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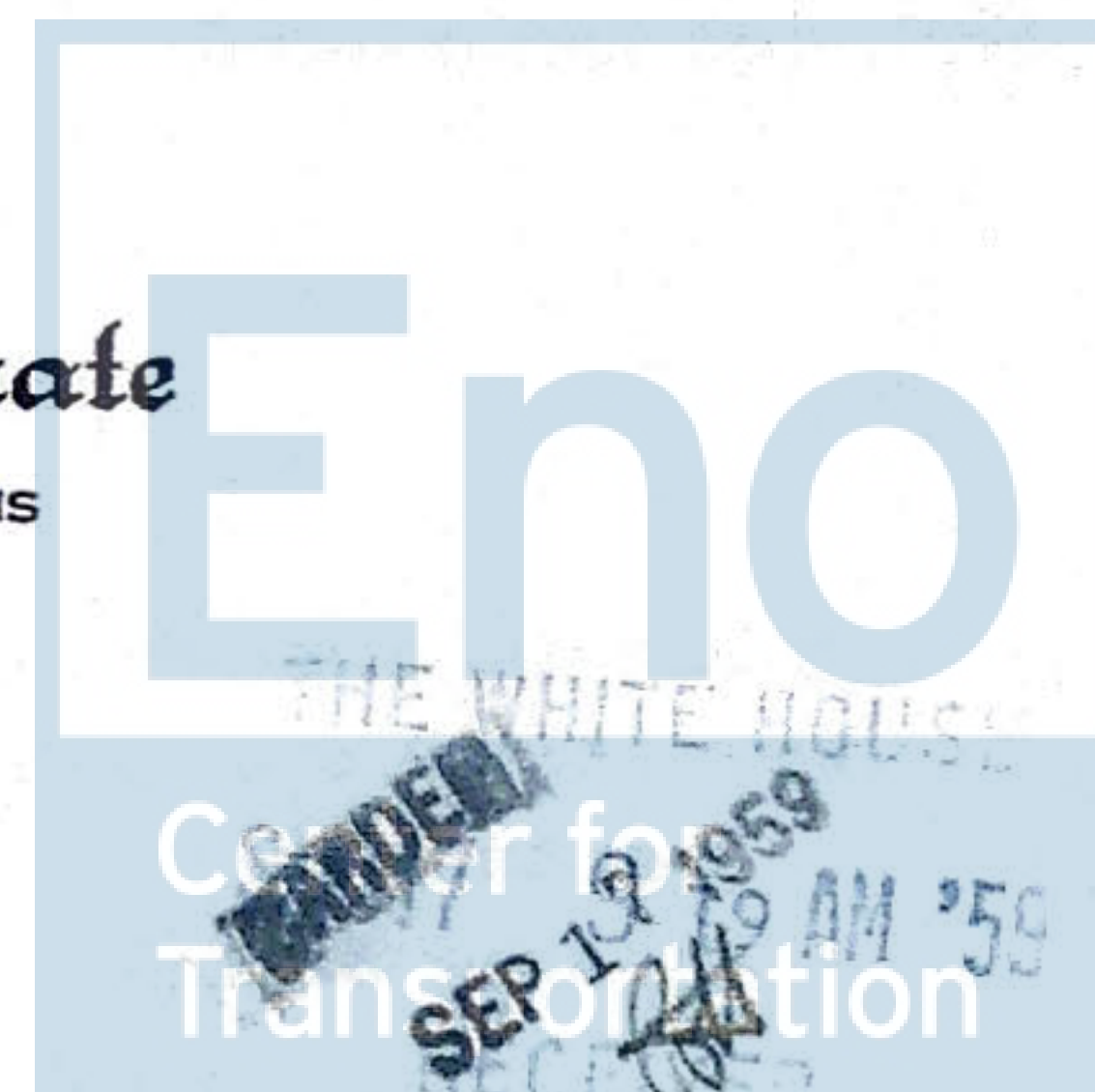
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United States Senate

COMMITTEE ON FOREIGN RELATIONS

September 16, 1959



Dear Mr. President:

In 1955 you submitted to the Congress your recommendation for an acceleration of the Federal-Aid Highway Program in order to meet the needs of national defense and of an expanding economy. As Chairman of the Public Roads Subcommittee of the Senate Committee on Public Works, I participated in an exhaustive examination of this proposal and I was most pleased when, after almost two years of labor, the Congress enacted the Federal-Aid Highway Act of 1956. This far-reaching act passed by Congress pursuant to your recommendation and signed into law by you provided for the construction of a National System of Interstate and Defense Highways and provided also for an increased effort to bring to a state of adequacy the Primary, Secondary and Urban Federal-Aid Highway Systems.

In passing the Highway Act of 1956, the Congress preserved the cooperative working relationship between Federal and state governments which has characterized the Federal-Aid Highway Program since its inception in 1916. Under this program, the Congress has periodically authorized the annual expenditure of specific sums. The sums authorized for expenditure are then apportioned to the several states in accordance with a formula prescribed by law.

Throughout the program, annual apportionments have been made to the states in advance of the year in which expenditure of the apportioned funds is authorized. Under applicable law, the states may, immediately upon the act of apportionment and upon approval of projects by the Secretary of Commerce, obligate funds for highway construction, provided only that the Federal share of the cost of such projects does not exceed the total amount of Federal funds apportioned to the state. Vouchers for reimbursement to the state for the Federal Government's share of the cost may be submitted and payment thereof is authorized by law at any time during the fiscal year for which funds were apportioned or within two fiscal years thereafter.

The validity of an apportionment of highway funds made pursuant to law, the right of the several states to proceed to enter into contractual obligations to the extent of funds apportioned to it, and the right of the several states to obtain prompt and full reimbursement of vouchers submitted, have never heretofore been questioned.

In hearings before the Senate Finance Committee on H.R. 8678, Federal Highway Administrator Bertram D. Tallamy testified that the Department of Commerce proposed to institute an administrative procedure which he described as "contract control." Although the details of this procedure were not spelled out by Mr. Tallamy, it appeared from his testimony that the Bureau of Public Roads proposed by administrative order to curtail the use of apportioned funds by the states, affecting the Primary, Secondary and Urban Systems as well as the Interstate System, to an extent which was unspecified but which would apparently be at a rate substantially below that at which the states are authorized by law to proceed and below the level for which funds have been apportioned.

I quote pertinent excerpts from the Finance Committee Hearings on H.R. 8678 in which the proposed procedure is described:

Mr. Tallamy. But I do believe that from here on in, with 209(g) in effect, we will have to apportion - not apportion - but control contracts so that a particular State which may be in a position to go ahead very rapidly in the first few months as compared to another State which cannot will have to control the rate of award of contracts so that every State will have an opportunity during that course of that year to award contracts to the amount which has been authorized for that particular year.

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Senator Curtis. But what I want to know about the future, suppose a State chose in the interest of conserving their own funds, and in the interest of getting the best contracts, and in the interest of avoiding the waste from rushing, suppose they chose to operate at a slower pace. Are their Federal funds going to be consumed because some other States just rush and get there first and take it all?

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Mr. Tallamy. Now in the future we will have to control contracts to the extent that the trust fund can support. And in the control of the contracts, we will apportion to each State the number of contracts that it can enter into in that particular year and they can enter into that year or they can enter into the next year.

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Senator Gore. Mr. Tallamy has several times today used the term "contract control." He is talking about control of State contractsI know of no authority in the law for such action. The law provides for apportionment to the States by a given formula to the extent that funds are available in the trust fund. When that apportionment is made, that becomes a commitment to the States. I know of no control over which State contracts which the Bureau of Roads can exercise within the commitment of this apportionment except approval or disapproval, and I think the senior Senator from Oklahoma will bear me out that that approval or disapproval contemplates approval or disapproval as to engineering designs, as to adequacy of plan.

Such a procedure, if adopted and if effective, would clearly undermine the validity of an apportionment of funds.

Mr. Tallamy testified further that revenue from the proposed additional 1¢ per gallon tax on gasoline, added to revenues already earmarked to the Highway Trust Fund, would be insufficient to provide funds during the current fiscal year to permit reimbursement to the states for all vouchers expected to be submitted by them prior to June 30, 1960. The following portion of Mr. Tallamy's testimony is quoted for your ready reference:

Mr. Tallamy. \$157 million is what the deficit would be at the end of this fiscal year, and what we would have to do under this legislation would be to carry vouchers over to the extent of about 2 or 2-1/2 weeks' business from this fiscal year to the next fiscal year, and then taper off during the course of the next fiscal year.

Senator Gore. That is a nice way of explaining how you would handle a default.

Mr. Tallamy. Yes; that is the way it will have to be done.

To me, it is inconceivable that the Federal Government should default in its solemn obligation to the states by refusing prompt reimbursement upon satisfactory completion of a project and presentation of a valid voucher. Yet such a default was not only admitted to be in prospect but was, on the basis of Mr. Tallamy's testimony, actually planned and programmed. Are you

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aware that an agency of your administration has actually programed a default on legal obligations to states? Surely not. Yet your supplemental budget request contained no request for funds with which to avoid it. I say to you with the deepest conviction that if the states cannot safely rely upon the prompt discharge by the Federal Government of its solemn obligation to pay its bills when due, then the cooperative working relationship which has been so successful over the years in this area of joint federal-state action will be seriously impaired. And the attempt of the Federal Government to exercise "contract control" over state contracts made pursuant to law would constitute a most serious attempt to infringe upon states rights.

The Senate Appropriations Committee, when considering the Mutual Security Appropriations Bill for 1960, included therein the following language providing an appropriation to the Highway Trust Fund from the general fund:

For repayable advances to the "Highway trust fund" during the current fiscal year, as authorized by section 209(d) of the Highway Revenue Act of 1956 (70 Stat. 399), \$359,000,000; Provided, That all such advances shall be repaid to this appropriation on or before June 30, 1960, and upon such repayment this account shall be withdrawn.

I am informed that the foregoing language, including the restrictive proviso, was submitted to the committee by your Director of the Budget.

Section 209(d) of the Highway Revenue Act of 1956 authorizes an appropriation from the general fund to the Highway Trust Fund as a repayable advance whatever "additional sums as may be required to make the expenditures" required pursuant to apportionments made. Section 209(f)(2) of the same Act provides that such repayable advances shall be repaid with interest to the general fund when the Secretary of the Treasury "determines that monies are available in the Trust Fund for such purposes." These provisions of law were recommended by your administration and enacted by Congress without change.

Unless the gasoline tax and other earmarked taxes produce substantially more revenue than now estimated or unless there are other unforeseen developments, it is obvious from Mr. Tallamy's testimony, to which I have referred, that money will not be available in the Trust Fund to repay the sum of \$359,000,000 to the general fund unless such money is arbitrarily made "available" by defaulting in existing obligations to the states which will be due and payable. In my opinion such would not only be contrary to the intent of existing law and in contravention of a decent code of morality in government, but would also be contrary to the statement of the conferees in The Conference Report on H.R. 8385 which now awaits your signature. Should the language in the Conference Report be subject to different interpretation than that which I apply (though I do not see how such could reasonably be done), then I submit that any such different interpretation must fall before the clear provisions of the law.

When the foregoing bill was before the Senate, I moved to strike from it the restrictive language contained in the Proviso. This effort was successful. The bill as passed by the Congress does not contain the restrictive language requiring repayment of the entire sum by June 30, 1960. Thus, under the provisions of the bill as passed by the Congress repayment is to be made in accordance with the provisions of basic law. The only reasonable interpretation that could be placed upon the law as contained in Section 209(f)(2) would be that it would authorize and direct such repayment when the funds were no longer required in the Trust Fund to reimburse the states for obligations created by apportionments duly made. You will note that the bill awaiting your signature contains no provision changing existing law as contained in Section 209(f)(2) of the Highway Revenue Act of 1956.

My view that the Federal Government should take whatever action is necessary to provide adequate funds with which to discharge legal and moral obligations created by apportionment of funds is, I believe, shared by an overwhelming majority of the members of the Congress. I quote herewith excerpts from the debate in the Senate on H.R. 8385 last Saturday evening:

Mr. Holland. . . . this matter does not have to do with the slowed-down program which will begin with the allotments for 1961. Instead, this matter has to do with payment of the just debts of the Federal Government, for programs which were legal, and for which apportionments were made in 1958 and 1959.

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Mr. Saltonstall. This afternoon we had a long discussion with the Senator from Tennessee, the Senator from Florida, the Senator from Illinois, and myself, together with representatives of the administration. We met in another room. After we had consulted with them, we reached an agreement to the effect that all of us wanted to see the obligations of the Federal Government paid to the States.

We do not want the Federal Government to fail to pay its obligations to the States, when the obligations come due. All of us gave our assurances that next January we would do our best to see that that was done. I do not like to see the proviso deleted; but I do not think its deletion will be fatal.

Mr. Holland. Let me say that no sooner did we have that discussion, than I consulted that Senator from Arizona (Mr. Hayden), the chairman of the Appropriations Committee, and the Senator from Texas (Mr. Johnson), the distinguished majority leader; and I obtained their strong assurances that, so far as their leadership goes, they recognize this as being so much an obligation of the Federal Government that we should not ignore it; and that they assure us that they will stand back of the effort to see it through to conclusion.

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Mr. Gore. I wish to confirm that we had a conference, at which agreement was reached that the obligations to the States would be recognized as valid and honored in full. I had previously talked to the chairman of the Appropriations Committee, to the distinguished majority leader, and to the distinguished minority leader. After this amendment is adopted, which I support, I shall then offer another amendment, but which I shall withdraw after a brief discussion of it. But I wish to confirm the understandings, and I concur in the understandings, that Congress will meet the solemn and legal obligation of the Federal Government to the respective States in this fiscal year.

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Mr. Gore. I am sure the Senator from Arizona knows that never before has it been proposed to Congress that the Federal Government default on its obligations created by apportionment of highway funds to the States, created by an act of Congress and

signed into law by the President. I am happy to say that the distinguished Senator from Arizona has said to me that he does not propose to see such defaults start now.

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Mr. Hayden. In all the years since the original act was passed, it has always been understood that the following procedure would take place: That Congress would determine a lump sum of money to be expended upon highways; that the money was to be divided by a formula among the States -

Mr. Gore. Apportioned.

Mr. Hayden. Yes, Under a formula; and then when the apportionment was made, and the State expended the money, when the expenditures were made, the State would be promptly reimbursed.

Mr. Gore. That is correct.

Mr. Hayden. For the share which the Federal Government assumed. In other words, whether the arrangement was on a 50-50 basis, or whatever else it might have been, the Federal Government said, "If you will do all the work, we will pay our share of it when it is done." The Federal Government has never failed, up to this moment, to have the money available and ready to meet that State obligation. So far as I am concerned, budget estimate or no budget estimate, when the next session of Congress comes, if there is not money enough available to do that, I propose to appropriate it out of the Treasury of the United States at the earliest opportunity to do so, to see to it that the word of Congress, given to the States, is kept.

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Mr. Holland. Mr. President, will the Senator yield?

Mr. Gore. I yield.

Mr. Hdland. The Senator from Tennessee has correctly stated what has transpired.

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What I have said to the Senator from Tennessee, and what I propose to stand by - and I have said it earlier to the Senator from Michigan (Mr. McNamara) and other Senators who were on the floor when we discussed this matter some weeks ago or months ago - was that I propose to do everything in my power to recognize the obligation of the Federal Government to the State. I do not know of any Senator or any Representative who does not feel that way about it. I have discussed the matter with the majority leader, the minority leader, and all the others whom I have mentioned today, and every one of them feels as I do about the matter .

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I want the Record to show, and the Senator from Tennessee to realize, that upon the committee which makes this decision is the chairman, who, as the coauthor of the Hayden-Cartright Act, contributed so much to the stability of this program; is the Senator from New Mexico (Mr. Chavez), who is the chairman of the Committee on Public Works; are six former Governors, who have labored on this matter from the other end, that is, from the point of view of the States, and who, of course, want to be able to honor their obligations promptly and to receive reimbursement.

I give to the Senator from Tennessee every assurance of which I am capable that that is my feeling and the feeling of all the other Senators with whom we have conferred on this matter.

Mr. Gore. This is a happy culmination of a controversy. It was 2-1/2 months ago that I proposed on the floor of the Senate that Congress proceed to deal realistically with this problem. Congress has now approved an amendment to provide an advance from the general fund to the trust fund to meet the obligations of the Federal Government to the States.

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For this fiscal year the administration proposed a planned default to our States. I have read Mr. Tallamy's testimony before the Finance Committee. It was proposed to withhold payment of vouchers submitted by the States. This would be a serious matter for the States. Never before had it been

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suggested to the States, as the Chairman of the Committee on Appropriations (Mr. Hayden) has said, that after Congress has made such an apportionment, and after the Governor of the State or the highway commission of the State has proceeded to make contracts and commitments, whether to counties, whether by force account, or by contract, and after the contracts or the particular jobs or projects are completed, and valid vouchers are presented to the Bureau of Roads reimbursement will not be made promptly. I am glad to say that the Senate has determined to see that we shall continue that practice.

I am writing to you direct about this matter, Mr. President, because of my concern over the future of this program in which you have manifested great personal and official interest. Your interest and your support contributed in large measure to enactment of the program outlined in the Highway Act of 1956.

Success of this program is now in danger. By their acts, some of the officials of the Executive Department appear to manifest little concern about the prospect of inadequate funds with which to defray obligations when they become due and payable. In hearings before the Senate Finance Committee, the Director of the Bureau of the Budget offered no suggestion and made no request for funds with which to pay the bills which are to become due this fiscal year. On the contrary, it appears that the Bureau of the Budget condones, if it did not, in fact, direct, that the Bureau of Public Roads simply default in its payments to the states by whatever amount earmarked revenues are insufficient to defray these obligations.

Despite the action of the Congress in removing the restrictive Proviso from the language making a supplemental appropriation, I am informed that some officials of your administration are still considering the imposition of "contract control" and are still considering deliberate default in payment of obligations to the states.

The several states are understandably concerned about this matter. They have made plans and have awarded contracts on the basis of commitments by the Federal Government. State Legislatures have met and adjourned after making provision for state finances based upon the assumption that the Federal Government would meet its obligations. As I have said, such has never previously been questioned.

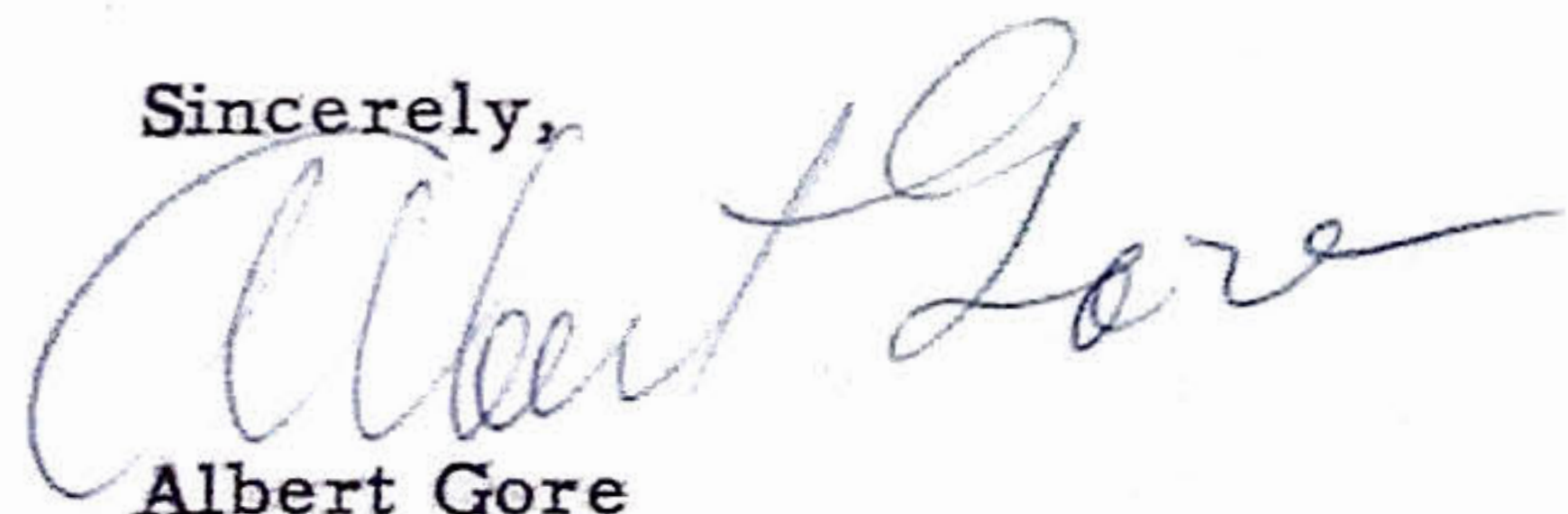
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I am in receipt of communications from Governors of a number of states about this problem. These communications indicate that failure to receive prompt reimbursement for the Federal Government's share of the cost of highway construction will seriously jeopardize the financial condition of their states. Already many states have completely terminated the award of future contracts until they receive some assurance that reimbursement will be forthcoming. Such termination seriously and adversely affects the economy of the nation and disrupts orderly progress in highway construction.

Such a stretchout of the program will, in the long run, make it more, rather than less, costly. Moreover, it would destroy the concept of the program which you recommended and which Congress approved, designed to bring the nation's highways to a state adequate to meet traffic needs by 1972.

In order that states may be reassured, I urge that appropriate action be taken by the Executive Department to eliminate any doubt that obligations created by the apportionment of highway funds will be honored by the Federal Government and to eliminate any question concerning the prompt reimbursement to the states upon the submission of proper vouchers. In the absence of such action, the Federal Government will have broken faith with the states who are its partners in this vital program for the construction of highways adequate to meet the needs of the nation.

Sincerely,



Albert Gore

The President
The White House

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Center for
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October 9, 1959

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CARDEN

Dear Senator Gore:

This is in further reply to your letter of September sixteenth concerning the Federal Aid Highway Program and the annual apportionment of funds to the states.

Since enactment of the 1959 legislation this whole question has been the subject of careful consideration in the Executive establishment. In addition, as you know, on several recent occasions members of the Administration have discussed this problem in great detail with various representative groups of Governors.

Last January, I recommended that the Congress increase the gas tax by 1-1/2 cents to be effective July 1, 1959. This additional amount of money would have been sufficient to allow the highway program to continue at the accelerated rate which had been authorized in the 1958 highway legislation. However, enactment of a one-cent increase in the gas tax, with an effective date of October 1, 1959, has resulted in smaller revenue to the Highway Trust Fund than would have resulted from my request, and is directly responsible for the problem with which we are confronted today.

I should like to emphasize that this Administration fully intends promptly to honor bills presented to it by the various states. In studying ways to achieve this objective while still adhering to the legislative directive establishing the pay-as-you-go principle in the Highway Act of 1956, it became obvious that if we were to be equitable to all of the states we would need to schedule the use of the existing unobligated authorizations. Without such scheduling, which will apply only to the letting of new contracts, we would face the untenable alternative of serious disruption of the program in the fiscal year 1961. In my opinion, any other course of action would be fiscally

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irresponsible and certainly would not be consistent with proper management of a trust fund which is established for a specific purpose, particularly in the face of a Congressional decision to limit the increase in trust fund revenues to two-thirds of the amount requested.

If, as you have suggested, Congress takes further action at its next session to provide, in an acceptable manner, additional revenues for the Trust Fund, the scheduling now contemplated will be adjusted to meet the new situation. Lacking such action by Congress, it is clear to me that the orderly scheduling of new contracts is the only prudent and equitable course to follow.

With warm regard,

Sincerely,

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The Honorable Albert Gore
United States Senate
Washington, D. C.

REM:mh

Copy to Secretary Mueller
Copy to Elmer Staats, BOB
Copy to Mr. Hagerty