BRADLEY, Mayor of the)
City of Los Angeles, et al.,)
) MEMORANDUM OF POINTS AND
Petitioners,) AUTHORITIES IN SUPPORT
) OF PETITION FOR A WRIT
v.) OF MANDATE
)
CALIFORNIA HIGHWAY COMMISSION, et al.,)
)
Respondents.)
)

I
INTRODUCTION

This is an action to compel respondents to consider mass rapid transit as a "highway purpose" within the meaning of Article XXVI of the California Constitution (hereinafter "Article XXVI"). It is based primarily on the proposition that the word "highway", as interpreted at the time of the adoption of Article XXVI, includes mass rapid transit and transportation systems other than roads for automobiles. Indeed, the definition of the word highway was so general and broad at the time of the adoption of Article XXVI that it included any public way open to public use. City of Long Beach v. Payne, 3 Cal. 2d 184 (1935).

Notwithstanding this very broad meaning of the word highway adopted in Article XXVI, respondents refuse to act as if "highway" means anything other than a road for automobile travel. The resulting failure to finance and develop a balanced transportation system has been the primary cause of the increase in

1 air pollution to extremely dangerous levels, presenting severe
2 health problems to residents of the South Coast Air Basin and
3 other urban areas of the state. Los Angeles and Riverside are
4 consequently incapable of complying with the requirements of the
5 Clean Air Act of 1970 unless and until a balanced transportation
6 system including mass rapid transit is developed. If the
7 regulations promulgated by the United States Environmental
8 Protection Agency (hereinafter "EPA") pursuant to the Clean Air
9 Act, which require a reduction of 90% in automobile traffic in
10 Los Angeles by 1977, are enforced in the absence of a balanced
11 transportation system, the result will be economic disaster.
12 The issue presented by this petition is therefore of great public
13 importance and urgency.

14 II

15 FACTUAL BACKGROUND

16 The cities and counties of the South Coast Air Basin
17 are faced with critical problems of air pollution which present
18 a serious danger to the health and welfare of all the residents
19 of that area. Air pollution levels in Riverside exceeded stan-
20 dards set by the United States Environmental Protection Agency
21 pursuant to the Clean Air Act, 42 U.S.C. §1857, on more than
22 250 days in 1972. Professor Ralph d'Arge of the Department of
23 Economics of the University of California at Riverside estimates
24 that the annual cost of automobile-generated pollution to resi-
25 dents of Riverside is about \$8 million, primarily attributable
26 to added medical expenses and decreased property values. Costs
27 of Air Pollution, Unpublished Report, August, 1972. The City's
28

1 Environmental Quality Commission has reported that automobile
2 pollution is linked to increasing prevalence of heart and
3 respiratory diseases, including emphysema and bronchitis, in
4 Riverside. Medical authorities have testified that a public health
5 crisis caused by air pollution exists in Riverside and patients
6 with chronic heart and lung ailments are being urged to leave
7 the area. See Affidavit of Gerschen L. Schaeffer on file in
8 the U.S. District Court for the Central District of California,
9 Civ. No. 72-2122-IH, Riverside v. Ruckelshaus.

10 Pollution levels in Los Angeles exceeded the national
11 health standards promulgated by EPA on 288 days in 1970. Even
12 assuming that all new cars meet strict emission control require-
13 ments by 1976, and all used cars are equipped with the best known
14 smog control devices, the national standard for oxidants will
15 be exceeded 102 days per year in 1977. Environmental Protection
16 Agency, Technical Support Document for the Metropolitan Los
17 Angeles Intrastate Air Quality Control Region (January 15, 1973), 1.

18 The automobile is the prime mover behind this air
19 pollution. Automobiles generate the major share of 4 out of 5
20 pollutants which have been declared harmful to human health by
21 the U.S. Environmental Protection Agency: photochemical oxidants,
22 oxides of nitrogen, carbon monoxide, and particulate matter.
23 See 40 C.F.R. §§550.6-50.11.

24 In the Los Angeles Air Quality Control Region, which
25 includes the City of Riverside, as well as Orange and Ventura
26 counties and portions of San Bernardino and Santa Barbara counties,
27 there were more than 6 million registered motor vehicles for
28 a total population of 9.7 million. While population is expected

1 to grow 10.4% in the period from 1970 to 1977, the number of
2 vehicle miles travelled in this region is expected to rise by
3 22.2% based on current projections. TRW, Inc. Prediction of
4 the Effects of Transportation Controls on Air Quality in Major
5 Metropolitan Areas (1972) (Distributed by National Technical
6 Information Service, U.S. Department of Commerce).

7 The EPA has established air quality standards pursuant
8 to the Clean Air Act amendments of 1970, 42 U.S.C. §1857, under
9 which states are required to take all measures necessary to
10 assure attainment of healthful air by 1977. The Act mandates
11 the Administrator of the EPA to establish standards for each
12 air pollutant which "in his judgment has an adverse effect on
13 public welfare," 42 U.S.C. §1857c-3, based on "the latest
14 scientific knowledge useful in indicating the kind and extent
15 of all identifiable effects on public health or welfare which
16 may be expected from the presence of such pollutant in the
17 ambient air." Id. The Act also requires manufacturers of motor
18 vehicles to reduce emissions of photochemical oxidants and
19 oxides of nitrogen by 90% of their 1970 levels no later than
20 1976 and 1977, respectively.

21 In order for the Los Angeles area to reach the ambient
22 air quality standards by the statutory deadline, the Administrator
23 [under a federal court injunction obtained by petitioner City
24 of Riverside and others, Riverside v. Ruckelshaus, _____ F. Supp.
25 _____, 4 E.R.C. 1728 (D.C. Cal. 1972)] has had to propose that
26 automobile use be reduced by as much as 90%, through limitations
27 on gasoline sales, setting aside freeway lanes for buses, de-
28 creasing the number of parking spaces available, and other

1 means. 37 Fed. Reg. 17683 (July 2, 1973).

2 As drastic as these proposals sound, they were clearly
3 contemplated by the framers of the 1970 amendments to the Clean
4 Air Act. The Report of the Senate Public Works Committee which
5 accompanied the amendments through both houses of Congress, noted
6 "As much as 75% of the traffic may have to be restricted if
7 health standards are to be achieved within the time required by
8 this bill." The report further warned that "Construction of
9 urban highways and freeways may be required to take second place
10 to rapid and mass transit and other public transportation systems."
11 S. Rep. No. 91-1196, 91st Cong., 2nd Sess. at 2.

12 The need for mass transit in the Los Angeles area as a
13 means to reduce air pollution was underscored by EPA Acting
14 Administrator Robert W. Fri on June 22, in remarks announcing
15 his proposed transportation plan. "The development of large-
16 scale mass transit facilities in the Los Angeles area is essential
17 to any effort to reduce automotive pollution through restrictions
18 on vehicle use....The Agency...actively encourages the immediate
19 and large-scale purchase of additional public transportation
20 facilities, most specifically including additional buses and
21 an increased examination of the feasibility of rail transit."
22 38 Fed. Reg. 17683.

23 It is obvious that implementation of the EPA's plan
24 to reduce private automobile use by 90% in the Los Angeles area
25 would be practically impossible without the presence of a
26 balanced transportation system including mass transit. And yet
27 the EPA's plan is necessary if the Los Angeles area is to achieve
28 the healthful air standards mandated by the Clean Air Act of 1970.

1 So the Los Angeles area is faced with three alternatives:
2 (1) to continue to rely on the private automobile as virtually
3 the sole means of transportation and therefore ensure that the
4 standards of the Clean Air Act cannot be achieved (this presumes
5 that the law will not be enforced); (2) to reduce automobile
6 traffic drastically in the absence of an alternative balanced
7 transportation system and thus invite economic chaos caused,
8 for example, by people not being able to travel to work. (Such
9 chaos is no longer imaginary: on Thursday, July 26, 1973, the
10 EPA requested all federal offices in the Los Angeles air quality
11 control area voluntarily to close their offices because of the
12 expected heavy smog. Some 25,000 federal officials remained at
13 home that day. Los Angeles Times, July 27, 1973, p. 1); or
14 (3) to develop a balanced transportation system including mass
15 rapid transit. The unacceptability of the first two alternatives
16 dramatizes the importance of the third.

17 The urgent problems of air pollution and the danger
18 it presents to the health and welfare of the citizens of the
19 Los Angeles Air Quality Control Region (and indeed every major
20 urban area in California) are not the only adverse results
21 of the failure to develop a balanced transportation system. The
22 indirect costs, environmental damage and social disruption
23 which have resulted from the failure to develop such a balanced
24 transportation system include the following:

25 Traffic congestion: Construction of new freeways
26 generates new automobile travel. This familiar phenomenon has
27 come to be known as the "freeway effect":

28 "The freeway effect (growth breeds growth)

1 occurred in California as a result of the con-
2 struction of improved, limited-access roadways.
3 These roads were intended to relieve traffic
4 congestion. They caused, instead, increased
5 use of the available roadways, and the people
6 changed their living habits to suit their
7 convenience." Inman, D.L. and Brush, B.M.,
8 "The Coastal Challenge," Science, Vol. 181 No. 4094, p. 31
9 (July 6, 1973).

10 TRW, Inc. estimates that the I-105 (Century) Freeway in Los
11 Angeles, which respondents plan to construct before 1977, will
12 generate 26% additional new traffic per year in the LA Basin
13 by its mere presence. In contrast, the "normal" rate of traffic
14 growth in Los Angeles is 3.7%. City of Los Angeles, Department
15 of Traffic, Cordon Count: Downtown Los Angeles May 1970 at 21,
16 35.

17 Construction of new freeways or increasing the automobile
18 capacity of existing freeways has the long-run effect of
19 increasing traffic because so long as capacity remains fairly
20 stable there is a constant state of congestion during peak
21 driving hours. See Bureau of Public Roads, Highway Capacity
22 Manual (1969). This congestion creates an impediment to addi-
23 tional travel but does not eliminate the latent demand for
24 more trips. When a new freeway opens up the pent-up demand is
25 unleashed; within a matter of two to four years the additional
26 traffic capacity is used up, and congestion reigns again. Then,
27 of course, the highway engineers begin to plan a new freeway.
28 Institute of Public Administration, Evaluating Transportation

1 Controls to Reduce Motor Vehicle Emissions in Major Metropolitan
2 Areas, March 16, 1972 (mimeographed) 3.19-3.22. This traffic-
3 inducing effect of road construction leads transportation experts
4 to the conclusion that only alternative transportation systems
5 can break the vicious spiral. See, e.g., Note, "Litigating the
6 Freeway Revolt: Keith v. Volpe, " 2 Ecology L.Q. 761, 763 (1972);
7 Robert A. Burco and David Curry, Future Transportation Systems:
8 Impacts on Urban Life and Form (Stanford Research Institute,
9 1968).

10 Social Costs: It has been estimated that 20% of
11 American families do not drive automobiles. In Los Angeles, the
12 figure may be closer to 40%. Hearings Before the House of
13 Representatives Committee on Public Works, Subcommittee on
14 Transportation, March 20, 1973. They are especially the young,
15 the old, the poor, and the handicapped. Many are members of
16 racial minorities. The lack of adequate public transportation
17 seriously curtails the mobility of this substantial minority
18 and restricts their opportunities for employment, housing
19 and other social contacts. The McCone Commission report found
20 one of the primary causes of the 1965 Watts riots to be the
21 isolation of ghetto areas produced by the absence of effective
22 public transportation. Hearings before the Subcommittee on
23 Executive Reorganization of the Senate Committee on Government
24 Operations, 89th Cong. 2d Sess. 893 (1966).

25 Urban sprawl and loss of open space: The sprawling
26 development of the Los Angeles area is a direct result of the
27 exclusive reliance on the freeway and the private automobile
28 for urban transportation. Along with urban sprawl comes the loss

1 of open space. The Los Angeles area has less open space per
2 resident than any other metropolitan area in the country.
3 Sprawling development requires expensive public facilities and
4 services such as schools, sewer projects, police and fire pro-
5 tection to be furnished in outlying areas unprepared to provide
6 them. Furthermore, the automobile itself presents a serious
7 land use problem. Highway rights-of-way greatly exceed those
8 required for public transit. Parking space consumes a vast
9 share of the downtown business area -- in Los Angeles almost
10 60% of the downtown area is devoted to the automobile.

11 J. Robinson, Highways and Our Environment 79 (1971).

12 Housing and property taxes: Urban freeways cause the
13 displacement of large numbers of people and the destruction of
14 housing, usually of the scarce low and moderate price variety.
15 In Los Angeles, for example, the proposed Century Freeway
16 (I-105), if completed, will displace approximately 21,000 people
17 and will result in the destruction of approximately 6,000
18 dwelling units, consisting almost entirely of low and moderate
19 price housing. Keith v. Volpe, 352 F.Supp. 1324 (C.D. Cal.
20 1972). Furthermore, urban freeways and streets greatly diminish
21 the tax base of financially hard-pressed cities, counties and
22 school districts. This results in higher taxes for the
23 remaining property taxpayers, and a substantial hidden subsidy
24 to the highway users.

25 Energy and Natural Resources: Overreliance on the
26 private automobile also contributes significantly to the
27 nation's energy and natural resources problems. Although the
28 causes remain in dispute, there is presently an apparent

1 gasoline shortage in this country. Experts agree that there is
2 a vital need to conserve energy and natural resources. Yet the
3 number of private automobiles and the gallons of gasoline con-
4 sumed in their engines continues to grow. TRW, Inc., Prediction
5 of the Effects of Transportation Controls on Air Quality in
6 Major Metropolitan Areas, supra. It is well known that mass
7 transit consumes far less energy for urban transportation than
8 does transportation by private automobile. One study shows
9 that mass transit uses far less than half the energy per
10 passenger mile that the private automobile uses. Hirst, E.
11 and Herendeen, R., Total Energy Demand for Automobiles, Society
12 of Automotive Engineers, Inc. 1973, at p. 3. Another study
13 indicates that the private automobile may use as much as five
14 times the energy per passenger mile as does mass transit.
15 Grimer, D.P. and Luszczynski, K., "Lost Power" in Environment,
16 April 1972, p. 16. Furthermore, the indirect energy costs of
17 the freeway-automobile transportation system which include the
18 energy consumed in the construction and maintenance of both the
19 freeways and the automobiles and the discovery and production
20 of oil are extremely high. Hirst, E. and Herendeen, R., Total
21 Energy Demand for Automobiles, supra, at 3-4. The authors
22 conclude:

23 "Another energy conservation strategy involves
24 the use of mass transit rather than autos to
25 reduce the need for additional highways. Transit
26 systems can move eight times as many people per
27 highway lane as autos can. A shift to mass

28 ///

1 transit would reduce highway construction and
2 its concomitant energy demand." Id. at 4.

3 Respondents' refusal, contrary to law, to act as if
4 highway as used in Article XXVI means anything other than a
5 road for automobile travel is a primary cause of the critical
6 problems discussed above. Article XXVI governs the expenditure
7 of approximately \$1.4 billion annually. This accounts for
8 almost 90% of the State funds available for transportation pur-
9 poses. Thus, the interpretation of Article XXVI virtually
10 determines state transportation policy:

11 "Article 26, by supplying an abundance of
12 state-generated revenues earmarked for one mode
13 of transportation when nothing was available for
14 alternatives, has fostered decisions at the
15 local level leading to the decline and, in most
16 cases, failure of competing modes and our present
17 total dependence on the automobile." E. Rolph,
18 Article 26: Obstacle to Improved Transportation
19 in California 11 (September 15, 1972) [published
20 in Transportation for the future: Mass or Mess
21 (October 19, 1972).]

22 It is not, however, Article XXVI which has led to the
23 failure to develop a balanced transportation system, but rather
24 respondents' refusal correctly to interpret "highway purposes"
25 in Article XXVI as including any public way for public use,
26 including mass rapid transit.

27 ///

28 ///

1 Respondents' refusal to consider mass rapid transit
2 as a "highway purpose" within Article XXVI is seriously
3 jeopardizing petitioners' efforts to comply with the Clean Air
4 Act by depriving the cities and counties of tax funds which
5 could properly be applied immediately to the costly tasks of
6 planning and constructing mass transit and other alternative
7 transportation systems. Furthermore, respondents' expressed
8 intent to use most of the \$1.4 billion annual proceeds of gas
9 and highway user taxes for construction of additional freeways
10 (1972 Annual Highway Planning Report, Summary Report, State
11 of California Business and Transportation Agency, Department of
12 Public Works, March 1973), is a direct threat to attainment of
13 the national air quality standards because it encourages
14 additional automobile use in the face of a legal duty under the
15 Clean Air Act to discourage such use. As the following section
16 will show, respondents' refusal to consider mass rapid transit
17 as a highway purpose within Article XXVI is based on a serious
18 misinterpretation of that constitutional provision.

19 Petitioners of course do not assert in this petition
20 that funds governed by Article XXVI may no longer be used for
21 the construction and maintenance of roads and freeways for the
22 use of motor vehicles. Indeed, it is clear that a large share
23 of those funds will continue to be used for just such purposes.
24 Petitioners do assert, however, that the law vests in respondents
25 the duty and responsibility to exercise their discretion to
26 allocate funds governed by Article XXVI to mass transit in
27 appropriate cases. For all the reasons above, petitioners
28 respectfully submit that this is an issue of overriding public

1 importance which this Court should decide by exercise of its
2 original jurisdiction.

3
4 III

5 THE LEGISLATURE HAS A DUTY TO CONSIDER
6 ALLOCATING GAS TAX FUNDS FOR MASS TRANSIT

7 A. The Legislature Presently Refuses to
8 Consider Using Funds Subject to
9 Article XXVI For Any Purpose Other
10 Than Roads Designed For Automobiles,
11 Trucks and Buses.

12 The Legislature is empowered by Article XXVI to appro-
13 priate moneys and provide the manner of their expenditure for
14 the purposes specified by that article. Cal. Const. Art. XXVI,
15 §3.

16 Relying solely on the language of Article XXVI, which
17 provides that the proceeds from gas tax and registration license
18 fees shall be used exclusively "for highway purposes," the
19 Legislature refuses to allocate any such funds to mass transit.
20 It is the view of the Legislature that Article XXVI prohibits
21 the use of funds subject to that article for anything other than
22 roads adapted to automobiles, or structures directly incidental
23 thereto, and that only such roads are encompassed by the term
24 "highway." Infra, p. 47. See Affidavit of Mary D. Nichols,
25 attached hereto as Exhibit "5" and the Opinion of the Attorney
26 General attached hereto as Exhibit "4."

27 ///

28 ///

1 B. The Legislature's Interpretation of
2 the Phrase "For Highway Purposes" in
3 Article XXVI is Invalid.

4 1. Article XXVI adopted the pre-
5 vailing definition of "highway."

6 When Article XXVI was presented to the voters for
7 ratification in 1938, it was understood by both its proponents
8 and opponents to make no change in existing law. The ballot
9 argument in favor of Proposition 28 -- which was adopted as
10 Article XXVI of the California Constitution -- states:

11 "This proposed constitutional amendment,
12 when adopted by the voters, will effectively and
13 permanently prevent diversion of gasoline tax
14 funds to purposes other than those now provided
15 by law." Ballot Pamphlet, General Election,
16 June 1938 at 8. (Exhibit "2" hereto.)

17 The proponents, Senators William F. Knowland and Sanborn Young,
18 argued that:

19 "The measure is carefully drawn and eminently
20 fair. It makes no change in existing law, nor
21 does it change any of the present uses for which
22 gasoline taxes and other highway fund revenues are
23 expended." Id.

24 The opposition to Proposition 28, signed by Malcolm M.
25 Davisson, agreed that the amendment would change nothing:

26 "The purpose of this amendment is to prevent
27 effectively and permanently the diversion of motor
28 vehicle fuel taxes and motor vehicle registration

1 license fees to purposes other than those now
2 provided by law. This purpose is accomplished
3 under existing laws; and the amendment, therefore,
4 is unnecessary." Ballot Pamphlet, General Elec-
5 tion, June 1938, at 9. (Emphasis in original.)

6 2. The "existing law" at the time
7 Article XXVI was adopted defined
8 a highway as any public way.

9 This Court established the legal definition of
10 "highway" in 1935, in the only reported case interpreting the
11 predecessor statute to Article XXVI. The California Vehicle
12 Act, Stat. 1923, c. 266, sec. 159, provided that motor vehicle
13 registration fees must be deposited in a "Motor Vehicle Fund."
14 In City of Long Beach v. Payne, 3 Cal.2d 184 (1935), the issue
15 before the Court was whether Los Angeles County could use a
16 portion of the money allocated to it from the Motor Vehicle
17 Fund to improve and repair certain canals in the City of Long
18 Beach. The County Auditor refused to pay over the funds, and
19 the City sought a mandamus to issue against the Auditor direct-
20 ing payment.

21 Section 159 of the California Vehicle Act, as amended
22 in 1933, directed that Motor Vehicle Fund moneys allocated
23 directly to the counties ". . . shall be expended by such counties
24 exclusively on the construction, maintenance, improvement or
25 repair of streets, roads, highways, bridges or culverts therein
26" The Court observed that canals cannot reasonably be
27 "streets," "roads," "bridges," or "culverts," but held that they
28 were included within the definition of "highways."

1 "We find no definition of 'highway' given in
2 the California Vehicle Act. As near as that act
3 comes to defining a highway is to be found in the
4 definition of a 'public highway,' which is defined
5 to mean, 'Every highway, road, street etc.' In
6 other words, the act defines public highway as a
7 highway, but makes no attempt to define 'highway.'" "
8 Webster's New International Dictionary (2d Ed.)
9 recently issued by G. & C. Merriam Co., publishers,
10 defines a highway as follows: 'A main road or
11 thoroughfare; hence a road open to the use of the
12 public, including in the broadest sense of the
13 term ways upon water as well as upon land.' The
14 definition given by Bouvier's Law Dictionary
15 conveys the same meaning. It is in the following
16 words: 'The term highway is the generic term for
17 all kinds of public ways, whether it be carriage-
18 ways, bridle-ways, foot-ways, bridges, turnpike
19 roads, railroads, canals, ferries, or navigable
20 rivers.' In 4 Words and Phrases, First Series,
21 3292, among numerous definitions of the same
22 general tenor, we find the following: 'The term
23 highway is the generic term for all kinds of public
24 ways, including county and township roads, . . .
25 railroads and tramways, bridges and ferries, canals
26 and navigable rivers. In fact, every public
27 thoroughfare is a highway.' -- citing Southern
28 Kansas Ry. Co. v. Oklahoma City, 12 Okl. 82,

1 [69 P. 1050, 1054]; Union Pacific R.R. v. Colfax
2 County Commrs, 4 Neb. 450, 456; Board of Shelby
3 County Commrs v. Castetter, 7 Ind. App. 309,
4 [33 N.E. 986, 34 N.E. 687]." 3 Cal.2d 184 at
5 188-189. (Emphasis added.)

6 Article XXVI itself contains no definition of "highways." The
7 word must therefore be interpreted in the sense in which it was
8 understood in 1938 -- that is, as the Supreme Court established
9 in Long Beach v. Payne, supra, that a highway is any public
10 thoroughfare. This rule of construction was applied by the
11 Court in the Long Beach case:

12 "[A]fter the courts have construed the
13 meaning of any particular word, or expression,
14 and the Legislature subsequently undertakes to
15 use these exact words in the same connection,
16 the presumption is almost irresistible that it
17 used them in the precise and technical sense
18 which has been placed upon them by the courts.
19 In re Nowak, 184 Cal. 701, 705 [195 P. 402]."
20 Long Beach v. Payne, supra, at 191.

21 In a 1929 case the Court had ruled that a canal could
22 serve a highway purpose. Wattson v. Eldridge, 207 Cal. 314,
23 278 P. 236. Holding that the City of Los Angeles could fill in
24 canals in Venice for use as city streets, the Court noted:

25 "There cannot, therefore, be any question
26 but that a canal is a highway of a peculiar kind.
27 (9 Cor. Jur. 1125, sec. 1.) The dedication of a
28 highway to public use authorizes any ordinary use

1 for highway purposes. With changing conditions of
2 travel and use a city has a right to adapt and
3 appropriate its highways from time to time to such
4 uses as in its judgment would be most conducive
5 to the public good, and the courts should be slow
6 to interfere with the exercise of this discretion."

7 Wattson v. Eldridge, 207 Cal. 314, 321.

8 Four years after the Wattson decision, the Legislature
9 amended §159 of the Motor Vehicle Act to add "highways" as a
10 permissible use of Motor Vehicle Fund moneys. This use of the
11 word "highways" without further definition constituted an adop-
12 tion of the Wattson definition, the Court held. Long Beach v.
13 Payne, 3 Cal.2d at 191.

14 Similarly, the use of the word "highway" in Article
15 XXVI, three years after the decision in Long Beach v. Payne,
16 must be presumed to reflect the legislative drafters' knowledge
17 of the definition the Court had established. This rule of
18 statutory and constitutional construction has been followed by
19 this Court and the California Courts of Appeal in a long line
20 of cases. See, e.g., County of Sacramento v. Hickman, 66 Cal.2d
21 841 (1967); Perry v. Jordan, 34 Cal.2d 87 (1949); Michels v.
22 Watson, 229 Cal.App.2d 404 (1964). In County of Sacramento v.
23 Hickman, this Court quoted with approval the statement of the
24 rule by the Court of Appeal in Michels v. Watson: "'In the
25 absence of contrary indication in a constitutional amendment,
26 terms used therein must be construed in the light of their
27 statutory meaning or interpretation in effect at the time of its

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1 adoption.' (Michels v. Watson (1964) supra, 229 Cal.App.2d
2 404, 408.)" 66 Cal.2d at 850.

3 3. The Legislature itself has used
4 "highway" in the broad sense re-
5 quired by Long Beach v. Payne.

6 In 1937, the Legislature adopted an amendment to the
7 Streets and Highways Code reflecting its acceptance of the
8 Supreme Court's definition of "highway" in City of Long Beach v.
9 Payne, supra. The amendment provides:

10 "100.5. Whenever the location of a State
11 highway is such that a ferry must be used to com-
12 pletely traverse said highway, the department
13 may construct, maintain and operate such a
14 ferry. . . . Whenever a highway between the
15 termini of which a publicly owned ferry is used,
16 the title to the ferry and all the appurtenances
17 thereto vests in the State." Stats. 1937, Ch. 931.

18 A water route suitable for a ferry is patently not a road tra-
19 versible by automobiles. The legislative use of the term
20 "highway" to describe such a route demonstrates that the Payne
21 definition had been adopted prior to the use of the term in
22 Article XXVI. "Highway" must therefore be interpreted as
23 meaning "all kinds of public ways." City of Long Beach v.
24 Payne, supra at 189.

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1 4. The purpose of Article XXVI was
2 to prevent diversion of fuel tax
3 and other motor vehicle taxes
4 from transportation needs to the
5 state general fund.

6 California began in 1923 to require that motor vehicle
7 registration fees be deposited in a special Motor Vehicle Fund
8 for exclusive use in connection with county roads or "public
9 highways." Stats. 1923, Ch. 266, §159. Motor vehicle fuel
10 taxes were imposed for the first time that same year, with half
11 the proceeds to be deposited by each county in a "special road
12 improvement fund," and the rest to be used for maintenance of
13 "state highways." Stats. 1923, Ch. 267, §13.

14 By the mid-1930s, highway taxes provided a temptingly
15 dependable source of revenue for a Legislature feeling the
16 pinch of depression. Legislators began to dip into the highway
17 funds to support general expenditures -- including unemployment
18 compensation, parks, and even oyster propagation. Hanna, "John
19 Motorist Battles to Save His Gas Tax," Westways v. 30, no. 4
20 (1938). Diversions of state gas tax funds from 1929 to 1938
21 were said to have amounted to \$1 billion on a nationwide basis.
22 Editorial, "Gas Tax Grabs and Safety," Los Angeles Times, June 12,
23 1938. In 1938, the Automobile Club of Southern California and
24 the California State Automobile Association led the fight for
25 a constitutional amendment to prevent such diversion "for all
26 time." "Diversion Hit," Los Angeles Times, May 8, 1938.

27 The purpose of the constitutional amendment, Article
28 XXVI, was to preserve the fuel tax and registration fee funds

1 for public transportation needs, as they were then conceived.
2 Privately owned, unsubsidized mass transportation companies
3 such as the Pacific Electric Company's "Big Red Cars" were on
4 the brink of insolvency and were cutting back on service at
5 the same time the private automobile -- with the aid of pro-
6 tected tax money for more streets and roads -- was taking over
7 an increasing number of passenger miles traveled. R. Hebert,
8 "L.A.'s Big Red Cars -- They Went Places," Los Angeles Times,
9 July 22, 1973, p. 3. Smerck, Readings in Urban Transportation
10 (1968) at 32. But in 1938 street car tracks ran down the
11 center or at the side of roads traversed by automobiles, bicy-
12 cles and pedestrians, and the vision conjured by the word
13 "highway" in the urban Californian's mind could well have
14 included metal rails. In fact, the last "Big Red Cars" did
15 not cease running to Watts and Long Beach until 1961. Banham,
16 Los Angeles: The Architecture of Four Ecologies (1971) 79-83.
17 In any event, the issue of roads for automobiles to the exclu-
18 sion of rapid transit or other alternative transit systems was
19 never raised. It was the use of motorists' tax funds for non-
20 transportation purposes that incensed the Auto Club's membership
21 in 1938. A Friend to all Motorists - The Story of the Automo-
22 bile Club of Southern California 137-139 (1968).

23 5. This Court has consistently
24 reaffirmed its broad
25 definition of "highway."

26 The broad definition of highway adopted by the Court
27 in Payne was reaffirmed three years after adoption of Article
28 XXVI in City and County of San Francisco v. Boyd, 17 Cal.2d 606

1 (1941). In that case, the City of San Francisco sought a writ of
2 mandamus against the State Controller, to certify that there was
3 a sufficient balance in certain funds subject to Article XXVI
4 allocated to the County's account to hire a consulting engineer
5 "to aid in the solution of traffic and transit problems." The
6 Controller refused to certify the expenditure on the ground that
7 the funds, if available, could not legally be used for the
8 specified purpose. The Court issued the writ, holding that the
9 consulting contract was a legitimate "highway purpose":

10 "As to the appropriation from the accrued
11 surplus in the county road fund, the respondent
12 contends that monies derived from gasoline taxes
13 and registration license fees, and transferred
14 by the state to the county, cannot be used in
15 connection with the Purcell contract. We cannot
16 accept the contention. Section 1622 of the Streets
17 and Highways Code, St. 1937, p. 2562, provides that
18 such monies 'shall be deposited in a special road
19 improvement fund' and shall be expended by the
20 county 'exclusively for the acquisition of real
21 property or interests therein, or the construction,
22 maintenance or improvement of highways, bridges
23 or culverts in that county.'

24 "That the County Road Fund Act should be
25 construed liberally is indicated by our decision
26 in Long Beach v. Payne, [citation omitted] wherein
27 it was held that highways included canals as an

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1 integral part of the highway system." San
2 Francisco v. Boyd, supra, at 612-613.

3 In a later decision not involving application of
4 Article XXVI, Justice Traynor again pointed out that the meaning
5 of "highway" is not frozen by the common understanding of any
6 particular moment in history. In Holloway v. Purcell, 35 Cal.2d
7 220 (1950), plaintiff taxpayers brought suit to enjoin reloca-
8 tion of a state highway, urging among other grounds that the
9 provision of Article IV, Section 36 of the California Consti-
10 tution that "The Legislature shall have power to establish a
11 system of state highways" precludes the Legislature from authori-
12 zing construction of a freeway or limited-access highway because
13 the term "highway" was not understood to encompass such roads
14 when the constitutional provision was adopted in 1902. Affirming
15 the judgment for defendants, Justice Traynor wrote for a unani-
16 mous court,

17 "The Constitution authorizes the Legislature
18 to establish a system of highways adequate to
19 meet the needs of the state, 'and to pass all
20 laws necessary and proper to construct and
21 maintain the same.' The type of highway that
22 is adequate to meet traffic needs necessarily
23 varies with the character and extent of those
24 needs." Holloway v. Purcell, supra, at 228-
25 229 (1950).

26 See also, People v. Western Airlines, Inc., 42 Cal.2d 621, 635
27 (1954) (holding that an airlines is within the definition of

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1 "railroad or other transportation company" as used in Article
2 XII of the California Constitution of 1879).

3 Article XXVI was wisely drafted in general terms to
4 meet future needs as they might develop, limiting the use of
5 fuel and registration taxes only to broad "highway purposes."
6 The dictionary definition of "highway" has not grown more re-
7 strictive in the 35 years since Article XXVI was enacted.
8 Webster's Third International Dictionary Unabridged defines it
9 thus:

10 "highway 1a: a road or way on land or water
11 that is open to public use as a matter of right,
12 whether or not a thoroughfare. . .compare private
13 way b: such a road or way established and main-
14 tained (as by a State) in accordance with law."

15 Webster's Third International Dictionary Unabridged
16 1069 (1966).

17 But the transportation needs of California have changed since
18 1938. Freeway congestion is now known to be a vicious circle,
19 which construction of new freeways will not break. Federal air
20 pollution law requires that we adopt new modes of transportation.
21 See Section II of this Memorandum supra at 5.

22 Publicly owned and financed mass rapid transit faci-
23 lities now present a necessary and viable alternative -- an
24 alternative which the City of Riverside and the Mayor of Los
25 Angeles are eager to implement as quickly as funds can be made
26 available. In light of the progressive rule of constitutional
27 interpretation applied in Holloway v. Purcell, supra, this Court
28 should clear away a major stumbling block by reaffirming the

1 substantial line of cases beginning with City of Long Beach v.
2 Payne, and holding that, in 1973, highway is also mass rapid
3 transit.

4 C. Summary and Conclusion

5 The Legislature has refused to exercise its discretion,
6 as mandated by Article XXVI, §3, to consider appropriating any
7 of the \$1.4 billion annual revenue from gas tax and motor vehicle
8 license fee funds to mass rapid transit or other alternative
9 transportation systems. It bases this refusal on the erroneous
10 view that the language of Article XXVI, restricting the use of
11 such funds to "highway purposes," precludes using any moneys
12 governed by Article XXVI for rapid transit.

13 The Legislature's interpretation of Article XXVI is
14 invalid because the word "highway" was defined at the time of
15 Article XXVI's adoption as including "all kinds of public ways,"
16 including railroads. City of Long Beach v. Payne, 3 Cal.2d 184,
17 186 (1935). That definition of highway was not changed by
18 Article XXVI, which sought only to prevent diversion of motor
19 vehicle funds to purposes other than those provided by law at
20 the time of its adoption in 1938. The law in 1938, as inter-
21 preted by this Court, permitted the use of highway funds in
22 connection with all kinds of public ways.

23 The purpose of Article XXVI was to prevent raids on
24 the motor vehicle funds for general budgetary purposes.
25 Petitioners do not challenge that purpose, nor do they seek to
26 compel the Legislature to allocate the funds subject to Article
27 XXVI to any particular project. They seek only to establish
28 their right to have such funds used for all lawful purposes

1 under Article XXVI. This Court should order the Legislature to
2 exercise its discretion to consider mass rapid transit and other
3 alternative transportation systems as proper "highway purposes"
4 within the meaning of Article XXVI.

5
6 IV

7 THE CALIFORNIA HIGHWAY COMMISSION HAS A
8 DUTY TO CONSIDER ADOPTING RAPID TRANSIT
9 AND ALTERNATIVE TRANSPORTATION SYSTEMS
10 AS STATE HIGHWAYS

11 A. Introduction: The Statutory Framework

12 Pursuant to §2106 of the Streets and Highways Code, a
13 fixed sum per gallon tax collected under the Motor Vehicle Fuel
14 License Tax Law is apportioned among counties and cities. These
15 apportionments must be spent exclusively for acquisition of
16 rights of way for and construction of routes on the "select
17 system of county roads and city streets" established under
18 Section 186.3, Str. & H. Code, except that the funds may be
19 spent for the same purpose upon a State highway. Conceding that
20 a rapid transit system may not be a county road or a city
21 street, under the definitions established by City of Long Beach
22 v. Payne, supra, a city or county may spend gas tax money upon
23 such a system only if it is a "state highway." As demonstrated
24 in Section III of this Memorandum, supra, a mass transit system
25 is a highway. To be labelled a state highway, it must be
26 selected, adopted and its route location approved by the
27 California Highway Commission (hereinafter "the Commission").
28 Str. & H. Code §75.

1 The Commission refuses to consider a mass rapid transit
2 system as a state highway. It apparently bases its refusal upon
3 its interpretation of "highway" as used in the sections of the
4 Streets and Highways Code implementing Article XXVI and in Article
5 XXVI itself. The Commission's interpretation is erroneous in
6 both cases.

7 B. The Streets and Highways Code
8 incorporates the Payne definition
9 of highway.

- 10 1. The word "highway" in the 1935
11 Streets and Highways Code was
12 carried over from the 1923
13 Vehicle Act.

14 In 1935, the Legislature enacted the first Streets and
15 Highways Code, "thereby consolidating and revising the law re-
16 lating to public ways and all appurtenances thereto." Stats.
17 1935, c. 29, p. 248. The codification was approved on March 27,
18 1935 -- one month before the decision in City of Long Beach v.
19 Payne came down -- and was in effect on September 15, 1935.
20 West's Ann. Str. & H. Code p. 1. The limitation on expenditures
21 by cities and counties of gas tax funds was carried over from
22 the old Motor Vehicle Act, which was adopted in 1923. Under
23 Section 159 of the Vehicle Act, automobile registration fees
24 were deposited in a Motor Vehicle Fund. One half of the receipts
25 were to be paid to counties to be spent exclusively in "the
26 construction and maintenance of public roads, bridges, and
27 culverts in said counties," Stats. 1923, c. 266, §159. Section 159
28 was amended in 1933 to broaden the scope of possible expenditures

1 by counties to include "the construction, maintenance, improve-
2 ment or repair of streets, roads, highways, bridges or culverts
3 there." Stats. 1933, c. 1031, §159(c). (Emphasis added.) It
4 was this statute that the Court interpreted in 1935 in the
5 Payne case, supra.

6 A different statute, also first adopted in 1923, im-
7 posed a tax on motor vehicle fuels, the proceeds of which went
8 into a separate "Motor Vehicle Fuel Fund." Half the receipts
9 of that fund were allocated to counties to be spent "exclusively
10 in the construction and maintenance of roads, bridges, and
11 culverts in each such county." Stats. 1923, c. 267 §§1,13.
12 This limiting language was not changed until adoption of the
13 first Streets and Highways Code in 1935.

14 The Streets and Highways Code merged the provisions of
15 the two preceding statutes relating to use of the tax funds by
16 counties. The new law provided that:

17 "All amounts paid to each county, out of
18 money derived from motor vehicle fuel license
19 taxes and vehicle registration license fees
20 imposed by the State, shall be deposited in a
21 'special road improvement fund' which each
22 board of supervisors shall establish for that
23 purpose. Except as otherwise provided in
24 this article, such money shall be spent ex-
25 clusively in the construction, maintenance or
26 improvement of county highways, bridges, or
27 culverts in that county." Stats. 1935, c. 29
28 §1622. (Emphasis added.)

1 Thus, the term "highway" was added to the permissible uses of
2 gas tax funds without further definition in 1935. The history
3 of the section demonstrates that highway was intended to have
4 precisely the same meaning that it had in Section 159 of the
5 Vehicle Act -- that is, the broad meaning established by City
6 of Long Beach v. Payne, supra.

7 2. The definition of "highway" has
8 remained the same through succeeding
9 amendments to the Streets and
10 Highways Code.

11 The Collier-Burns Act of 1947 has been the only major
12 legislative revision in the highway program since 1935. That
13 act increased gasoline and diesel taxes and registration fees,
14 divided the State Highway Construction Fund into two shares,
15 allocating 45% to the northern part of the State and 55% to the
16 South, and increased the apportionment of revenues to the cities
17 and counties. Stats. 1947, 1st Ex. Sess., c. 11. The Legis-
18 lature declared that this act was enacted "in furtherance of the
19 policy and purpose of Article XXVI of the Constitution." Id.,
20 §43. Obviously, if the Legislature was dissatisfied with the
21 interpretation of "highway" in Article XXVI which was estab-
22 lished in City of Long Beach v. Payne, 3 Cal.2d 184, in 1935,
23 and reiterated in City and County of San Francisco v. Boyd,
24 17 Cal.2d 606, in 1941, it would have taken the opportunity to
25 enact a narrower definition. It did not do so. It is, there-
26 fore, clear that the term highway as used in §75 and §186.3
27 Str. & H. Code, is intended to be used in precisely the same
28 broad sense in which it is used in Article XXVI. Thus, there

1 is no obstacle, legislative or constitutional, to the Commission
2 exercising its discretion to consider selecting, adopting and
3 determining the location for mass rapid transit systems, to
4 allocate funds governed by Article XXVI for such purposes, and
5 to permit cities and counties to spend their allocations of
6 Article XXVI on such systems once they are adopted as state
7 highways.

8 C. The Commission is Violating the Command
9 of Streets and Highways Code §75.7 in
10 Failing to Consider Adopting Rapid
11 Transit Systems as State Highways.

12 When the Commission exercises its discretion to adopt
13 a state highway route, it is required to issue a report contain-
14 ing "the basis for its decision, including the consideration
15 given to the following factors:

- 16 (a) Driver benefits
17 (b) Community values
18 (c) Recreational and park areas
19 (d) Historical and aesthetic values
20 (e) Property values, including impact on local
21 tax rolls
22 (f) State and local public facilities
23 (g) City street and country road traffic
24 (h) Total projected regional transportation
25 requirements." Cal. Str. & H. Code §75.7.

26 The Commission is violating the statutory mandate to
27 consider all the factors listed above in determining what are
28 "highways," since, under the Payne definition, rapid transit

1 lines are highways. In order to give full and unfettered con-
2 sideration to item (b), "Community values," and item (h), "Total
3 projected regional transportation requirements," the Commission
4 must be able to consider adopting rapid transit instead of or in
5 addition to roads for motor vehicles. Failure to exercise its
6 discretion to consider rapid transit as state "highways" is a
7 clear violation of the statutory requirement to consider commu-
8 nity values, e.g., the community's interest in a reduction in
9 air pollution, and total transportation needs.

10 D. Summary and Conclusion

11 Cities and counties must spend their share of the gas
12 tax revenues on "state highways" if they choose not to spend all
13 or part of their allocation for city streets and county roads.
14 The Commission has refused to consider adopting rapid transit
15 systems as state highways, basing its refusal on Article XXVI
16 of the Constitution and implementing legislation. This refusal
17 not only is without legal basis, since the term highway encom-
18 passes rapid transit systems under previous decisions of this
19 Court; it also violates the express statutory command of Streets
20 and Highways Code §75.7 that the Commission consider community
21 values and total projected regional transportation requirements
22 in determining what shall be state highways.

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2 THE ATTORNEY GENERAL'S OPINION ON WHICH
3 RESPONDENTS PURPORT TO RELY FOR THEIR
4 REFUSAL TO CONSIDER MASS RAPID TRANSIT
5 AS A HIGHWAY PURPOSE IGNORES APPLICABLE
6 CASE LAW, BUT ITS LOGIC SUPPORTS
7 PETITIONERS

8 A. The Attorney General's Opinion
9 Has No Basis in California Law.

10 In an Opinion issued June 6, 1973, Ops. Cal. Atty. Gen.
11 No. CV 72/357 attached hereto as Exhibit "4," Attorney General
12 Evelle J. Younger concludes that Article XXVI bars the appropri-
13 ation of motor vehicle fuel taxes for the construction or
14 maintenance of a rapid transit system. This Opinion does not
15 cite or consider the application of the three principal California
16 cases dealing with the proper definition of highway discussed
17 above: Wattson v. Eldridge, 207 Cal. 314; Long Beach v. Payne,
18 3 Cal.2d 184; and San Francisco v. Boyd, 17 Cal.2d 606. The
19 sole case cited for the proposition that "highway purposes"
20 excludes rapid transit lines is a Massachusetts decision, In re
21 Opinion of the Justices, 85 N.E.2d 761 (1949). The opinion
22 relies primarily on prior Attorney General's opinions, see
23 47 Ops. Cal. Atty. Gen. 145 (1966); 47 Ops. Cal. Atty. Gen. 28
24 (1966); 27 Ops. Cal. Atty. Gen. 15 (1956), none of which acknow-
25 ledges the existence of applicable California case law.

26 That the Massachusetts definition of a highway is not
27 dispositive of the intention of California statutes was

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1 clearly established in the Payne case, supra, at 190, in which
2 the Court observes:

3 "Counsel for respondent have cited decisions
4 from other jurisdictions holding that in certain
5 instances the term 'highway' does not include a
6 canal, but these authorities are out of line
7 with the general trend of decisions upon the
8 subject, and are in direct conflict with the
9 decision of this court in Wattson v. Eldridge,
10 supra. We are therefore of the opinion that the
11 term 'highway' as generally used and understood
12 is sufficiently comprehensive to include canals
13 as an integral part of a highway system."

14 The Attorney General asserts, at p. 4, that a "long-
15 standing legislative interpretation of article XXVI supports a
16 restrictive definition of highway purpose." As petitioners have
17 demonstrated in the foregoing sections, the Legislature has
18 never explicitly adopted such an interpretation, and its current
19 view is based on an invalid construction of the word "highway."

20 B. The Attorney General's Conclusion that
21 Bicycle Lanes or Trails May Serve a
22 "Highway Purpose" is Equally Applicable
23 to Mass Rapid Transit Systems.

24 Despite the groundless assertion that "highways" are
25 only for motor vehicles, the Attorney General's opinion concludes
26 that "pedestrian, equestrian, or bicycle lanes or trails" may be
27 funded by motor vehicle fuel tax revenues. The Attorney General
28 reasons as follows:

1 "[I]t is apparent, for instance, that the
2 construction and maintenance of pedestrian
3 facilities, such as sidewalks and pedestrian
4 overcrossings and undercrossings, which serve
5 to separate pedestrian traffic from motor
6 vehicle traffic on the highway, serve a
7 'highway purpose' in that pedestrians who might
8 use the streets and highways for transportation
9 are removed from the highway thereby increasing
10 the traffic capacity and safety of such street
11 or highway." Id. at 4-5.

12 Petitioners agree. Under this reasoning, even if this Court
13 were to adopt the constricted definition that a "highway" is
14 only a "road," as proposed by the Attorney General, it should
15 hold that a mass rapid transit system is a valid furtherance
16 of such "road" purposes. Mass rapid transit facilities relieve
17 traffic congestion and improve safety by reducing the use of
18 motor vehicles. See Institute of Public Administration,
19 Evaluating Transportation Controls to Reduce Motor Vehicle
20 Emissions in Major Metropolitan Areas, App. E 1-20 (November
21 1972). As shown in Section II of this Memorandum, supra, at
22 6-7, constructing mass rapid transit as an alternative to
23 roads in appropriate cases can also forestall the creation of new
24 freeways, thereby mitigating the pressure to commit future reve-
25 nues to additional automobile routes. Thus, even under the
26 Attorney General's definition, rapid transit serves a "highway
27 purpose" and moneys governed by Article XXVI may therefore be
28 allocated for rapid transit in appropriate cases.

VI

THE WRIT OF MANDATE IS THE APPROPRIATE REMEDY
TO COMPEL RESPONDENTS TO CONSIDER REQUESTS
FOR MONEYS GOVERNED BY ARTICLE XXVI TO BE
USED FOR DEVELOPMENT OF MASS RAPID TRANSIT
AND OTHER PUBLIC WAYS OPEN TO PUBLIC USE.

As this section will show, petitioners properly seek
a writ of mandate to compel respondents to perform a public duty
involving the public welfare of virtually every citizen of the
State of California.

The California Code of Civil Procedure, section 1085,
provides that the writ of mandate may be used ". . .to compel
the performance of an act which the law specially enjoins as a
duty resulting from an office, trust, or station. . . ."
Section 1086 requires that the writ ". . .must be issued in all
cases where there is not a plain, speedy, and adequate remedy
in the ordinary course of the law. It must be issued on the
verified petition of the party beneficially interested."

These statutory elements have been interpreted as
requiring that the petitioners show a clear, present (and
usually ministerial) duty on the part of respondent coupled
with a clear, present and beneficial right in the petitioner.
Additionally, the petitioner often must show that he has made
a demand that the duty owed be performed. However, this Court
has held that when the duty invoked in a petition for a writ
of mandate affects the public welfare, some of these require-
ments are relaxed. Hollman v. Warren, 32 Cal.2d 351 (1948);
Ballard v. Anderson, 4 Cal.3d 873 (1971). For instance, when

1 a petitioner can show that he seeks to compel the performance
2 of a public duty, he need not allege that he himself is person-
3 ally and beneficially interested. Hollman v. Warren, supra;
4 Fuller v. San Bernardino Valley Mun. Wat. Dist., 242 Cal.App.2d
5 52 (1966) [citing cases]; see also Jensen v. McCullough,
6 94 Cal.App. 382 (1928).

7 A. Respondents Have a Clear, Present
8 Duty to Consider Requests for Moneys
9 Governed by Article XXVI to be Used
10 to Develop Any Public Way Open to
11 Public Use Including Mass Rapid
12 Transit and Other Alternative
13 Transportation Systems.

14 The language and purpose of Article XXVI do not limit
15 or restrict the use of gas taxes and vehicle registration fees
16 for the construction, improvement or maintenance of legitimate
17 public transportation systems. As shown above, past decisions
18 of this Court establish that the "highway purposes" included
19 within Article XXVI contemplate the use of funds for the creation
20 of varied transportation systems, including mass rapid transit.
21 A proper interpretation of "highway purposes" establishes a
22 clear and present duty in respondents to consider requests for
23 funds governed by Article XXVI to be used in the creation of a
24 variety of transportation systems not limited to streets, roads
25 or freeways, capable of carrying cars, trucks and buses and to
26 appropriate those funds for such purposes in proper cases.

27 In seeking to compel respondents to consider requests
28 for funds to be used on all legitimate public transportation

1 systems, petitioners do not seek to have this Court control the
2 manner in which respondents exercise their discretionary power,
3 but only to require that they exercise it. It is well estab-
4 lished that the writ of mandate may be used to compel the
5 exercise of discretionary power when there has been a complete
6 absence of the use of such power. Thurmond v. Superior Court,
7 66 Cal.2d 836 (1967); Erlich v. Superior Court, 63 Cal.2d 551
8 (1965); Hollman v. Warren, supra; Memorial Hospital of Southern
9 Cal. v. State Health Planning Council, 28 Cal.App.3d 167 (1972);
10 Betancourt v. Workmen's Compensation Board, 16 Cal.App.3d 408
11 (1971).

12 The use of the writ of this purpose is particularly
13 appropriate when, as in the present case, the public agency
14 charged with a refusal to perform a duty has based its refusal
15 on an erroneous view of the law.

16 "The availability of mandate is not limited
17 to these situations when there has been an abuse
18 of discretion, but also extends to cases where a
19 trial court refuses to exercise its discretion
20 because of a mistaken belief that the court had
21 no discretion in the premises. . . ." Erlich v.
22 Superior Court, supra, at 556.

23 The general principle established by these cases that
24 the writ of mandate can be used to compel the exercise of
25 vested discretionary power, has been applied against admini-
26 strative officers as well as judicial ones. Hollman v. Warren,
27 supra, Betancourt v. Workmen's Compensation Board, supra;
28 Memorial Hospital of So. Cal. v. State Health Planning Agency,

1 supra. Agencies and individuals in these cases had refused to
2 exercise judgment with respect to a given subject, in the
3 belief that they were not empowered to act at all. The writ
4 of mandate operated in these situations to clarify a rule or
5 law affecting the exercise of discretionary power and to compel
6 the exercise of that power.

7 Hollman v. Warren, supra, is a case directly analogous
8 to the instant case. In that case, Governor Warren had failed
9 to exercise his discretion to appoint notaries public in San
10 Francisco because he was under the erroneous impression that
11 the law allowed him no such discretion. This Court issued a
12 peremptory writ of mandate to compel Governor Warren to
13 exercise his discretion to appoint the notaries, stating that:

14 "While ordinarily, mandamus may not be
15 available to compel the exercise by a court or
16 officer of the discretion possessed by them in
17 a particular manner, or to reach a particular
18 result, it does lie to command the exercise of
19 discretion -- to compel some action on the
20 subject involved. [Citations omitted.]

21 32 Cal.2d at 355.

22 In the instant case, respondents have refused and will continue
23 to refuse to exercise their discretion to consider requests for
24 moneys governed by Article XXVI unless ordered by this Court to
25 exercise that discretion. As in Hollman v. Warren, respondents'
26 refusal rests on a misinterpretation of the law, and therefore
27 a writ of mandate is the appropriate remedy to compel respon-
28 dents to exercise their discretion.

1 When an agency's action or refusal to act rests on
2 an interpretation of law, a petition for a writ of mandate is
3 an appropriate means to seek review of that determination.

4 Rich v. State Board of Optometry, 235 Cal.App.2d 591 (1965).

5 In that case, petitioners sought to compel the State Board of
6 Optometry to allow them to relocate branch offices of their
7 businesses. The issuance of the writ necessarily involved a
8 determination of the meaning and purpose of the California
9 Business and Professions Code §3077. In granting the writ,
10 and thus deciding the correct interpretation of §3077, the
11 court said,

12 "The construction of a statute and its
13 applicability to a given situation are matters
14 of law. . . . Accordingly, where an administrative
15 agency's determination involves the construction
16 of a statute, its interpretation is a question of
17 law which is reviewable by the courts. . . ."

18 235 Cal.App.2d 591, 604.

19 As in Rich, petitioners in the instant case seek a review of
20 respondents' interpretation of a law (in this case constitu-
21 tional) and a writ of mandate compelling compliance with that
22 law.

23 This Court has issued its original writ of mandate to
24 correct erroneous administrative interpretation of important
25 laws in cases like the present one. In San Francisco Unified
26 School District v. Johnson, 3 Cal.3d 937 (1971), this Court was
27 "called upon to determine the interpretation and constitution-
28 ality of Education Code Section 1009.5. . . ." 3 Cal.3d at 942.

1 Read one way, the statute could be "construed so as to prohibit
2 nonconsensual busing in order to achieve racial integration."

3 3 Cal.3d at 943. The Court rejected such an interpretation and
4 issued a peremptory writ of mandate compelling a computer study
5 of present and future school assignments in San Francisco.

6 3 Cal.3d at 960. The Court pointed out that it was not by its
7 order requiring busing as a means of achieving integration, but
8 rather was compelling the school authorities to exercise their
9 discretion to consider school assignments which would depend on
10 busing as a means of achieving integration. The school authori-
11 ties' refusal to study such school assignments was purportedly
12 based on their belief that the statute did not permit them to
13 consider busing.

14 As in San Francisco Unified School District v. Johnson,
15 petitioners in the instant case seek to have the Court interpret
16 a law and to compel respondents to exercise the discretionary
17 power which the law confers upon them. Just as the Court was not
18 required to order busing to achieve school desegregation in the
19 San Francisco case, so in the present case, petitioners do not re-
20 quest the Court to compel respondents to allocate funds governed
21 by Article XXVI for mass transit in any specific case. But, as in
22 Johnson this Court held that to read Education Code Section 1009.5
23 as prohibiting busing as a means of achieving integration was
24 incorrect, so, petitioners submit, in this case the Court should
25 conclude that to read Article XXVI as prohibiting use of funds
26 governed thereby for anything but roads for motor vehicles
27 is clearly erroneous. As in Johnson, the writ of mandate is

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1 the appropriate remedy to compel respondents to exercise the
2 discretion granted them by law.

3 Earlier, in County of Sacramento v. Hickman, 66 Cal.2d
4 841 (1967), this Court issued a peremptory writ of mandate to
5 compel a county assessor to assess property at between 20% and
6 25% of its face value rather than at its "full cash value" as
7 stated in Article XI, Section 12 of the California Constitution.
8 The assessor had interpreted that section of the Constitution
9 as allowing her no discretion to assess the property at anything
10 other than full cash value. This Court disagreed, pointing out
11 that the statutory meaning and interpretation in effect at the
12 time of the adoption of Article XI, Section 12 allowed assess-
13 ment at fractional value. The Court held that Article XI,
14 Section 12 does not preclude assessment at a fraction of full
15 cash value and issued a writ of mandate to compel the county
16 assessor to assess property at between 20% and 25% of face
17 value.

18 As in the cases above, the course of action challenged
19 herein is based upon an incorrect interpretation of law. Respon-
20 dents have refused and continue to refuse to consider the use
21 of Article XXVI funds for the development of mass rapid transit
22 and alternative transportation systems. Their refusal is based
23 upon the erroneous view that they lack discretion to consider
24 use of gas taxes and vehicle registration fees for mass rapid
25 transit under Article XXVI.

26 In requesting the Court to issue the writ of mandate
27 in this case, petitioners seek to compel respondents to perform
28 their clear and present duty to exercise authority and discretion

1 vested in them which they now refuse to exercise. As in San
2 Francisco Unified School District v. Johnson, supra, it is
3 appropriate that this Court issue its writ of mandate to compel
4 the exercise of discretion here.

5 B. Petitioners by This Action Seek to
6 Procure Performance of a Public Duty
7 in Which They Have a Beneficial Interest.

8 It is well established that when a petitioner attempts
9 to vindicate a public right and thus to compel performance of
10 a public duty, no special beneficial interest other than his
11 interest as a citizen need be shown.

12 "Where the question is one of public right
13 and the object of mandamus is to procure the
14 enforcement of any public duty, the relator need
15 not show that he has any legal or special interest
16 in the result, since it is sufficient that he is
17 interested as a citizen in having the laws
18 executed and the duty in question enforced." Diaz v.
19 Quitoriano, 268 Cal.App.2d 807, 811 (1969); See also,
20 Fuller v. San Bernardino County Municipal Water
21 District, 242 Cal.App.2d 52, 57 (1966).

22 In Hollman v. Warren, supra, this Court stated that
23 petitioner had sufficient interest in the issuance of a writ
24 of mandate compelling Governor Warren to exercise his discretion
25 to appoint notaries in San Francisco not only as an applicant
26 for the position of notary, but also as a resident and taxpayer
27 of San Francisco "interested in having a sufficient number of
28 notaries commissioned to act therein." 32 Cal.2d at 357.

1 In Brown v. Superior Court, 5 Cal.3d 509 (1971), the
2 California Secretary of State sought mandamus in this Court
3 directing the Superior Court to vacate its order dismissing the
4 Secretary's action for civil penalties against parties for their
5 alleged failure to comply with campaign laws. This Court, in
6 issuing the writ of mandate, pointed out that it was particularly
7 appropriate that the Secretary of State seek mandamus because of
8 his overall responsibility to enforce the election laws.

9 In the instant case, petitioners seek to procure
10 performance of a public duty which affects the public welfare
11 of virtually every citizen of the State of California. As shown
12 above, the lack of mass rapid transit and other forms of public
13 transportation is a direct cause of problems of air pollution
14 and traffic congestion in California's urban and suburban areas.
15 The existence of funds for the creation of a balanced trans-
16 portation system will determine to a great extent the ability
17 of petitioner City of Riverside and other cities like the City
18 of Los Angeles to comply with the requirements of the Clean Air
19 Act of 1970. Respondents' refusal to make funds available for
20 balanced transportation systems vitally affects every California
21 city's ability to deal effectively with its social, environmental
22 and economic problems. Further, transportation has a direct
23 bearing on whether this state will be capable of meeting the
24 increasingly urgent need to conserve energy and natural resources.
25 There can be no doubt that petitioners in this case seek to
26 procure performance of a public duty of the greatest importance
27 and significance for all Californians.

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1 Petitioners are especially appropriately situated to
2 seek mandamus compelling performance of respondents' public
3 duty in this case. Mayor Bradley, as the highest administrative
4 official of the City of Los Angeles, has the responsibility to
5 protect the health and welfare of all residents and citizens of
6 the City. He is vitally concerned both in his official capacity
7 and as a citizen with finding solutions to the problems of air
8 pollution, traffic congestion, urban sprawl and social disloca-
9 tion. He has a duty to see that the City of Los Angeles complies
10 with the requirements of the Clean Air Act. Solutions to these
11 problems can be found only in the development and maintenance
12 of a balanced transportation system. The development of such
13 a system in turn depends on the availability of vast sums of
14 money for mass rapid transit and other alternative public
15 transportation. Just as it was appropriate for the Secretary of
16 State to seek mandamus in Brown v. Superior Court, supra, so
17 Mayor Bradley is particularly well suited to seek performance
18 of respondents' public duty in the instant case.

19 Councilman Edelman is likewise qualified both as a
20 citizen and as a public official of the City of Los Angeles to
21 seek performance of respondents' public duty in this case. As
22 a city official, Councilman Edelman has been vitally concerned
23 with the development of a balanced transportation system
24 including mass transit. He has been a strong advocate of the
25 use of moneys governed by Article XXVI for the development of
26 such a balanced transportation system since 1966. As a
27 resident of West Los Angeles who commutes approximately 10 miles
28 each way to work in downtown Los Angeles, he would benefit

1 directly from the issuance of a writ of mandate in this case by
2 using the mass rapid transit system constructed and maintained
3 from funds governed by Article XXVI.

4 The City of Riverside is itself authorized to seek
5 and obtain funds governed by Article XXVI for whatever lawful
6 purposes said funds may be used. The City of Riverside is
7 burdened by aggravated air pollution problems and is anxious to
8 obtain moneys governed by Article XXVI for construction and
9 maintenance of alternative modes of transportation to replace
10 the private automobile. In order to fulfill its responsibili-
11 ties to protect the health and welfare of its residents and
12 citizens, the City of Riverside intends to seek funds governed
13 by Article XXVI for such purposes upon this Court's issuance of
14 the writ of mandate prayed for in this petition.

15 In short, all three petitioners are particularly well
16 qualified by reason of their interests and responsibilities as
17 city officials and as private citizens and, in the case of the
18 City of Riverside, by reason of its direct interest in receiving
19 funds governed by Article XXVI for mass transit, to seek to compel
20 respondents to perform their public duties affecting all the
21 citizens of the Los Angeles and Riverside areas as well as the
22 entire state.

23 C. This Petition is Timely Because
24 Respondents Have Shown That Any
25 Demand to Perform Their Duties
26 Under Article XXVI Would be Refused.

27 Ordinarily, when a petitioner seeks mandamus, he must
28 assert that he made demand upon the respondent to perform the

1 act and that the respondent refused to comply. No such demand
2 need be made, however, where petitioner seeks mandamus to compel
3 the performance of a duty affecting the public at large or
4 where the conduct and attitude of the respondent show that the
5 demand would have been refused if made. In Jensen v. McCullough,
6 94 Cal.App. 382 (1928), petitioner, a state officer, sought
7 mandamus compelling respondent, a county treasurer, to pay
8 moneys due the state by reason of commitments by the County to
9 the Sonoma state home. In issuing the writ of mandate, the
10 Court stated:

11 "But there are two well-recognized exceptions
12 to this general rule [that there be a demand and a
13 refusal] -- first, that a demand is excused when
14 the act is a mere public duty affecting the public
15 at large and in which the petitioner has no imme-
16 diate benefit, and, second, that a demand is excused
17 when the attitude of the respondent shows that it
18 would have been refused if made." 94 Cal.App. at
19 389.

20 See also, Young v. Gness, 7 Cal.3d 18 (1972) (Original writ of
21 mandate issued to prevent enforcement of unconstitutional resi-
22 dency requirement), holding that "the remedy may be sought when
23 it is clear from the circumstances that the public officer does
24 not intend to comply with his obligations when the time for
25 performance arrives." Both exceptions set out in Jensen v.
26 McCullough, supra, are present in the instant case. First, as
27 set out above, petitioners seek to procure performance of a
28 public duty affecting the public at large, and petitioners'

1 beneficial interest in respondents' performance of that duty is
2 a consequence of petitioners' responsibilities to the public,
3 who are the direct beneficiaries.

4 Further, the conduct and public statements of respon-
5 dents leave no doubt that they have interpreted and continue to
6 interpret Article XXVI narrowly to prohibit use of funds governed
7 thereby for any purpose other than the construction and mainte-
8 nance of streets, roads and freeways designed to carry motor
9 vehicles and structures directly incident thereto. In the
10 California Action Plan for Transportation Planning prepared by
11 respondent California Department of Transportation to fulfill
12 the requirements of the Federal-aid Highway Act of 1970, this
13 interpretation is explicit:

14 "The California Department of Transportation
15 is authorized to plan for a balanced and coordinated
16 transportation system including all transportation
17 modes, but is not authorized to assume the functions
18 of designing or building any mode other than highway.
19 Therefore, the system planning portion of the Action
20 Plan is multimodal in concept, but the project
21 development phase is only directed toward highway
22 projects." California Action Plan for Transportation,
23 Final Draft, California Department of Transportation,
24 June 1973, at p. 1-4. [The Department of Transpor-
25 tation is clearly using the word "highway" in this
26 passage to mean road for automobile travel.]

27 The reason why respondent Department of Transportation "is not
28 authorized to assume the functions of designing or building any

1 mode other than highway" [i.e., road for automobile travel] is
2 because it has misinterpreted Article XXVI as limiting use of
3 the funds governed thereby for use in designing, constructing
4 and maintaining streets, roads and freeways for use of motor
5 vehicles.

6 Further, the 1972 Annual Highway Planning Report,
7 Summary Report, published by the State of California Business
8 and Transportation Agency, Department of Public Works in March
9 1973, outlines a highway program for the next nine years limited
10 exclusively to construction of highways for use of motor vehicles.
11 The program, which depends for part of its financial support
12 on \$10.6 billion which is presumed to be available under
13 Article XXVI during the next nine years, rests on the assumption
14 that the use of funds governed by Article XXVI will be limited
15 exclusively to construction of highways for use of motor
16 vehicles. Thus, the report states that its basic assumptions
17 regarding state revenues are:

- 18 "a) there will be no change in the highway
19 user [Article XXVI] tax structure; and
20 b) there will be no diversion of highway
21 users [Article XXVI] taxes." Id. at 13.

22 If there were ever any doubt as to the position of
23 respondents regarding the use of funds governed by Article XXVI
24 for mass rapid transit and other alternative transportation
25 systems, that doubt has been laid to rest by a recent request
26 from respondent California State Legislature to the State
27 Attorney General and the response to that request. [The res-
28 ponse from the Office of the Attorney General is attached hereto

1 as Exhibit "4"]. The question which was presented to the
2 Attorney General by the Honorable James R. Mills, President Pro
3 Tempore of the California State Senate, was:

4 "1. Does Article XXVI of the Constitution
5 permit the appropriation of motor vehicle fuel
6 taxes for the construction or maintenance of a
7 rapid transit system?" Exhibit "4" at 1.

8 The conclusion as to that question is stated as
9 follows:

10 "1. Article XXVI of the Constitutions bars
11 the appropriation of motor vehicle fuel taxes for
12 the construction or maintenance of a rapid transit
13 system." Exhibit "4" at 1.

14 The Attorney General's analysis unfortunately does
15 not include any reference to the Payne case. Consequently, its
16 reliance on the legislative history surrounding the passage and
17 approval of Article XXVI is incomplete and fatally defective.
18 Its existence, however, assures that any request by petitioners
19 that respondent State Legislature authorize use of funds
20 governed by Article XXVI would be refused.

21 It is clear that respondent State Legislature is
22 presently relying on the above opinion of the Attorney General
23 for its interpretation of Article XXVI. On July 18, 1973,
24 Mary D. Nichols, one of the attorneys for petitioners herein,
25 talked by telephone with Jimmy Wing, deputy legislative counsel
26 in charge of transportation. He informed Miss Nichols that his
27 office has relied and continues to rely on the above opinion of
28 the Attorney General in advising the Legislature regarding the

1 scope of Article XXVI. (The details of this conversation are
2 set out in the affidavit of Miss Nichols attached hereto as
3 Exhibit "5".)

4 Because the State Legislature, relying on the above
5 opinion of the Attorney General, has too narrowly construed the
6 purposes for which funds governed by Article XXVI may be used,
7 there have been numerous legislative attempts to alter the
8 situation. The bill authored by Assemblyman Foran, ACA 16,
9 would open the funds governed by Article XXVI to uses for con-
10 struction and maintenance of mass transit and would have the
11 details to be worked out by the State Legislature. The bill
12 authored by Senator Mills, SCA 15, would authorize use of some
13 of the funds governed by Article XXVI for transportation purposes
14 other than roads for motor vehicles but would accomplish it in
15 more specific and limited ways. Neither of these bills, nor
16 any other legislation, would be necessary had respondent State
17 Legislature properly interpreted Article XXVI as limiting funds
18 governed by that Article only to general transportation purposes
19 rather than non-transportation purposes. The reasons for the
20 failure properly to interpret the scope of Article XXVI appear
21 to be twofold: 1) the issue seems never to have presented
22 itself clearly and distinctly to respondents until very recently;
23 2) apparently the decisions of this Court, discussed extensively
24 above, have never been called to the attention of respondents.
25 At any rate, it is readily apparent that respondent State Legis-
26 lature has in the recent past interpreted and continues to
27 interpret Article XXVI as restricting use of the funds governed
28 thereby to roads for motor vehicles. Thus, any request from

1 petitioners that such funds be allocated for mass transit and
2 other alternative transportation systems would be denied, and a
3 writ of mandate is the appropriate remedy to compel respondents
4 to consider such requests, notify all county and city governments
5 that such requests will be considered, and allocate funds for
6 such uses in appropriate cases.

7 D. Petitioners Have No Plain, Speedy
8 and Adequate Remedy in the Ordinary
9 Course of the Law.

10 For all the reasons set out in Section II above, the
11 issues presented by this petition are of the utmost public impor-
12 tance and urgency. No remedy at law could begin to provide
13 petitioners with the equivalent of the relief they seek by this
14 petition: namely, an opportunity to use a portion of the funds
15 governed by Article XXVI to provide solutions to the critical
16 public transportation, pollution and related urban problems
17 enumerated above. Money damages or other ordinary remedies are
18 totally inadequate and inappropriate in the context of this
19 litigation. Petitioners submit that mandamus is the only
20 appropriate remedy under the circumstances.

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VII

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2 THIS PETITION PRESENTS A COMPELLING CASE FOR
3 THIS COURT TO EXERCISE ORIGINAL JURISDICTION
4 BECAUSE THE ISSUES PRESENTED ARE OF THE
5 GREATEST PUBLIC IMPORTANCE AND MUST BE
6 RESOLVED PROMPTLY.

7 Under Article VI §4 of the California Constitution,
8 the Supreme Court has original jurisdiction in proceedings in
9 the nature of mandamus. Rule 56(a) of the California Rules of
10 Court provide:

11 "A petition to a reviewing court for a
12 writ of mandate. . .shall set forth the matters
13 required by law to support the following:

14 (1) If the petition might lawfully have been
15 made to a lower court in the first instance, it
16 shall set forth the circumstances which, in the
17 opinion of the petitioner, render it proper
18 that the writ should issue originally from the
19 reviewing court. . . ."

20 This Court has long recognized that issues of great
21 public concern which should be quickly resolved satisfy the
22 demand for "circumstances" justifying the exercise of original
23 jurisdiction. People ex rel. Younger v. County of El Dorado,
24 5 Cal.3d 480 (1971); San Francisco Unified School District v.
25 Johnson, 3 Cal.3d 937 (1971); State Board of Equalization v.
26 Watson, 68 Cal. 2d 307 (1968); Farley v. Healey, 67 Cal.2d 325
27 (1967); Sacramento v. Hickman, 66 Cal.2d 841 (1967) Perry v.

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1 Jordan, 34 Cal.2d 87 (1949); Hollman v. Warren, 32 Cal.2d 351
2 (1948).

3 In San Francisco Unified School District v. Johnson,
4 3 Cal.3d 937 (1971), the Court was called on to decide whether
5 Education Code section 1009.5 precluded the use of busing for
6 purposes of desegregating public schools. The Court stated
7 that this issue was of great public concern and affected pupil
8 assignment throughout the state. Because the United States
9 Supreme Court had directed that segregation in public schools
10 must terminate "at once," prompt judicial action was necessary
11 and the Court therefore exercised original jurisdiction.
12 3 Cal.3d at 945.

13 In People ex rel. Younger v. County of El Dorado,
14 5 Cal.3d 480 (1971), this Court exercised original jurisdiction
15 and issued a writ of mandate compelling El Dorado and Placer
16 Counties to pay to the Tahoe Regional Planning Agency their
17 share for the support of the agency. In explaining the reasons
18 why the Court chose to exercise original jurisdiction in that
19 case, Justice Sullivan noted that the Lake Tahoe Basin is a
20 uniquely beautiful area which is endangered by explosive growth.
21 The Court reasoned that all the people of the state have an
22 interest in the protection of the scenic beauty of the area
23 which the Tahoe Regional Planning Agency is supposed to protect
24 and preserve, and therefore the case was of sufficient impor-
25 tance to justify the exercise of original jurisdiction.

26 In County of Sacramento v. Hickman, 66 Cal.2d 841
27 (1967), the Court issued a writ of mandate to compel the county
28 assessor to assess property at a fraction of full cash value as

1 required by the revenue and tax code. Justice Mosk, writing for
2 a unanimous Court, pointed out that the local assessment roll
3 had to be completed by a certain date and that the delay involved
4 in first submitting the matter to a lower court would result in
5 confusion in the administration of the tax laws and hardship
6 and expense to the public. 66 Cal.2d at 845.

7 In Hollman v. Warren, 32 Cal.2d 351 (1948), the Court
8 issued a writ of mandate compelling then Governor Warren to
9 exercise his discretion to appoint notaries public in San Fran-
10 cisco. The Court explained its decision to exercise original
11 jurisdiction as follows:

12 "The case is a proper one for this court to
13 exercise its original jurisdiction. It affects
14 the entire city and county of San Francisco, a
15 populous county, the writ runs to the highest
16 executive of the state, and an important consti-
17 tutional question is involved." 32 Cal.2d 351,
18 357.

19 The Court has also exercised original jurisdiction to
20 resolve a variety of important public issues including: quali-
21 fication of an initiative for the ballot, Perry v. Jordan,
22 34 Cal.2d 87 (1949), and Farley v. Healey, 67 Cal.2d 325 (1967);
23 validity of assessment procedures, State Board of Equalization
24 v. Watson, 68 Cal.2d 307 (1968); and the constitutionality of
25 requiring a two-thirds majority in bond elections, Westbrook v.
26 Mihaly, 2 Cal.3d 765 (1970).

27 Under the guidelines established by these cases, the
28 present case clearly calls for the exercise of the original

1 jurisdiction of this Court: (1) the issue involved is of the
2 greatest public concern and its resolution will directly affect
3 virtually every citizen and resident of the state. The develop-
4 ment of mass transit and other alternative transportation systems
5 is now a matter of great public interest in every major urban
6 area in the State. Not only does the development of such public
7 transportation determine whether the cities and counties of the
8 South Coast Air Basin will be able to achieve clean air, it
9 also determines to a large degree whether solutions can be found
10 for problems of traffic congestion, urban blight and urban sprawl,
11 and dwindling supplies of energy and natural resources, as well
12 as all of the human and social hardships inherent in the fact
13 that 40% of the residents of the Los Angeles area (the very
14 young, the very old, the poorest and the disabled) do not drive
15 automobiles. (2) The requirements imposed on the City of Los
16 Angeles and petitioner City of Riverside by the Clean Air Act,
17 as discussed above, make the prompt resolution of this issue
18 a matter of utmost urgency. (3) The issue to be resolved is
19 a question of construction of an important Constitutional pro-
20 vision, and the writ, if granted, will be directed against state
21 officials whose public duties under Article XXVI are statewide.
22 There are essentially no questions of fact to be resolved, the
23 sole issue being the proper interpretation of a Constitutional
24 provision and respondents' duties thereunder. A definitive
25 interpretation can come only from this Court.

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VIII

CONCLUSION

As shown above, the proper definition of "highway" in Article XXVI includes any public way for public use. This definition gives full force and effect to the purpose of Article XXVI which is to prevent moneys governed thereby from diversion to purposes not related to transportation. Respondents' refusal to act in accordance with the correct interpretation of Article XXVI has resulted and continues to result in great hardship to petitioners. Petitioners respectfully request this Court to order respondents to perform their duties under Article XXVI as set out in the petition.

Respectfully submitted,

BRENT N. RUSHFORTH
MARY D. NICHOLS
CARLYLE W. HALL, JR.
A. THOMAS HUNT
JOHN R. PHILLIPS
FREDRIC P. SUTHERLAND

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By *Mary D. Nichols*
MARY D. NICHOLS

Attorneys for Petitioners

EXHIBITS

TABLE OF EXHIBITS

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EXHIBIT 1	Article XXVI
EXHIBIT 2	Ballot Arguments on Proposition 28 (1938)
EXHIBIT 3	Chart: Budgetary Flow of State Motor Vehicle Fees and Related Highway Users Taxes in California for the 1972-73 Fiscal Year.
EXHIBIT 4	Opinion of the Attorney General No. CV/357 June 6, 1973.
EXHIBIT 5	Affidavit of Mary D. Nichols
EXHIBIT 6	The Urgent Need for Mass Rapid Transit
	<u>"Mass Transit: a Good Start"</u> <u>Los Angeles Times</u> , July 24, 1973
	<u>"Mayor Seeks Los Angeles Mass Transit"</u> <u>New York Times</u> , July 15, 1973
	<u>"Feasible Ideas for Cleaner Air"</u> <u>Los Angeles Times</u> , June 17, 1973
	<u>"NOx + LA = Mass Transit"</u> <u>Los Angeles Times</u> , June 8, 1973
	<u>"L.A. Must Break Auto Habit, U.S. Official says"</u> <u>Los Angeles Times</u> , May 17, 1973
	<u>"Fitz Urges Highway Fund Diversion"</u> <u>Southern California Teamster</u> , May 2, 1973
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EXHIBIT "1"

the payment or payments of the all...
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 mistration.
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ARTICLE XXVI

MOTOR VEHICLE TAXATION AND REVENUES

Fuel Taxes

SEC. 1. (a) From and after the effective date of this article, all moneys collected from any tax now or hereafter imposed by the State upon the manufacture, sale, distribution, or use of motor vehicle fuel, for use in motor vehicles upon the public streets and highways over and above the costs of collection, and any refunds authorized by law shall be used exclusively and directly for highway purposes, as follows:

(1) The construction, improvement, repair and maintenance of public streets and highways, whether in incorporated or unincorporated territory, for the payment for property, including but not restricted to rights of way, taken or damaged for such purposes and for administrative costs necessarily incurred in connection with the foregoing.

(2) As now or hereafter may be provided by law, the net revenue from not more than 20 per cent of \$0.01 per gallon tax on such motor vehicle fuel may be expended under any act of the Legislature for the payment, redemption, discharge, purchase, adjustment, contributing to or refunding of special assessments or bonds or coupons issued for street or highway purposes as set forth in this section and which special assessment districts were initiated by an ordinance or resolution of intention adopted prior to January 1, 1933. [New section adopted November 8, 1938]

COLLATERAL REFERENCES

Cal Jur Taxation §§ 357-384; MeK Dig Taxation § 457; Am Jur Taxation § 1260 et seq.; 22 CLR 288 (gasoline taxes as involving interference with interstate commerce); 4 SCLR 417 (taxation of sale of gasoline, sales to municipality); 3 Ops Atty Gen 13 (exemption from motor vehicle fuel tax on sales to Cal Cross under Rev & Tax C § 7401); 3 Ops Atty Gen 212 (Mexican Treaty of 1913 as entitling consular officers and employees to refund on motor vehicle fuel license tax); 6 Ops Atty Gen 106 (city may lawfully use its one-fourth cent fund for highway survey outside city limits if Department of Public Works concurs therein, and fund so allocated may lawfully be matched by state funds available under Stats 1944, ch 47).
 Notes: 84 ALR 839 (constitutionality and construction of gasoline inspection tax statutes); 125 ALR 734 (right of user of gasoline or other commodity to question validity of a statute or ordinance imposing a tax upon dealer).

Motor Vehicle Registration and License Fees

SEC. 2. (a) From and after the effective date of this article, all moneys collected from motor vehicle and other vehicle registration license fees and from any other tax or license fee now or hereafter imposed by the State upon vehicles, motor vehicles or operation thereof, except as may otherwise be provided in Section 4 of this article, shall be used for the following purposes:
 1. For costs of collection and for the administration and enforcement of all laws now in effect or hereafter enacted, regulating

OF DECISIONS

claim are merely administrative
 tails incidental to the general
 subject of the article sought to be
 repealed, namely aid to the need-
 ed blind. Perry v. Jordan
 C2d 87, 207 P2d 47.
 he title of an initiative
 tutional amendment adequately
 ers such subjects as recalling
 rector of Social Welfare name
 Art XXV, abolishing the Wel-
 Board thereby created, state
 tration of pensions, and
 things, where it states that the
 ure repeals Art XXV, which
 with "Old Age Security and
 the Blind, and the admini-
 thereof," and states specifically
 the Legislature is vested with
 thorty in the field. Perry v.
 (1949) 34 C2d 87, 207 P2d 47.

[2 Cal Const]

EXHIBIT # 1 #
 PAGE " / "

or concerning the use, operation or registration of vehicles used upon the public streets and highways of this State and for the exercise of those powers and for the performance of those duties now imposed upon the California Highway Patrol.

2. For street and highway purposes as specified in paragraph (1) of subdivision (a) of Section 1 of this article.

(b) The moneys referred to in subdivision (a) of this section allocated to the counties and any city and county may also be used as now or hereafter provided by the Legislature for the following additional purposes, provided such use will not in any manner cause the loss of federal highway funds to this State:

(1) For the payment of any portion of the principal or interest of, or for the purchase or redemption at a discount of, or for the transfer to the interest and sinking fund for the discharge and payment of bonds voted at an election prior to January 1, 1935, and issued by a city, city and county, or county, the proceeds of which have been used for the purposes specified in paragraph (1) of subdivision (a) of Section 1 of this article.

(2) For the payment, redemption, discharge, purchase, adjustment, contributing to or refunding of special assessments or bonds or coupons issued to represent such special assessments, where such assessments were imposed wherein the ordinance or resolution of intention was adopted prior to January 1, 1933, for the acquisition of rights of way or easements for or for the construction or improvements of public streets, highways or parks. [New section adopted November 8, 1938]

COLLATERAL REFERENCES

Cal Jur Automobiles §§ 5, 6; McK Dig Automobiles §§ 20 et seq.; Am Jur Automobiles §§ 113 et seq.

Appropriations by the Legislature

SEC. 3. The provisions of this article are self-executing but the Legislature shall have full power to appropriate such moneys and to provide the manner of their expenditure by the State, counties, cities and counties, or cities for the purposes specified and to enact legislation not in conflict with this article. This article shall not prevent any part of the moneys referred to in Section 1 or 2 hereof from being temporarily loaned to the State General Fund upon condition that the amount so loaned shall be repaid therefrom to the funds from which so borrowed to be used for the purposes specified in Sections 1 or 2 hereof. [New section adopted November 8, 1938]

COLLATERAL REFERENCES

McK Dig State of California, §§ 18, 19.

NOTES OF DECISIONS

1. Expenditure of Funds Collected Under Article XXVI Under Art XXVI, from and after Nov. 8, 1938, moneys derived from Motor Vehicle Fuel Fund taxes and fees for vehicle registration fees must be used for highway purposes as herein directed, whether collected prior or subsequent to that date. Atty Gen's Op No NS 2093, Oct. 31, 1939.

Art XXVI prevents the transfer of moneys in the Highway, Motor Vehicle Fuel, Motor Vehicle or Motor Vehicle Support Funds, under Pol C to the General Cash Revolving Fund. Atty Gen's Op No NS 2093, Oct. 31, 1939.

An authorization for creation of a fund, under Pol C, Sec 661, the Department of Motor Vehicles, with the approval of the Director of Finance, to expend funds from the unbudgeted balance for purchase of real property. Atty Gen's Op No NS 5680, May 25, 1944.

The Department of Public Works is authorized by virtue of authority conferred upon it by Article XXVI, to acquire land for that purpose. Motor vehicle funds may be used therefor as an "administrative cost" under Art XXVI. In planning the department's anticipated needs are properly considered. Presently unneeded land may be rented to the Highway Department. Atty Gen's Op No NS 2282, February 23, 1940.

The Department of Public Works is authorized to guard powder magazines and bridges and other important portions of highways, preparation of maps, engineering studies and conditions, and load-carrying capacity of bridges for use by military and naval forces.

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If Sec 6, amended to to retailers tax proceed: eral Fund a Fund due to County a Highway Us able to pay crossing guar fornia High that such ap tor vehicle Art XXVI, (1951) 17 p

Not to Affect Certain Existing Acts

SEC. 4. This article shall not affect or apply to any tax imposed by Chapter 339, Statutes of 1933, "Retail Sales Tax Act of 1933," as amended, "Unemployment Relief Bond Act of 1933," as amended; nor shall it affect or apply to the "Unemployment Relief Bond Act of 1933," as approved by Section 9 of Article 13, nor shall it affect or invalidate Chapter 362, Statutes of 1935 as amended, imposing a motor vehicle license tax. The Legislature may continue in effect Chapter 362, Statutes of 1935 as amended, or any amendment to, said chapter, provided that the revenue from said tax, excise and subventions to counties, cities and towns shall first be applied to the payment of principal on all State highway bonds outstanding on the date of the passage of this article. In the event the tax imposed by Chapter 362, Statutes of 1935 as amended, is repealed, the provision for such payment of said State

EXHIBIT 2 2 PAGE 2 2

registration of vehicles used
of this State and for the
performance of those duties
Highway Patrol.

as specified in paragraph
his article.

division (a) of this section
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such use will not in any
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discharge, purchase, adjust-
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REFERENCES
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article are self-executing but
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nt so loaned shall be repaid
so borrowed to be used for
or 2 hereof. [New section

REFERENCES

VISIONS

Vehicle Fuel Fund taxes and
icle registration fees must be
highway purposes as there-
ted, whether collected prior or

sequent to that date. Atty Gen's Op
No NS 2093, Oct. 31, 1939.

Art XXVI prevents the transfer of
moneys in the Highway, Motor Ve-
hicle Fuel, Motor Vehicle or Motor
Vehicle Support Funds, under Pol C
Sec 443, to the General Cash Revolv-
ing Fund. Atty Gen's Op No NS 2093,
Oct. 31, 1939.

Upon authorization for creation of
a deficiency, under Pol C, Sec 661, the
Department of Motor Vehicles, with
approval of the Director of Finance,
may expend funds from the unbud-
geted balance for purchase of real
estate. Atty Gen's Op No NS 5680,
Oct. 26, 1944.

The Department of Public Works
has implied power to construct an of-
fice building by virtue of authority
to acquire land for that purpose. Mo-
tor vehicle funds may be used there-
for, being an "administrative cost"
within Art XXVI. In planning the
building anticipated needs are proper
to be considered. Presently unneeded
space may be rented to the Highway
Patrol. Atty Gen's Op No NS 2282,
February 23, 1940.

The guarding of powder magazines
of the Div of Highways, bridges and
important portions of highways, pre-
paration of maps, engineering studies
of road conditions, and load-carrying
capacity of bridges for use by mili-

tary and naval authorities and others
have a direct relation to maintenance
of public highways and moneys appro-
priated by the Dept of Public Works
from the State Highway Fund may
be expended for such purposes. Such
moneys may not be expended to pay
the premium on bonds of deputy
sheriffs. Atty Gen's Op No NS 4008,
Jan. 6, 1942.

Funds allocated to counties by the
State such as gas tax and motor ve-
hicle registration and license fees,
may not be transferred to the county
general fund and expended for gen-
eral county purposes. Both Pol C,
Sec 3714 and Art XXVI appear to
prevent such transfer. Atty Gen's
Op No NS 5157, Oct. 26, 1943.


If Sec 6, Retail Sales Tax Act is
amended to make the tax applicable
to retailers of motor vehicle fuel, the
tax proceeds would go into the Gen-
eral Fund and not into the Highway
Fund due to Sec 4 of Art XXVI. Atty
Gen's Op No NS 1543, March 20, 1939.

County apportionments from the
Highway Users Tax Fund are avail-
able to pay salaries of pedestrian
crossing guards furnished by the Cali-
fornia Highway Patrol, to the extent
that such apportionments include mo-
tor vehicle revenues derived under
Art XXVI, Sec 2. Atty Gen's Op
(1951) 17 p 157.

Not to Affect Certain Existing Acts

SEC. 4. This article shall not affect or apply to any license fees
or taxes imposed by Chapter 339, Statutes of 1933, as amended, nor
to any tax which is now or may hereafter be imposed by the
"Retail Sales Tax Act of 1933," as amended, or the "Use Tax Act
of 1935," as amended; nor shall it affect or repeal any provision
of the "Unemployment Relief Bond Act of 1933," Chapter 207, Stat-
utes of 1933, as approved by Section 9 of Article XVI of this Con-
stitution, nor shall it affect or invalidate Chapter 362, Statutes of
1935, as amended, imposing a motor vehicle license fee based upon
value. The Legislature may continue in effect the tax imposed
by Chapter 362, Statutes of 1935 as amended, provided that the
continuation of, or any amendment to, said Chapter 362, shall
provide that the revenue from said tax, excluding the costs of
collection and subventions to counties, cities and counties, and
cities, shall first be applied to the payment of principal and inter-
est on all State highway bonds outstanding on the effective date
of this article. In the event the tax imposed by said Chapter
362, Statutes of 1935 as amended, is repealed, the Legislature may
make provision for such payment of said State highway bonds by

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EXHIBIT 
PAGE " 3 "

Art XXVI § 4 **CONSTITUTION OF 1879**

means of any fees or taxes of the types mentioned in this article, whether now or hereafter imposed, provided such payment will not in any manner cause the loss of federal highway funds to this State.

Nothing in this article shall be construed as repealing, superseding or modifying that provision of Section 15 of Article XIII of this Constitution, reading as follows:

"Out of the revenue from State taxes for which provision is made in this article, together with all other State revenues, there shall first be set apart the moneys to be applied by the State to the support of the public school system and the State university."

In the event, however, moneys are transferred to the General Fund of the State from the funds referred to in this article for the support of the public schools and the State university, pursuant to Section 15 of Article XIII of this Constitution, the moneys so transferred shall be returned to the funds from which they were transferred from the first moneys available in the General Fund in excess of those required under Section 15 of Article XIII of this Constitution for the support of the public schools and the State university. [New section adopted November 8, 1938]

EXHIBIT "2"

DATE

MOTOR VEHICLE TAXATION AND REVENUE. Senate Constitutional Amendment 28. Adds Article XXVI to Constitution. Requires motor vehicle fuel tax moneys be used exclusively for public street and highway purposes. Permits not exceeding 20% of 1¢ per gallon fuel tax to be expended for payment, redemption, etc. of certain street or highway assessments, bonds or coupons. Requires all vehicle license fee and tax moneys be used to enforce laws concerning use, operation or registration of vehicles, for California Highway Patrol functions, for street and highway and other designated purposes. Declares amendment shall not affect certain existing laws.

YES

NO

(For full text of measure, see page 9, Part II)

Argument in Favor of Senate Constitutional Amendment No. 28

This proposed constitutional amendment, when adopted by the voters, will effectively and permanently prevent diversion of gasoline tax funds to purposes other than those now provided by law.

California motorists have been threatened many times with the misuse or diversion of moneys paid by them for the maintenance and development of routes for motor travel and for the support of the Department of Motor Vehicles. The purpose of this amendment is forever to end such threats.

The measure has been carefully drawn and is eminently fair. It makes no changes in existing law, nor does it change any of the present uses for which gasoline tax and other highway fund revenues are expended.

Briefly, the measure provides that all gasoline tax money and registration fees now or hereafter collected shall be used exclusively for the following purposes:

- (1) State highway maintenance and development;
- (2) Support of the State Department of Motor Vehicles, including the State Highway Patrol;
- (3) Allocations to cities and counties for street and highway purposes;
- (4) A continued limited use for the retirement of local street and highway bonds.

The measure specifically provides that the so called "in lieu" tax will not be affected; also that the Legislature shall retain control over the proceeds of the 3 per cent transportation tax on commercial vehicles.

The practice of borrowing gasoline tax and registration fees for the temporary benefit of the general fund is continued by specific pro-

vision. However, money so obtained must be returned as soon as the condition of the general fund permits. No change is made in that provision of the State Constitution which provides that the first call on all revenue received by the State shall be for the maintenance of the public schools and the State university, but it is likewise provided that in the event any highway funds are taken for such a purpose they must be returned as soon as the condition of the State's general fund permits.

Despite the seemingly large amounts of money spent annually for street and highway maintenance and development, the demands of constantly growing traffic make it imperative that the gasoline tax and registration fees be protected in every possible manner against diversion for nonhighway purposes. In other states where "diversion" has taken place, it has been ruinous to the proper development of adequate street and highway facilities.

Organizations interested in the development of our street and highway systems have heartily endorsed the amendment. Organized labor has voiced support. It has been approved by those responsible for the fiscal affairs of California. It has been submitted to the electorate by a practically unanimous vote of the Legislature.

The soundness of the proposed amendment in establishing a permanent barricade against the misuse of motorists' money deserves a "YES" vote from every person interested in conserving these funds for development of streets and highways.

Vote "YES" on Proposition No. 3 and forever prevent a "diversion" of gasoline tax and other highway funds.

WILLIAM F. KNOWLAND,
Senator, Sixteenth District.

SANBORN YOUNG,
Senator, Eighteenth District.

EXHIBIT # 2

PAGE 1

ment Against Senate Constitutional Amendment No. 28

purpose of this amendment is to pre- effectively and permanently the diversion for vehicle fuel taxes and motor vehicle registration license fees to purposes other than now provided by law. This purpose is fulfilled under existing laws; and the amendment, therefore, is unnecessary.

There are approximately two and one-half million motor vehicles in California, and the majority of these constitute a substantial segment of the electorate. It is entirely unnecessary to grant constitutional protection to so large a group. If any attempt is made to use motor vehicle fuel taxes and registration license fees for purposes which do not meet the approval of the motorists, their voting strength is sufficient to protect their interests. To add constitutional protection would serve only to increase the rigidity and inflexibility of State government.

Efficient and economical conduct of government demands that spending agencies of the State be required to report to and obtain authorization for expenditure of public funds from the Legislature, which is the representative body of the people. This objective is accomplished if the expenditure of large

sums is made to depend upon the yield of particular sources of revenue rather than upon the need for such services.

Regardless of the need for or the desirability of using funds derived from the motor vehicle fuel tax and registration license fees exclusively for highway purposes, the "freeing" of any tax fund for special purposes by constitutional amendment is unsound fiscal policy. Existing provisions regarding the use of these funds may be entirely satisfactory in terms of the present needs of the highway system; but there is no reason to assume that at some future time change may not be desirable. If the existing laws become embedded in the Constitution, as proposed by the amendment, a needless handicap is created. Should change be made necessary by future developments, legislative action would be preferable to the lengthy process of constitutional amendment.

An adequate program of expenditure in any field is a relative matter. In the case of highways, necessary expenditures for new roads and for improvement of existing roads are a function of (1) the existing highway facilities and the amount and kind of traffic; (2) the intensity of the need for other forms of expenditure; and (3) the burden involved in raising the necessary revenues.

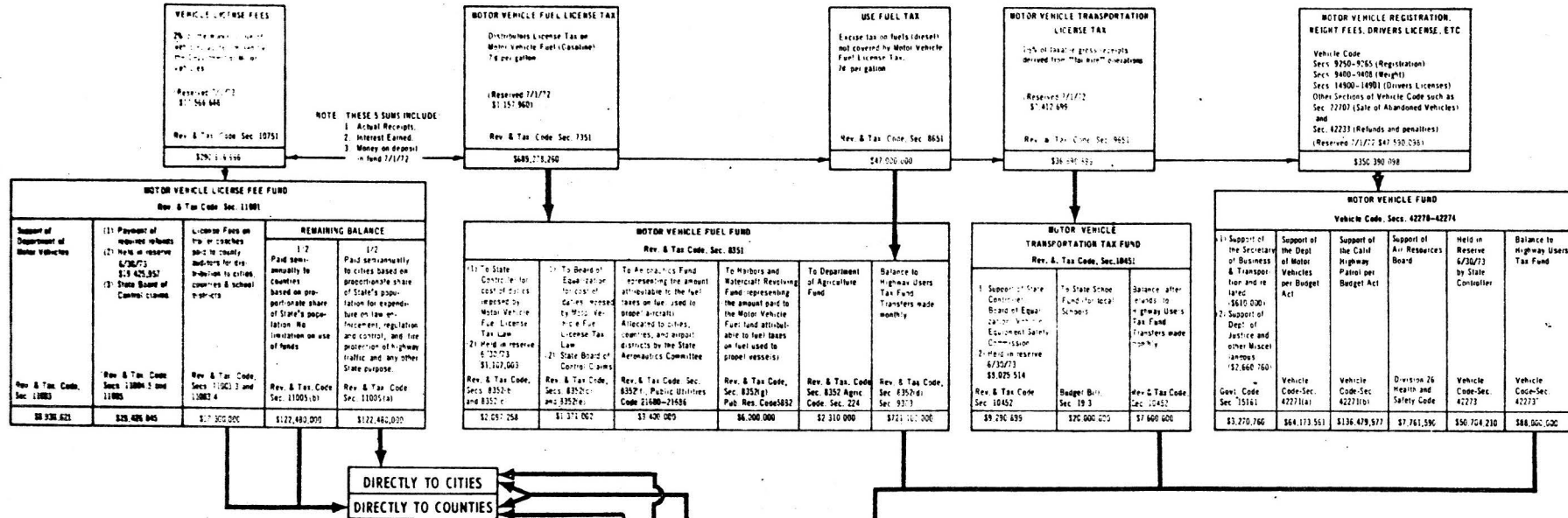
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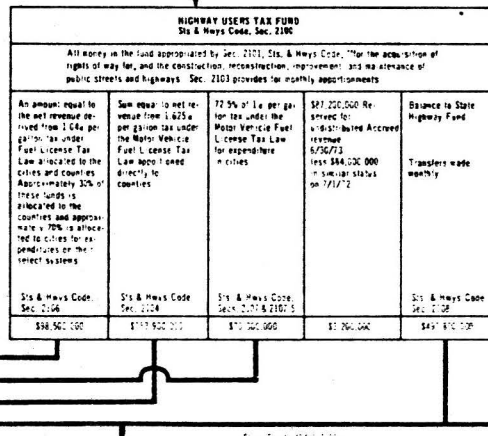
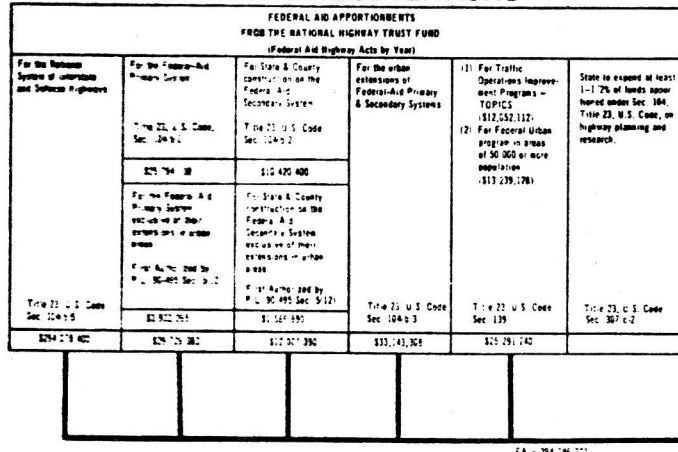
EXHIBIT "3"

BUDGETARY FLOW OF STATE MOTOR VEHICLE FEES AND RELATED HIGHWAY USERS TAXES IN CALIFORNIA FOR THE 1972-73 FISCAL YEAR

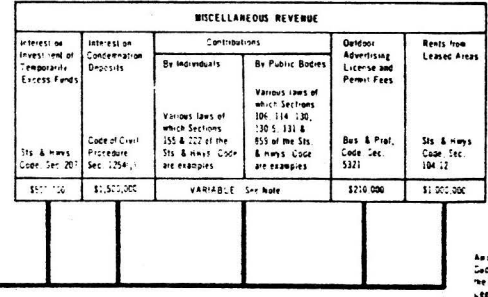
A. REVENUE FROM CALIFORNIA STATE MOTOR VEHICLE FEES AND TAXES



B. FEDERAL SUBVENTIONS



C. OTHER REVENUES



STATE HIGHWAY FUND

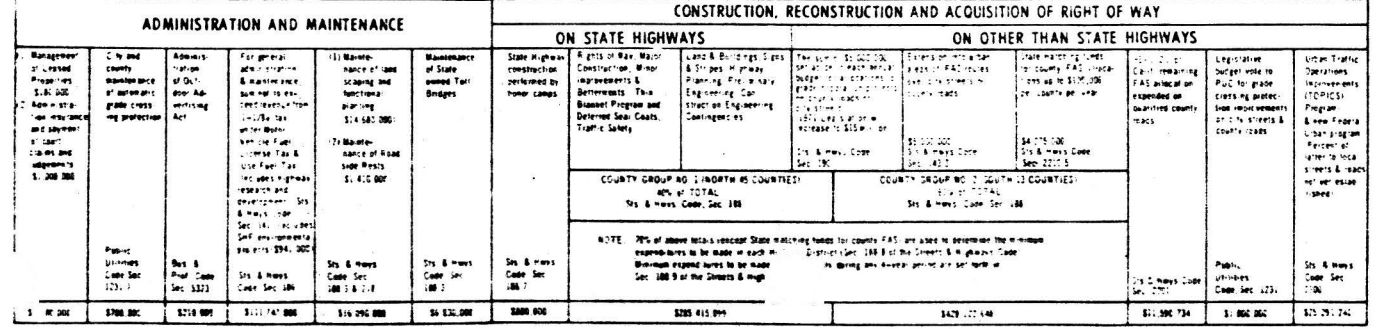


EXHIBIT "4"

OFFICE OF THE ATTORNEY GENERAL
STATE OF CALIFORNIA

EVELLE J. YOUNGER
Attorney General

OPINION

of

EVELLE J. YOUNGER
Attorney General
LAWRENCE K. KEETHE
Deputy Attorney General

NO. CV 72/357

JUNE 6, 1973

THE HONORABLE JAMES R. MILLS, PRESIDENT PRO
TEMPORE, STATE SENATE, has requested an opinion on questions
which may be stated as follows:

1. Does article XXVI of the Constitution permit
the appropriation of motor vehicle fuel taxes for the
construction or maintenance of a rapid transit system?

2. Does article XXVI of the Constitution permit
the appropriation of motor vehicle fuel taxes for use on
pedestrian, equestrian, or bicycle lanes or trails?

The conclusions are:

1. Article XXVI of the Constitution bars the
appropriation of motor vehicle fuel taxes for the construction
or maintenance of a rapid transit system.

2. Article XXVI of the Constitution permits the
use of motor vehicle fuel taxes for the construction and
maintenance of pedestrian, equestrian, and bicycle lanes
and trails separated from but adjacent to or approximately
paralleling existing or proposed highways if such separation
increases the traffic capacity or safety of the highway.

ANALYSIS

Article XXVI of the Constitution^{1/} was adopted November 8, 1938. In order to fully comprehend the issues presented here, article XXVI should be viewed in the light of its historical background and the circumstances surrounding its adoption.

In the fifteen years preceding 1938, there was a steady and gradual increase in the revenues produced from gasoline taxes, registration fees, and weight fees. By 1938 there were conflicting views on whether these revenues should be used to improve the state highway system or should go into the general fund. This conflict was resolved in 1938 by the adoption of article XXVI.

An examination of the ballot arguments for and against article XXVI, which appeared on the ballot in the 1938 general election as Proposition 3, should be considered as a guide to the purposes to be accomplished by its adoption.

Argument in Favor of Senate Constitutional Amendment No. 28

"This proposed constitutional amendment, when adopted by the voters, will effectively and permanently prevent diversion of gasoline tax funds to purposes other than those now provided by law.

"California motorists have been threatened many times with the misuse or diversion of moneys paid by them for the maintenance and development of routes for motor travel and for the support of the Department of Motor Vehicles. The purpose of this amendment is forever to end such threats.

1. Article XXVI of the California Constitution provides, with certain exceptions enumerated in section 4 of the article, that proceeds from motor vehicle fuel taxes "imposed by the State" on the manufacture, sales, distribution, or use of motor vehicle fuel in motor vehicles operated on public streets and highways in the State shall be used "exclusively and directly for highway purposes." "Highway purposes" are defined in the article to include the construction, improvement, repair, and maintenance of public streets and highways, the payment for property taken or damaged for such purposes, the administration costs necessarily incurred in carrying out such purposes and the payment of sums due under certain designed bonds.

" . . . "

Argument Against Senate Constitutional
Amendment No. 28

"The purpose of this amendment is to prevent effectively and permanently the diversion of motor vehicle fuel taxes and motor vehicle registration license fees to purposes other than those now provided by law. This purpose is accomplished under existing laws; and the amendment, therefore, is unnecessary.

"There are approximately two and one-half million motor vehicles in California, and the owners of these constitute a substantial segment of the electorate. It is entirely unnecessary to grant constitutional protection to so large a group. If any attempt is made to use motor vehicle fuel taxes and registration license fees for purposes which do not meet the approval of the motorists, their voting strength is adequate to protect their interest. To add constitutional protection would serve only to increase the rigidity and inflexibility of State government.

" . . . "

When we view article XXVI in the light of its historical background and the arguments in favor of its adoption, we are logically led to the conclusion that the article was drawn to halt attempts to divert gasoline tax funds to purposes other than the construction, maintenance, and repair of bridges and highways. In fact, it is stated in the argument in favor of passage that one of the purposes of the article is "forever to end such threats."

While the ballot arguments state the general intent of article XXVI in 1938, an analysis of "public highway" and "highway purposes" indicates that, not only in 1938 but also presently, these terms exclude rapid transit lines from their meanings. See, for example, In re Opinion of the Justices, 85 N.E. 2d 761 (Mass. 1949).

In that case, the Supreme Judicial Court of Massachusetts was requested to render an opinion on the validity of a provision which declared that transit lines owned by the Metropolitan Transit Authority were "public highways or bridges" within the meaning of the Massachusetts Constitution, which required highway user fees to be spent on highway obligations or for the construction, reconstruction, maintenance or repair of public highways and bridges

and on the enforcement of state traffic laws. The court stated that the proposed bill would be invalid, concluding that constitutional language ". . . 'should be interpreted in "a sense most obvious to the common understanding at the time of its adoption . . .'" 85 N.E. 2d 761, 763.

It is clear that the longstanding legislative interpretation of article XXVI supports a restrictive definition of "highway purpose." It is to be observed that numerous attempts have been made to amend article XXVI to provide for expenditures for mass transit, all of which have failed to pass. As recently as 1970 an amendment to article XXVI appeared on the ballot in the general election which would have permitted a portion of highway user funds to be so diverted. This was voted down by a 54 to 46 percent margin. The ballot arguments again, as in 1938, assumed that "highway" and "highway purposes" exclude mass rapid transit. Additionally, the Constitution Revision Commission suggested a constitutional amendment to allow the use of motor vehicle fuel taxes for rapid transit in their report of 1970. California Constitution Revision Commission, Proposed Revision of the California Constitution, Part 3, pp. 39-46 (1970).

The use of motor vehicle fuel taxes for the construction or maintenance of a rapid transit system has been considered in prior opinions of the Attorney General. This office has consistently held that article XXVI of the Constitution bars the appropriation of such tax revenues for rapid transit purposes. See 47 Ops.Cal.Atty.Gen. 145 (1966); 47 Ops.Cal.Atty.Gen. 28 (1966); 27 Ops.Cal.Atty.Gen. 15 (1956).

In light of the foregoing, we conclude that motor vehicle fuel taxes cannot be appropriated for use in the construction or maintenance of a rapid transit system.

The next question to be considered is whether motor vehicle fuel tax revenues may be used on pedestrian, equestrian, or bicycle lanes or trails.

In view of the historical context in which article XXVI was bred and subsequent reaffirmation of those basic concepts, one is forced to the conclusion that motor vehicle fuel taxes were meant for use in connection with activities directly related to motorized vehicular traffic.

However, it is apparent, for instance, that the construction and maintenance of pedestrian facilities, such as sidewalks and pedestrian overcrossings and undercrossings, which serve to separate pedestrian traffic from motor vehicle

traffic on the highway, serve a "highway purpose," in that pedestrians who use or might use the streets and highways for transportation are removed from the highway thereby increasing the traffic capacity and safety of such street or highway.

It is important to note that, in absence of a contrary indication, terms used in a constitutional amendment must be construed in the light of their statutory meaning or interpretation in effect at the time of its adoption. County of Sacramento v. Hickman, 66 Cal. 2d 841, 848-51 (1957).

Streets and Highways Code section 22010 defines "street" as including "all or any portion of territory within a city set apart and designated for use of the public as a thoroughfare for travel, and includes sidewalks, the center and the side plots thereof. [Emphasis added.]

Section 22010, enacted in 1941, was based upon a 1931 statute and remains substantially unchanged since that time. Therefore, at the time of the adoption of Article XXVI, the statutory definition of "street" included more than just the roadway used by motor vehicles.

Furthermore, in and before 1938, the streets and highways were available not only to motor driven vehicles but also to pedestrians, horses, wagons and bicycles, as well as to livestock. Therefore, prior to 1938 there was a tradition of customary use of the "highway" by more than motor vehicles.

Article XXVI was enacted to preserve the highway fund for motor vehicle travel, as it became readily apparent in the 1930's that a complete "highway" system had to be developed and maintained in order to accommodate the substantial increase in automobile traffic and "highway" use. But, since the highways were used in 1938, and are still used today, for purposes other than motor vehicle movement, can motor vehicle fuel taxes be used for such other purposes? It is our view that the allocation of such funds to non-motor vehicle purposes is authorized if such purposes have a direct bearing on the movement of motor vehicle traffic.

Thus, it is our opinion that article XXVI of the Constitution permits the use of motor vehicle fuel taxes for the construction and maintenance of pedestrian, equestrian, and bicycle lanes and trails separated from but adjacent to or approximately paralleling existing or proposed highways only where such separation directly increases the traffic capacity or safety of highway.

Consistent with this conclusion is chapter 1092,

Statutes 1972, effective March 7, 1973, enacted during the 1972 Legislative Session. Chapter 1092 provides, among other things, for the development of bicycle lanes from revenues collected under the Motor Vehicle Fuel License Tax Law. Chapter 1092 specifies that motor vehicle fuel taxes may be used, as set forth in said chapter, for the construction and acquisition of rights-of-way for bicycle lanes, where the separation of bicycle traffic from motor vehicle traffic would increase the traffic capacity or safety of the highway. This, we believe, is permitted by article XXVI.

Additionally, prior enacted statutes provide that motor vehicle fuel taxes may be used for the construction and maintenance of pedestrian, equestrian, and bicycle lanes and trails if such trails are adjacent to or approximately paralleling existing or proposed highways where the separation from the highway would increase the traffic capacity or safety of the highway. See Streets and Highways Code §§ 100.12, 104, 105.5 and 105.7.

The above statutes validly provide for the construction and maintenance of pedestrian, equestrian, and bicycle lanes from motor vehicle fuel taxes.

We conclude, therefore, that the use of motor vehicle fuel taxes on pedestrian, equestrian, and bicycle lanes and trails is permitted if such lanes or trails are adjacent to or approximately paralleling existing or proposed highways and would directly increase the traffic capacity or safety of the highway. On the other hand, the use of motor vehicle fuel taxes on such lanes or trails other than as outlined above and which are not adjacent to or do not approximately parallel a highway, and which do not increase the traffic capacity or safety of the highway, is precluded by article XXVI of the Constitution since it would not promote the movement of motor vehicle traffic.

EXHIBIT "5"

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AFFIDAVIT OF MARY D. NICHOLS

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

MARY D. NICHOLS, first being duly sworn, deposes
and states that:

1. I am one of the attorneys for Petitioners in the
foregoing Petition for A Writ of Mandate With Memorandum of
Points and Authorities.

2. On Wednesday, July 18, 1973, I spoke by telephone
with Mr. James Wing, an attorney on the staff of the Legislative
Counsel to the California Legislature specializing in legislation
affecting transportation. I asked Mr. Wing if he was aware of
any opinions of the Legislative Counsel, or any other State
official or agency, concerning the scope of the term "highway
purposes" as used in Article XXVI of the California Constitution.

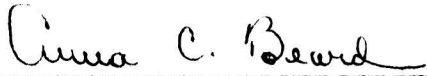
3. Mr. Wing informed me that to the best of his
knowledge there is no public document which contains a statement
of the construction which the Legislature or any State agency
places on the term "highway purposes." He stated that while
opinions of the Legislative Counsel's office are confidential
and not available to the public, he could tell me that there
was no opinion in existence defining in general the permissible
purposes for which Article XXVI funds may be used.

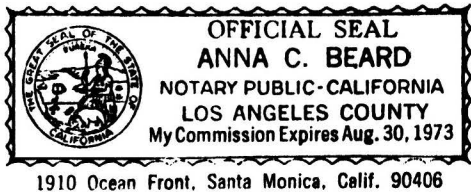
4. Mr. Wing also told me that the Attorney General's
opinion requested by Senator James Mills, attached to the
foregoing petition as Exhibit 5, was intended to resolve any
possible existing doubts about whether "highway purposes" could

1 include mass rapid transit facilities. He stated that it
2 was his belief that the Attorney General's opinion was conclusive
3 on this question, and that it is correct.

4
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6 
7 MARY D. NICHOLS

8
9 Subscribed and sworn before me
10 this 29th day of July, 1973.

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13 _____
14 NOTARY



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EXHIBIT "6"

Los Angeles Times

HARRISON GRAY OTIS, 1881-1917
HARRY CHANDLER, 1917-1944

NORMAN CHANDLER, 1944-1960



OTIS CHANDLER, Publisher

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FRANK P. HAVEN, Managing Editor

6-Part II

TUESDAY MORNING, JULY 24, 1973

Mass Transit: a Good Start

The proposed mass rapid transit system for Los Angeles looks good.

It represents the best thinking of teams of experts in a \$600,000 study that itself benefited from more than \$4 million in research over the years. The eight priority corridors are similar to the corridors identified in other studies, which reinforces the validity of the findings. And the elaboration of the rapid transit trains with an expanded bus system, including more buses on special freeway lanes, makes sense.

We think the Southern California Rapid Transit District has done a professional job in the development of these plans.

The plans are just a beginning. A process of community hearings and meetings will now begin, and run almost to the end of the year, so that the final plans will truly reflect the views of the citizens. And, while that is being done in this area, work will continue in Sacramento and Washington to assure state and federal support, both needed.

The crucial test of the wishes of the community will come next year, in the June or November election, when voters will be asked to approve a special sales tax to cover most of the local share of the project.

If that vote carries, and if the Department of Transportation provides the kind of federal money needed, it will be possible to break ground in 1975 and have a 110-mile system, including 116 miles of high-speed train service, in operation within the following 12 years.

We are confident that the community will support the special sales tax. It is true that a more modest system was rejected by the voters in 1968. We, too, opposed that proposal. The need was not appreciated, for that was a time of peak freeway construction. Now, the situation is different for

two persuasive reasons: (1) The present dislocations in the supply of petroleum products foreshadow a real shortage of gasoline in the years ahead; (2) the Environmental Protection Agency has found that Los Angeles can improve the quality of its atmosphere only by reducing the use of automobiles.

In other words, if Los Angeles residents wish to maintain their mobility, they must accept the costly burden of rapid transit—not as a luxury, not as a mere supplement to the private car, but as a necessity, as the principal way of getting around.

Fortunately for Los Angeles citizens, they will not be required to bear the financial burden alone. Under provisions of the law, the federal government is authorized to provide about two-thirds of the cost. The only question in connection with the Los Angeles plan is whether, because of the sheer immensity of the plan, totaling at least \$6.5 billion, the federal government will be willing to provide the share possible under the law. A funding crisis could jeopardize the project because the system cannot be reduced in size without risking ineffectiveness and inefficiency, and each day's delay, because of inflation, increases the cost by at least \$1 million.

More than Washington's cooperation is required. There is urgent need for action in Sacramento on pending legislation, already approved by the Assembly, to facilitate the sales tax election, permitting a decision by a simple majority of the voters and allowing the district to ask for as much as 0.75%.

These obstacles will be more readily surmounted as the community itself comes to appreciate the potential for rapid transit in a region where once it was commonplace to say it would never work. The RTD study assures us that it can work. The situation in energy supply and pollution dramatizes that it must.

Mayor Seeks Los Angeles Mass Transit

By JUDITH KINNARD

Special to The New York Times

LOS ANGELES, July 14— Construction of a rapid transit system to unite the sprawling suburbs of Los Angeles, a key campaign promise in Thomas Bradley's race for Mayor, is emerging as the major stated goal of his administration.

Surrounded by unpacked boxes cluttering the new offices two weeks after his inauguration, the city's first black Mayor talked about his dreams for the next four years.

"Number one, I want to see us build a rapid transit system," he said. "Then I want to see some kind of revitalization of some of these communities.

"And I want to see if we can bring people together. I want them to begin to feel some connection, not just with their particular community but between themselves and the city—between themselves and the other people who live here."

As one Bradley aide said, "building a rapid transit system is going to be a monumental job." The new Mayor will be trying to influence a life-style long wedded to the automobile and the equally long-standing skepticism toward rapid transit that has resulted from more than two decades of ineffectual studies and plans.

Highway Lobby Opposed

In addition, the Mayor must challenge the powerful economic bloc, the so-called highway lobby composed of major oil companies and road builders, that has long opposed such a system.

Even before his inauguration as the city's 37th Mayor,

Mr. Bradley, 55 years old, began his campaign to bring rapid transit to Southern California with trips to Washington and Sacramento to seek the help of legislators, Congressmen and Federal officials.

"I did not go asking for dollar amounts or even specific programs," he said. "I just wanted them to know that we're going to come in with such programs and set the climate for a working relationship."

Although he professes optimism, the Mayor has backed off his campaign promise "to break ground within 18 months" and has adopted an attitude of caution in devising a plan.

The plan will be developed in two phases: an immediate response to meet the strict air quality regulations recently imposed by the Environmental Protection Agency, and a longer-range plan coordinated with the county government for a rapid transit system.

Test May Be Copied

Immediate measures to help relieve congestion and meet E.P.A. regulations include express lanes for buses and car pools and subscription bus service modeled after a recently initiated experiment by the Atlantic Richfield Company. The service, a first for the city, brings 230 commuters to the downtown headquarters from four different sections of Los Angeles at a cost of \$40 a month, a fee that is cheaper than gas and parking for an automobile.

The second phase will be the long-range development of a rapid transit system that would form the backbone of transportation in the

county and eventually the region.

This month the plan for a multibillion-dollar transit system for Los Angeles will be announced by the Southern California Rapid Transit District. The district, which was created eight years ago by the State Legislature, currently administers the city's bus service at a loss of \$2-million a month.

The plan, executed at a cost of \$600,000, is expected to call for a 100-mile fixed rail system that would cost more than \$6-billion and take more than a decade to construct.

Although the new Mayor has made no comment on the plan, there are indications that he leans toward more advanced modes.

"I understand that the technological development of some of these alternate systems has reached a point where they would be practical for us, could be built at one-third the cost, and are much better looking," he said.

One such system that has attracted his attention is personal rapid transit, a system that is beyond the conceptual stage but which has not yet been fully developed in this country. The system uses slim guideways installed over existing city streets to carry small, three-to-six passenger cars nonstop to their destination by electromagnetic propulsion. The Aerospace Corporation, a nonprofit research organization near Los Angeles, estimates that fares of three to four cents a mile would pay all operating costs.

Mayor Bradley is supporting a bill in the Legislature that would create a region-

al planning administration to supersede the Rapid Transit District and would seek Federal funding for the region. The transit district, notoriously lagging in its fund raising efforts, has received only \$38.9-million from the United States Department of Transportation, compared with \$457.5-million for New York.

The Mayor also supports a bill that would reduce requirements for passage of a local bond issue for rapid transit from 60 per cent to a simple majority. And he is lobbying to break the strong Federal and state highway trust funds to permit the use of bulging gas tax revenues, now limited to highway construction, for rapid transit.

In California, a constitutional amendment is considered necessary to open the funds. However, Mr. Bradley plans a court challenge to the original legislation of 1938 by arguing that the definition of "roadway" could be expanded to include rapid transit.

An unexpected windfall of an estimated \$90-million and matching Federal funds could come from legislation being developed by the Los Angeles County Board of Supervisors. The bill would permit spending the first six months' receipts from a new one cent sales tax on rapid transit.

Mayor Bradley's efforts come at a propitious time. They coincide with the tarnishing of the freeway dream of safe, swift automotive transportation that was born in the winter of 1940 with the six-mile \$6-million construction of the first leg of the Pasadena Freeway.

6/17

Feasible Ideas for Cleaner Air

The Environmental Protection Agency has been the first to acknowledge that Los Angeles will not be able to meet federal clean air standards by 1977, even if the most stringent controls are placed on private auto use. But in presenting the EPA's proposals for air pollution reduction in major metropolitan areas, Acting Administrator Robert Fri has also rightly emphasized that a great deal can be done in the next few years to reduce smog substantially in this area, and it is this goal that must now be pursued.

Fri believes that adoption of all the control steps in the EPA's plan could cut the number of seriously smoggy days in the Los Angeles area by 75% to 90%. These are the days when smog readings exceed the federal standard set in 1970. Last year this area experienced 250 days of excessive smog. Fri says that by 1977 the number could be cut to as few as 25 days.

That would be done essentially by dissuading or preventing people from driving their cars as much as they now do. The EPA's strategy is to require the state to institute a series of restrictions and alternatives. Beginning immediately, for example, the EPA proposes a ban on the construction of new car-parking facilities, to be followed next Jan. 31 by a program aimed at a 20% phased cutback in existing parking spaces. The aim of both proposals is to encourage more car pooling. Meanwhile, starting next Dec. 1, the EPA wants special bus and car-

pool lanes, to move high-occupancy vehicles faster and, in so doing, to encourage their use.

A limit on gasoline consumption is also a key part of EPA strategy. Beginning July 1, 1974, gasoline sales would not be permitted to exceed the sales of 1972 and 1973. That means rationing, either voluntary on the part of drivers or regulated by the government. In either case, the result would be to cut back on private auto use.

The strength of these proposals is that they are feasible, that they would not be likely to disrupt the basic economic life of Los Angeles, even though they would involve some forced restrictions on driving. But by themselves they would not bring about the improvement in air quality that the law envisions for 1977, which means that Congress will have to give Los Angeles more time to meet that goal. Nor would they by themselves satisfy the transportation needs of this area.

Los Angeles got into its foul-air fix in good part because there has been no adequate mass transit alternative to the private car. If the EPA proposals or something like them are made law, as they probably will be, auto use is going to be restricted. When that happens, a good public transit system will be not only desirable but essential. We have been warned, in short, that the days of unlimited driving freedom are coming to an end, and quite soon. To equivocate in the face of that warning would be inexcusable folly.

NOX + LA = Mass Transit

The Environmental Protection Agency is preparing to recommend to Congress a significant easing in the standard for emissions of oxides of nitrogen in 1976 cars. Adoption of the EPA proposal, which is almost certain, would mean some cost savings for car buyers in coming years. That's the good news.

The bad news is that, even with the change, Los Angeles will still be faced with the need for what acting EPA Administrator Robert Fri calls "extremely stringent" auto standards. That will require major changes in this area's transportation habits.

The unprecedented appeal by Gov. Reagan and air pollution authorities yesterday for a severe curtailment in driving because of the heavy smog was a timely and urgent reminder of the problem.

On the basis of recent studies the EPA believes that the auto exhaust emission level for oxides of nitrogen called for in the 1970 Clean Air Act is unnecessarily strict to meet national health requirements. The law says that by 1976, NOX from new cars has to be reduced 90% from 1971 levels. This means that no more than 0.4 grams per vehicle mile of NOX would be tolerated.

The 0.4 figure was drawn mostly from some studies of the effects of NOX on a group of school children in Chattanooga. But those studies apparently yielded erroneous conclusions because the measuring instruments used were faulty. The EPA has now found that NOX concentrations are much less a threat to health around the nation than was first thought. So, the agency says, NOX controls on cars don't have to be as tough as Congress thought when it wrote the Clean Air Act three years ago.

Instead of a 1976 standard of 0.4 grams per vehicle mile, the EPA now is thinking about an NOX maximum of between 1.5 and 2 grams per mile. The state Air Resources Board long ago concluded that a 1.5-gram standard would be adequate for California, so in effect the EPA now is agreeing with the ARB findings. Of major importance is the fact that the proposed revised standard could be achieved without the use of expensive and questionable reduction catalysts, devices that would boost the cost of new cars about \$150.

A change in the NOX standard would not, however, mean the end of catalysts. An oxidizing catalyst would still be needed on most cars beginning in 1975 to reduce emissions of hydrocarbons

and carbon monoxide, if current standards are to be met. General Motors, which has a large capital investment in catalyst development, is ready to go ahead with installation on 1975 models. Ford and Chrysler have been pursuing alternative emission control technologies. But the exhaust cleanup methods they see as promising will take some time beyond the 1975 deadline to have ready.

Whatever happens, Los Angeles residents will still be faced with the need for substantial adjustments in their motoring habits. Our problem is that even with strict auto emission controls, we produce an unhealthy amount of air pollution, thanks to the enormous number of cars in the basin and the peculiar atmospheric conditions that help create and trap photochemical smog. That's what Fri of the EPA was talking about when he warned that Los Angeles still will have real difficulties.

Last January the EPA served notice that Los Angeles might be able to clean up its air only through such drastic expedients as gasoline rationing during the six smoggiest months of the year. Next week the EPA will publish its final plan for combatting air pollution in the basin. Details aren't known, but it is certain there will be strong emphasis on the need to cut down the number of vehicle miles traveled daily on our streets and freeways.

There is only one way to do that: by developing adequate mass transportation systems in Los Angeles, and by beginning not at some point in the vague future, but now.

EXHIBIT "6"
PAGE "4"

5/17

L.A. Must Break Auto Habit, U.S. Official Says

Transportation Chief Hits City's Failure to Develop Transit

BY RAY HEBERT
Times Urban Affairs Writer



Claude S. Brinegar
Times photo

Los Angeles faces the most serious transportation problem of any major urban area in the nation and may have to be shocked into doing something about it, Secretary of Transportation Claude S. Brinegar said Wednesday.

The new transportation official—a former Los Angeles oil company executive—put the blame on freeways and automobiles.

Los Angeles, he said, has concentrated so much on developing a "free y-suburban culture" that it has produced a dependence on the automobile that is "almost beyond belief."

"Let's face it—we're 'hooked' on the automobile and don't know how to break the habit," Brinegar, senior vice president of the Union Oil Co. before he became transportation secretary, said.

He offered the resources of the Department of Transportation to help Los Angeles get out of the automobile rut.

Brinegar, a Union Oil employe nearly 20 years and a resident of Rolling Hills, was nominated by President Nixon to the transportation post last December. The Senate confirmed him Jan. 18.

Severe Criticism

His scolding of Los Angeles—by a person who knows the region—was one of the severest criticisms to come from the federal level about this area's failure to build another type of transportation system.

At a news conference—and later at a National Transportation Week luncheon at the Los Angeles Convention Center—Brinegar urged:

"Let's start offering alternatives to the automobile right now."

He promised "special handling" through DOT's Urban Mass Transportation Administration of any ap-

plication for help or funds to get the Los Angeles area's transportation problems solved.

UMTA administers planning and capital grant programs valued at about \$1 billion a year. Matched by local funds, the money can be used for buses, terminals and to plan and build rapid transit systems.

"Some of this money is available to Los Angeles," Brinegar said. "But I have not seen an application yet. Very little is coming to Los Angeles."

The transportation secretary refused to place responsibility for the region's problems on any one agency or individual.

Under state law, however, the Southern California Rapid Transit District has the job of developing a rapid transit system and running the nation's largest urban transit bus fleet.

Brinegar said he was trying to help the Los Angeles area find another mode of transportation—besides freeways and cars—to "beat the Environmental Protection Agency to the punch."

Please Turn to Page 3, Col. 1

Continued from First Page

He warned that the EPA would continue to exert pressure to enforce the Clean Air Act, which could lead to a proposed gasoline rationing plan for Los Angeles.

Cautioning that Los Angeles should "take this matter very seriously," he urged a speed-up in coordinated land use and transportation planning and a strengthening of implementation authority.

"We in Washington cannot find the solutions to Los Angeles' problems," he said. "But when you bring us comprehensive, community-supported proposals we stand ready to help—and quickly."

The SCRTD currently is engaged in a transportation corridor analysis. The study, the latest of scores undertaken here, evolved from disagreements over where the first line of a proposed rapid transit system should be built.

Brinegar suggested that Los Angeles, like other cities, find alternatives to the automobile by producing balanced transportation ideas—such as expanded bus service—that could "happen in a hurry." (Actually, the SCRTD recently proposed expanding bus service in the San Fernando Valley and elsewhere).

He cited the \$58 million San Bernardino Freeway busway as a "small start (but) much, much more needs to be done."

More Passengers

Since high-speed buses began operating on express lanes built especially for them in January, rush-hour patronage on two SCRTD lines using the busway has increased from about 1,050 round-trip passengers to 1,370 a day.

Other low-cost transportation ideas which, Brinegar said, should be developed include:

—High quality, reliable, rapid bus service on exclusive or reverse lanes on freeways and surface arteries. This should be coupled with greater freedom

of movement for buses on downtown streets, he added.

—Special freeway and parking privileges for car pools.

—Special parking lots in outlying communities to serve as "staging" areas for bus service or car pools.

—Developing a schedule of staggered work hours to balance the freeway load more evenly.

Free Passes

—Getting companies to provide free bus passes in lieu of free employe parking.

—Permitting, and possibly subsidizing, use of taxi-like limousines or small buses for home pickup and delivery of commuters who live near one another.

"I suspect that before long a few cities—and Los Angeles may be one—will even be looking at the possibility of licensing the use of freeways, with higher fees during prime time," Brinegar added.

An SCRTD spokesman questioned the transportation secretary's statement that no applications for help had been received from the Los Angeles area.

He pointed out that UMTA funds were used to help build the San Bernardino Freeway busway and that many new SCRTD buses, as well as its downtown minibuses, were purchased with federal help.

It was noted, however, that applications for these grants were made during the tenure of Brinegar's predecessor, former Transportation Secretary John Volpe.

A highlight of the Transportation Week observance at the Convention Center included a display of new buses and other vehicles, among them a new Bay Area Rapid Transit District car en route to San Francisco.

The car, which will go into service on the BART system, is the 198th delivered by Rohr Industries of Chula Vista. BART has ordered 350 of the rapid transit cars.

EXHIBIT # 6
PAGE # 5

MAY 2 1973

NEWS BUREAU

Allen's P.C.B. Est. 1888

Fitz Urges Highway Fund Diversion

Teamsters Union members have been urged by General President Frank E. Fitzsimmons to lend their support in getting highway funds diverted to mass transit programs.

Writing in the April issue of *The International Teamster* magazine, Fitzsimmons noted that Teamsters have always supported building a good national highway system, "and we continue this support."

Freeways not enough

He added: "But we have come to the conclusion that freeways alone cannot resolve the transportation needs of America's metropolitan areas. Our cities demand transportation solutions which cannot be attained without the aid of mass transit."

Fitzsimmons said that under current financial restrictions it is impossible to grant needed transportation flexibility to urban governments without permitting them to determine their use of accorded shares of the Highway Trust Fund.

Consolidation of funds needed

For this reason, said the Teamster leader, funds must be consolidated rather than proliferated before crucial transportation problems can be solved.

"Both as citizens and as union members," said Fitzsimmons, "I urge each and everyone to contact congressmen to properly amend the Federal Aid Highway Act. States and local governments should have the right to use a portion of their Highway Trust Fund revenues for transportation modes they deem most effective."

The question of the development of mass transit needs of cities is now active in Congress.

NEWS BUREAU

EDITORIAL

L.A. Mass Transit Commitment Needed

Since the SCRTD has decided to use gasoline sales tax revenues for maintaining its bus system rather than developing a mass transit system, many critics have appeared.

There have been moves in the State legislature and threats by the County to abolish the RTD and establish an entirely new organization. Although we don't agree with the RTD's plans to defray mass transit, we also don't believe the establishment of a new organization at this time will solve the problem either. Too often emotions cloud our vision. Let us step back and think for a moment. Certainly we were led to believe that SB 325 was designed to finance a starter system for mass transit and many of our business leaders who supported this approach feel they have been used and deceived.

Because of this, the Chamber has been meeting with the RTD. They have explained their financial difficulties, but the scars remain.

As we see it, the District's board itself is not yet fully committed to mass transit.

However, before we scrap the RTD we must investigate and evaluate every alternative. Money and a commitment to a balanced plan to achieve mobility is what is needed. Logically, the place to look is the Federal and State highway trust funds. Nevertheless we cannot rely on the District until they reorganize their internal priorities and affix a firm commitment to a plan including mass transit as a basic element.

NEWS BUREAU

Time Is Running Out

The consensus has it that the Environmental Protection Agency's proposal to ration gasoline sales in Los Angeles during the six smoggiest months of the year is economically infeasible and politically unpalatable—an accurate enough assessment, no doubt, but hardly of any real help in responding to the problem. Discard the EPA's drastic suggestion, and we are still left with the need to achieve a large reduction in hydrocarbon discharges for the sake of the community's health; if gasoline rationing is not the answer, something else will have to be.

Traffic controls on stationary sources of hydrocarbon emissions will help, but automobiles remain the key to the problem. Fewer cars on the road are the clear need, but auto traffic reduction requires alternative transportation. That means buses or other mass-transit facilities that the Los Angeles area does not have. Building these systems is expensive, and no single source of financing can do the job. Why not, as a start, use tax funds that are already there, and that we are accustomed to paying? Why not use some of the money collected in the form of gasoline and related taxes that now goes to construct still more roads and highways?

Last year a major effort was made in Congress to amend the law so that states could use a portion of their federal highway funds to support urban transit; it was defeated by powerful lobbying. In 1970 a major effort was made in California to pass a con-

stitutional amendment to allow some state gasoline taxes to be used for urban transit; it was defeated by a powerful and well-financed campaign. Congress will take up the highway trust fund diversion proposal again this year, and with luck the people of California will have another chance to vote in June, 1974, on a constitutional amendment like the one defeated in 1970. Passage of both proposals is no longer just desirable for the Los Angeles area, but a matter of some urgency.

There is another opportunity to reduce auto-exhaust pollution that should be adopted in the Legislature. Sen. Anthony Beilenson (D-Beverly Hills) plans to reintroduce in the current session a measure requiring fleet vehicles, in fleets of 10 or more, to be converted to run on virtually nonpolluting gaseous fuels, like propane. About 275,000 heavily used vehicles would be affected. Some fleet vehicle operators have already made the conversion and report good results. And just last week the Board of Supervisors ordered a study on the feasibility of converting the county's 6,700 vehicles to gaseous fuels.

Alternatives to gasoline rationing exist, and they carry considerable promise of alleviating this air basin's special problem. The trouble is that we have not yet taken those alternatives seriously enough. Now, as the EPA has reminded us, the time for doing so has just about run out.

New Spur to Clean Air

It will be a sad day for Southern California if the impossible gets in the way of the possible in fighting air pollution. Just because gasoline rationing won't work doesn't mean that progress can't be made toward meeting the federal clean air standards.

The U.S. Environmental Protection Agency has done a service to Southern California in outlining, step by step, what is required to lower hydrocarbons to a level judged safe.

It is disappointing to learn that there is no practical way to meet the 1977 deadline. There is no alternative to requesting a postponement of the deadline for the South Coast Air Basin. There is even the possibility that the basin, because of its peculiarities, may never be able to reach the required level.

Contrasting with the disappointment, however, is the progress being made and the promise of more. Controls now being put into operation or already in operation will reduce hydrocarbons from 1,250 tons a day reported in 1970 to a level of about 690 tons a day by 1977, according to officials. That is a long step toward the federal goal of a daily hydrocarbon output not exceeding 160 tons a day.

William D. Ruckelshaus, administrator of the EPA, is well aware that the problem of the Southern California basin is unique. A failure here to meet the 1977 standards need not jeopardize application of the act on a nationwide basis.

Ruckelshaus knew, when he proposed gasoline rationing for Southern California, that he was asking the impossible. He was responding as best he could to a court order. The fact that only such an extreme measure could bring quick conformity with federal pure air standards is cause for concern. But not cause for despair.

The problem now is to see that the region's air pollution efforts are not relaxed just because the region is forced to seek a stay from Congress in implementing the federal standards.

There is much to be done that has not been done, much of it within the powers of the local governments of the region, much of it only awaiting the urgent political demand of the people. Two priorities stand out above all others. There must be:

—Land-use planning, a coherent regional plan that establishes the level of population that can be supported within the basin without perpetuating foul air.

—Rapid transit, a system that supplements the freeway network and offers an alternative to the existing dependence on the private automobile.

Gasoline rationing was only part of the federal package. The EPA plan also enumerated steps that could be taken immediately to get on with the job, steps such as converting fleet vehicles to propane, butane or natural gas, controlling motorcycle emissions, controlling escaping hydrocarbons at service stations, recovering dry-cleaning vapors, requiring smog-abatement devices on older cars that do not have factory-installed equipment, controlling aircraft emissions, limiting hydrocarbon uses in industry, eliminating reactive hydrocarbons in industrial "degreasing" operations.

It is true that gasoline rationing in this car-dependent region would be catastrophic to the society and the economy. But it is also true that neglect of the air quality of the basin would produce in time its own catastrophe. A total instant solution is impossible. But that must not excuse neglect of the possible. That must be made clear as the EPA holds public hearings in the weeks ahead.

Some Necessary Steps Toward Cleaner Air NEW BUREAU

MONDAY LOS ANGELES TIMES OCTOBER 2, 1972

BY RALPH B. PERRY III

Recent headlines from Washington proclaim "Quality of Air Improving, Rivers Partier." Dr. A. J. Haagen-Smit, head of our State Air Resources Board, insists major improvements have been made and the worst is behind us. The federal Clean Air Act has set stringent standards for vehicle emissions to achieve a dramatic reduction beginning in 1975, and, after dragging their feet through the '60s, the auto

Ralph B. Perry III, a Los Angeles attorney, is president of the Coalition for Clean Air, a union of 22 citizen organizations concerned about air pollution.

manufacturers appear grudgingly resolved to comply.

The effect of these reports has been to foster in the average cities comforting but dangerous and misleading notions that somehow we have air pollution licked and have "turned the corner on smog." To realize how far we are from even modestly clean air in the South Coast Air Basin (Los Angeles and most of its surrounding counties), we must look at some hard facts.

Los Angeles residents are subjected to an almost unbelievable 26 million pounds of major air pollutants each day. Air quality standards for photochemical oxidants are violated almost two out of every three days. Although progress in reducing carbon monoxide was made in 1971, deadly oxides of nitrogen increased throughout Los Angeles and the nation.

Based on substantial and persuasive medical evidence, state and local authorities have set levels of air quality dangerous to human health; these danger levels are regularly exceeded in the Los Angeles Basin. Robert

Chass, head of the Los Angeles Air Pollution Control District, testified there is no "critical" health problem in Los Angeles, but the County Environmental Control Committee concluded last year that about one of every 10 persons suffers some health impairment from smog.

Finding encouragement in statistics can be misleading. Computing emissions by weight ignores their relative toxicity and overemphasizes the automobile's contribution to air pollution. (Berkeley researchers say sulfur dioxide from stationary sources is 100 times as toxic as the same amount of carbon monoxide.)

Published average emission figures for Los Angeles rarely give any idea of the dangerous concentrations of air pollutants in certain localities. (Sulfur poison in the air downwind from a chemical plant becomes an innocuous statistic when averaged basinwide.) Certain improvements in air quality in some areas of the basin have been accompanied by deteriorating quality in other areas and in adjacent Riverside and San Bernardino counties.

Spotty monitoring, loose estimates and the reluctance of local officials to provide adequate air pollution data (on the flimsy pretense it constitutes "trade secrets") all prevent the public from accurately assessing the problem. Although the APCD has long been a leader in air pollution regulation, a recent ARB investigation has tended to confirm citizens' fears that there has been a consistent effort by the District to blame Detroit and to manipulate and select favorable statistics; the result has been to overemphasize recent improvement in air quality, to minimize pollution from stationary

sources, to prosecute polluters weakly and, I believe, to refuse to cooperate willingly with the federal government.

The fact that the federal Clean Air Act of 1970 is so strong can lead us to be dangerously complacent. State and local authorities have requested the maximum two-year extension for some pollutants and seem skeptical and unenthusiastic about prospects for meeting even the extended deadlines. APCD officials predict that without major changes in land use and transportation patterns in the basin (there are no signs of any such changes on the horizon), federal "health" standards will not be achieved until 1990 or later. Without such major changes even the projections for future improvement in air quality are illusory because they usually ignore probable growth of population and rate of gasoline consumption.

The above facts may sound pessimistic, and they were intended to. But there are some ways in which we can take practical and available steps to realize cleaner air:

1—Require annual vehicle inspection for emission control (and safety) as a prerequisite to registration.

2—Unblock some of our gas tax revenues for transportation alternatives, such as mass transit.

3—Remove lead from gasoline.

4—Require conversion of all fleet vehicles to gaseous fuels (this 10% of the vehicles in L.A. burns 20% of the fuel).

5—Develop taxes and other financial incentives to discourage vehicle and stationary source pollution. (Make it more economical to clean up our air than pollute it.)

6—Improve variance procedures (greater public notice and

recognition of public health factors).

7—Accelerate study of safety factors surrounding nuclear power.

8—Analyze land use and transportation patterns and support efforts to achieve comprehensive mass rapid transit systems.

9—Greatly expand public education and information concerning air pollution.

Many of these steps have been, or now are, included in legislation either killed before (such as 2 or 3), or now languishing before some legislative committee in Sacramento (such as 1, 4, 5 and 6). We must educate ourselves as to these measures and demand that they be enacted.

If we are genuinely determined to achieve the goals established in the Clean Air Act of 1970, these measures must be adopted; citizens must also work with the Environmental Protection Agency to make sure the Act is meaningfully implemented and that plans for California's compliance include stringent controls. We must require greater information on air pollution from authorities at all levels. We must band together in citizen groups to keep tabs on the local, state and federal agencies charged with air pollution regulation. Finally, we must recognize that each of us is not doing all he could to achieve cleaner air; only an aroused citizenry can expect meaningful results.

When one reflects on those rare but beautiful days when the wind has swept through Los Angeles and the air is fresh and clean, they are all the more awe inspiring precisely because of their rarity. I believe we will have "turned the corner on smog" when such days are common-place.

EXHIBIT "6"
PAGE "10"

Financing Transit

Urban mass transportation, too long an overgrown orphan forgotten when it comes to adequate funding, at last seems about to get its share of the porridge.

The Department of Transportation's recommendation that mass transit share in the pot of perpetually-filled gold, known as the Highway Trust Fund, can only be faulted for not coming sooner. Even so, we can expect a long debate in Congress.

The fund brims each year with some \$5 billion, of which Congress spends \$4 billion annually — while gasoline and use taxes keep replenishing this modern cornucopia. Under the department's plan, highways would still receive \$3.5 billion yearly at first, then a steady \$3 billion a year. It's certainly sufficient.

Beginning in 1974, mass transit would be given \$2.25 billion a year, distributed according to population: 40 per cent would go to metropolitan areas, another 40 per cent to states for metropolitan projects, and 20 per cent would be reserved for funding special urban mass transit projects.

According to the department's timetable, this single fund for highways and mass transit would begin operating in 1974 — two long years off. But the delay should afford sufficient time for thoughtful consider-

ation by leaders in all fields of transportation.

Improved mass transit facilities will aid highway users because more efficient — and more numerically — trains, buses and subways will entice commuters out of their private cars and off the nation's traffic-clogged arteries. And this is the least that improved mass transit can accomplish.

Communities, small as well as large, will benefit. It has been proven time and again that in our mobile, modern society, businesses fail, towns and cities decay, when transportation is inadequate.

The sole argument against sharing the fund, on the other hand, is that taxes imposed on highway users should not be diverted from benefiting the people who pay them.

That is like arguing that the income tax must be spent only on improving the taxpayer's income; that real estate taxes be used to improve the taxpayer's property. Society has become too complex, too interdependent, for one segment to shun responsibility for the other.

We progress together, or we really don't benefit at all, in the long run. A unified transportation fund, as the Department of Transportation urges, is a deal by which no one will lose — and all of us are bound to gain.

NEWS BUREAU

A Green Light for Urban Transit?

The Nixon Administration is about to ask Congress to crack open the huge federal Highway Trust Fund and permit some of its billions of dollars to be spent on urban public transportation. The idea has been raised before, but has gone nowhere in the face of powerful opposition from the highway lobby—the trucking, auto and oil industries, the roadbuilders, the cement and gravel suppliers and others who profit from continuing extension of the national road system. This time, there is hope that Congress may finally act to meet one of the country's steadily worsening problems.

As outlined by Transportation Secretary John Volpe, the plan calls for an initial distribution of \$1 billion in highway taxes, rising to \$2.25 billion in later years. The nation's cities would get 40% of the funds on a population basis; 40% would be allocated to the states, also on a population basis, and the Transportation Department would retain the remaining 20% for discretionary use on urban transportation projects.

All funds would be on a matching basis, 70% federal, 30% state and local. The money could be spent on urban roads and state highways as well as public transportation, though the 20% of the total controlled by the transportation secretary could be spent only on transit.

Shifting a portion of the highway fund to other uses would not cut back on construction of the interstate highway system, though it would stretch out its projected completion date by several years. When finally finished the system, the largest single public works project in history, will have paved more than 42,500 miles and cost more than \$60 billion in taxes paid by the public on gasoline, oil and tires.

The trouble is that while building this system of undoubted utility, we have neglected other pressing road transportation needs. The gross inadequacy of urban transit systems in most of the nation's cities, the increasing congestion and air pollution that result from overreliance on automobiles, the expanding amount of city acreage that must be devoted simply to parking lots—all cry out for remedy. The treasury of the Highway Trust Fund,

which has a surplus of billions of dollars, is an obvious source of aid.

We have a similar situation at the state level. A constitutional amendment before the Legislature would permit some use of gasoline taxes for financing urban transit. It's a sound proposal, and the people should be given the chance to vote on it.

EXHIBIT "6"
PAGE "12"

Let's Clear the Air

State and federal officials are currently cooperating in a farce involving clean air in California. It asks a deadly serious problem.

Clean air, under federal law, is air that is not harmful to health, and the national deadline for getting air of this quality is 1975. The standards defining it have been set by the Environmental Protection Agency. Essentially, these require that the amount of various common pollutants in the air must be reduced to certain maximum levels by 1975. It is up to the states to devise ways to meet the federal standards. If the states don't, the EPA under law will.

California's Air Resources Board has complied with the law by developing a plan. The trouble is that the board itself and the EPA agree that the plan has no chance of being put into effect because some of its key proposals are considered unfeasible. Nonetheless, the EPA probably will accept the plan because if it doesn't, as one EPA official said, "It will just have to write another equally bad one."

The primary source of bad air in Los Angeles and other parts of the state is, of course, auto exhaust emissions. These major pollutants—the hydrocarbons and oxides of nitrogen that make smog, and carbon monoxide—would have to be drastically reduced by 1975 to meet EPA standards. The Air Resources Board thinks that the only way this might be done is through radical changes in our means of transportation.

For example, under the ARB plan, motor vehicle traffic in the Los Angeles, San Francisco and San Diego areas would have to be reduced by 20%. In addition, one-third of the remaining miles driven would have to be in cars converted to nonpolluting natural gas or propane. And by 1975, there would have to be developed wide-ranging rapid transit systems, as alternatives to private vehicle traffic.

The obvious expense and personal inconvenience implicit in this plan have convinced state and federal air authorities that it is politically unachievable. Converting a car to propane, for example, costs \$300 or \$400; building mass rapid transit systems, which we must have, will cost possibly billions; requiring motorists to drive less would involve an exercise of state authority which politicians flee from. So the 1975 air quality standards won't be met in California. One EPA official, in fact, sees 1985 "as the best we can hope for," and only then provided we have clean auto engines by 1975, and expensive mass transit.

We understand the practical difficulties in the way of the state's plan. But we understand too that the quality of our air isn't going to be improved without effective and vigorously enforced measures to reduce the pollutants we are putting into it. The time may indeed come when the state will have to use its police powers to restrict auto use, to protect the health of the community. The time is here now, however, when the state can take feasible steps to assure us at least cleaner air in the years ahead.

Rapid transit is a priority need. Encouragement of conversion of fleet vehicles to natural gas would help. Pollution controls for currently unregulated small engines—motorcycles, stationary power sources, etc.—should quickly be required. These would all contribute to the goal of cleaner air. The fact that federal standards can't be met by 1975 in no way reduces the value of those standards or the urgency for achieving them, nor does it lessen the imperative to do everything that must be done to improve California's air quality.

EXHIBIT " 6 " "
PAGE " 13 " "

Small Help for Rapid Transit

The Legislature today will finish patching a tattered legislation to come to the rescue of transportation, in some cases rapid, in California. The bill is primarily a tribute to the political power of the freeway forces which have stayed off all assaults on the gas tax itself and apparently left no alternative but this jury-built restructuring of the sales tax. The bill will add an unwelcome \$170 million a year to the cost of gasoline and diesel fuel. But the citizens have been told that "this is the only game in town" by no less an authority than the chairman of the Assembly Transportation Committee.

So it seems and so we grudgingly accept it.

Just the best of Southern California commuters had foster, we hasten to explain that the result of this law in this area will not be progress. The county's annual share will be about \$13 million. The Rapid Transit District will use this to keep the present bus system operating without a fare increase or a reduction in service. And there will be enough left over to apply against federal matching funds for more modernization of the bus fleet.

In other words, the bill will let Los Angeles County's transit system stand still. In this day and age of declining public transportation, however, that would be better than most systems are doing.

Today there are 1,511 RTD buses running over 2,700 miles of freeways and city streets where a half century ago the Big Red Cars of the Pacific Electric ran over 1,164 miles of track. The bus system touches the lives of about one-fifth of the county's adults. The rest prefer to move around on the 592 miles of freeway that now run through Los Angeles, Orange and Ventura Counties.

If there is any doubt that Southern California is failing to provide a good transit system, the doubt is not matched by se-

rious study of alternatives. The commitment to the freeway is overwhelming. The new state highway budget is \$221 million, about half state gas tax money, about half federal funds.

As every motorist knows, there is a seven-cent state and four-cent federal tax on each gallon of fuel. The state fund runs to almost \$400 million a year. All of it goes to roads and road-related research. Every effort to tap the fund, even for such righteous causes as smog control or transit development, has been rejected either by the voters or the legislators.

So the ragged forces of rapid transit have been reduced to practicing the art of the possible.

Under this new law, the state would apply the sales tax to gasoline which has been exempt because it was already bearing an enormous tax burden. The entire state sales tax would be divided on a new formula: It would still total 5%, but the state itself would keep 33.4% instead of 4%, local governments would collect 11.4% instead of 1%, and the extra 1.4% would go to transit, to so-called rapid transit where it exists in one form or another in more populous counties, to road construction in rural counties where there is no transportation system to help.

Once this new tax is written into the books it will be hard to erase. But we would rather accept this risk than the hardship of doing nothing at this time.

In this region alone, the consequences would be serious. We are told by the RTD that they would be forced to raise fares by 50% and cut service by 25% and probably end up ineligible for the federal matching-fund programs. Marginal as the RTD may be to the future of real rapid transit in Southern California, it nevertheless provides an essential holding operation which would be critically handicapped if it does not continue to be subsidized while the region thinks of a better solution.

CERTIFICATE OF SERVICE BY MAIL

I, LESLIE A. FOX, declare:

That I am a citizen of the United States and resident or employed in Los Angeles County, California; that my business address is Center for Law in the Public Interest, 10203 Santa Monica Boulevard, Los Angeles, California 90067; that I am over eighteen years of age and am not a party to the above-entitled action:

That on July 30, 1973, I deposited in the United States mail in the City of Los Angeles, California a copy of a PETITION FOR A WRIT OF MANDATE WITH MEMORANDUM OF POINTS AND AUTHORITIES relative to the above-entitled action, in an envelope bearing the requisite postage, addressed to:

JAMES A. MOE
Director
California Department of Transportation
1120 N. Street
Sacramento, California 95814

Mr. Emerson Rhyner
Legal Division, Room 5110
CALIFORNIA DEPARTMENT OF TRANSPORTATION
1120 N. Street
Sacramento, California 95814

Mr. Emerson Rhyner
Legal Division, Room 5110
CALIFORNIA STATE TRANSPORTATION BOARD
1120 N. Street
Sacramento, California 95814

Mr. Kingsley Hoegstedt
Legal Division, Room 1138
CALIFORNIA HIGHWAY COMMISSION
1120 N. Street
Sacramento, California 95814

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Honorable James R. Mills
Pro Tempore of the California State Senate
CALIFORNIA STATE LEGISLATURE
Room 5100
State Capitol
Sacramento, California 95814

Honorable Robert Moretti
Speaker of the California Assembly
CALIFORNIA STATE LEGISLATURE
Room 3164
State Capitol
Sacramento, California 95814

HOUSTON I. FLOURNOY
California State Controller
1227 O Street
Sacramento, California 95814

at their last known addresses.

I declare under penalty of perjury that the
foregoing is true and correct.

Executed at Los Angeles, California, on
July 30, 1973.



LESLIE A. FOX