

OFFICIAL OPINION NO. 75-26, House Bill 567

February 12, 1975

Joseph H. Barnett, Speaker
House of Representatives
State Capitol Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 75-26

House Bill 567

Dear Speaker Barnett:

You have asked whether house bill 567 requires a two-thirds majority for passage.

House bill 567 raises the tax on motor fuels.

In *State ex rel. Mills v. Wilder*, 73 S.D. 330, 42 N.W. 2d 891 (1950), the South Dakota Supreme Court held that the raising of the motor fuel tax to improve the state's highways was an appropriation requiring a two-thirds majority. The court said:

It does not employ the word "approximately," but counsel are agreed that the clear intention to appropriate may be expressed without the use of that term. . . . Clearly it intended the immediate expenditure of state funds in a broad statewide program of highway betterment. To accomplish its aim, the withdrawal of funds from the state treasury was essential. Hence no other conclusion is possible than that it expresses an intention to appropriate the funds it describes. As a bill for an appropriation for highway expenditures, a two-thirds vote was essential to its passage.

The *Wilder* case is clearly controlling. It has not been modified or overruled. The fact that the Department of Transportation has a continuing appropriation from the motor fuel tax fund indicates that the money is appropriated. Raising of the revenue cannot be separated from the appropriation of the revenue. Therefore, it is my opinion that house bill 567 requires a two-thirds majority for passage.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

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