

control, manage and supervise the Franklin County memorial building, as provided in Section 3068, General Code.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

791.

TOWNSHIP TRUSTEES, BOARD OF—NOT AUTHORIZED TO TRANSFER FUNDS FROM GENERAL FUND TO ROAD AND BRIDGE FUND—SECTIONS 5625-13a ET SEQ., G. C., PROVIDE THAT TRANSFER EFFECTED BY APPLICATION TO TAX COMMISSION OF OHIO AND COMMON PLEAS COURT—SUCH BOARD NOT A “DISTRICT AUTHORITY”—SECTION 5625-13f G. C.

*SYLLABUS:*

1. *A board of township trustees is not authorized to transfer funds from the general fund of the township to the road and bridge fund by mere resolution of the Board.*

2. *A transfer of funds from the general fund of a township to its road and bridge fund can be effected only by application to the Tax Commission of Ohio and the Common Pleas Court, in accordance with the provisions of Sections 5625-13a et seq. of the General Code of Ohio.*

3. *A board of township trustees is not under any condition a “district authority” within the meaning of the term as used in Section 5625-13, paragraph (f) of the General Code of Ohio.*

COLUMBUS, OHIO, June 22, 1939.

HON. ROBERT C. CARPENTER, *Prosecuting Attorney, Seneca County, Tiffin, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads as follows:

“In the year of 1938, Seneca County entered into a contract providing for the surface treating of numerous county roads. The project was sponsored by the federal government, which contributed forty-five per cent of the cost, the respective townships paying fifty-five per cent of the cost upon township roads. When the project was finally approved, it became necessary for the townships to deposit immediately their portion of the cost with a depository approved by the Federal government. A good many of the fifteen townships in this county did not have sufficient

amounts in their road and bridge funds to make the required deposit which had to be done almost immediately.

In accordance with Paragraph F of Ohio General Code, Section 5625-13, several of the townships made transfers from their general funds to the road and bridge fund. The quoted section reads as follows:

‘(f) Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by G. C. Sections 5625-11 or 5625-12 or to the proper fund of a district authority.’

The books of the various townships are now being examined by the Bureau of Inspection and Supervision of Public Offices, and the question arises as to the legality of these transfers, which were made by resolution, the provisions of 5625-13a not being complied with.

I am not unmindful of the opinion of a former attorney general which is found in Volume 2 of the 1934 Opinions, being numbered 3285. It appears to the writer that the last sentence of the above quoted section was ignored in the consideration which led to the rendition of that opinion. I agree with the reasoning therein that the road and bridge fund is not a fund authorized by General Code, Section 5625-11 or Section 5625-12, but that it is a fund authorized by General Code, Section 5625-9. My specific question is based upon the interpretation to be placed upon the language used in the last line of the above quoted statute, ‘or to the proper fund of a district authority’. In other words, is not the road and bridge fund a proper fund of a district authority within the meaning of Paragraph (f) of Section 5625-13? It appears to the writer that the purpose of this statute is to give to a subdivision the power to regulate the expenditure of its general fund in accordance with the existing needs of the subdivision, in case there is a balance therein which is not encumbered.

To repeat, my specific question is: Can a transfer from the general fund of a township to the road and bridge fund be made by resolution only under the provisions of paragraph f of General Code section 5625-13, or is it necessary to follow the procedure outlined by General Code section 5625-13a, 13b, 13c, 13d, 13e, 13f and 13g?”

The establishment of separate “funds” within taxing subdivisions in the State of Ohio, and transfers from one fund to another are controlled by the provisions of the “Uniform Tax Levy Law” as contained in Sec-

tions 5625-1 et seq., of the General Code. Section 5625-1, General Code, provides in part:

“The following definitions shall be applied to the terms used in this act:

(a) ‘Subdivision’ shall mean any county, school district, except the county school district, municipal corporation or township in the state.”

Paragraph (e) of Section 5625-1, provides that the term “taxing authority” or “bond issuing authority” shall mean in the case of a township, “township trustees.” Paragraph (j) of said section, reads as follows:

“‘District authority’ shall mean each board of directors, trustees, commissioners or other officers controlling a district institution or activity which derives its income or funds from two or more subdivisions, such as the county school board, trustees of district tuberculosis hospitals and district children’s homes, district board of health and other boards.”

Section 5625-9, General Code, lists eight separate and distinct funds which each subdivision is directed to establish. Among them are (a) general fund; (b) sinking fund; (c) bond retirement fund; (d) a special fund for each special levy; (e) a special fund for each bond issue; (f) a special fund for each class of revenue derived from a source other than the general property tax which the law requires to be used for a particular purpose.

Section 5625-11 and Section 5625-12, General Code, provide as follows:

“Sec. 5625-11. In addition to the funds provided for by G. C. §§5625-9 and 5625-12, the taxing authority of a subdivision may establish, with the approval of the bureau, such other funds as may be necessary and desirable, and may provide by ordinance or resolution that moneys derived from specified sources other than the general property tax shall be paid directly into such funds.

Sec. 5625-12. Without prejudice to the generality of the authority to create other special funds with the approval of the bureau, a municipality may establish in the manner provided by law a firemen’s pension fund, a firemen’s indemnity fund, a police relief fund, a sanitary police pension fund, or a cemetery fund; and a township may establish by law a cemetery fund.”

Pertinent provisions of Section 5625-13, General Code, are as follows :

“No transfers shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:

\* \* \* \* \*

(f) Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by G. C. §§5625-11 or 5625-12 or to the proper fund of a district authority.”

Sections 5625-13a to 5625-13g, inclusive, of the General Code, provide for the making of transfers of funds in addition to those authorized by Section 5625-13, General Code, by the taxing authority of a subdivision, by application to the Tax Commission and the Common Pleas Court.

By the terms of Section 5625-6, General Code, certain special tax levies are authorized. Among others, a special levy for road and bridge purposes in a township is authorized by paragraph (f) of said section, in the following language:

“In the case of a township, for the construction, reconstruction, resurfacing and repair of roads and bridges (except state roads and bridges on such roads), including the township’s proportion of the cost and expense of the construction, improvement, maintenance and repair of county roads and bridges.”

The proceeds of the special levy authorized by paragraph (f) of Section 5625-6, General Code, would clearly constitute at least a part of what is commonly referred to as the road and bridge fund of a township for which, under Section 5625-9, General Code, paragraph (d), supra, a special fund should be established.

In addition to the proceeds of a special levy for road and bridge purposes, there is allocated to each township a portion of the proceeds of gasoline excise taxes the use of which is limited to the constructing, widening, reconstructing and maintaining of public roads and highways within the township. See Sections 5541 and 5541-8, General Code.

For these gasoline tax funds a special fund should be established by Section 5625-9, paragraph (f) supra, which provides that a special fund shall be created within each subdivision “for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a special purpose.”

From the foregoing, it seems clear that the so-called road and bridge fund of a township is a fund established by authority of Section 5625-9, General Code, and is not such a fund as is authorized by Sections 5625-11 or 5625-12, General Code. It clearly follows therefore, that the power

extended by Section 5625-13, General Code, paragraph (f), to transfer funds from the general fund of a subdivision to a fund authorized by Sections 5625-11 or 5625-12, General Code, simply by resolution of the taxing authority of the subdivision, does not avail to make a transfer of funds such as the one involved in your inquiry.

This was the holding of a former Attorney General, whose opinion based on facts similar to those here involved, which opinion is found in Opinions of the Attorney General for 1934, Volume II, page 1438, held as stated in the syllabus of said opinion :

“Moneys may not be transferred from the general fund of a township to the road and bridge fund of such township except pursuant to the provisions of Sections 5625-13a et seq., of the General Code of Ohio.”

You point out that in the 1934 opinion no consideration was given to the last clause of paragraph (f), of Section 5625-13, General Code, to wit :

“or to the proper fund of a district authority.”

You inquire as to whether or not the road and bridge fund is a proper fund of a district authority within the meaning of paragraph (f) of Section 5625-13, General Code, and suggest that the apparent purpose of the enactment of paragraph (f) of Section 5625-13, General Code, is to give to a subdivision the full power to regulate the expenditure of its general fund in accordance with the existing needs of the subdivision in case there is a balance which is not encumbered.

It must be conceded that if the legislature meant to give the taxing authority of a political subdivision the power to transfer from the general fund any unencumbered balance therein to any other fund simply by passing a resolution to that effect, it certainly did not say so in Section 5625-13, paragraph (f). It is a fundamental rule of statutory construction that the intention of the legislature must be gathered from what it says and not from what it intended to say. Had it been the intention to give taxing authorities free rein in transferring from its general fund without application to the Tax Commission and the courts as provided by Sections 5625-13a et seq., General Code, the authority extended by the said paragraph (f) would not have been limited as it was. It appears to me that the very purpose of the enactment in part at least, was to preserve the general fund for possible necessary needs in the future.

Moreover, it might well have been within the legislative mind that inasmuch as the special funds enumerated in Section 5625-9, General Code, other than the general fund, are for special purposes, and special tax levies or other special means were provided for their creation, they fulfill their intended purpose when the revenues so specifically provided are ex-

hausted and that those revenues should not need to be supplemented by transfers from the general revenue fund or from any other source to carry out the purposes of the existence of the funds, except in special instances which would merit the more mature consideration that would be given to such a transfer upon application to the Tax Commission and the Common Pleas Court.

The legislature must necessarily be regarded as having used the term "district authority" in the last sentence of paragraph (f) of Section 5625-13, with full knowledge of its meaning as fixed by Section 5625-1, General Code. Upon consideration of the definition of a "district authority" as there stated, which definition is set out in the early part of this opinion, it seems clear that a board of township trustees could not have been meant. The mere fact that the federal government contributed to the financing of the project in question did not constitute the board of township trustees a "district authority" within the meaning of the term as used in the Uniform Tax Levy Law, and in my opinion the road and bridge fund of a township is not a fund of a district authority within the meaning of the term as used in paragraph (f) of Section 5625-13, General Code.

I am therefore of the opinion that a board of township trustees is without power to transfer funds from the general fund of a township to its road and bridge fund by mere resolution of said board of trustees.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

792.

COUNTY COMMISSIONERS — PAULDING COUNTY — MAY ENTER INTO PERSONAL SERVICE CONTRACT WITH ENGINEERING COMPANY WHERE OFFICER IS EMPLOYED AS DEPUTY COUNTY SURVEYOR—COUNTY AUDITOR MAY ISSUE WARRANT TO COMPANY FOR SERVICE PERFORMED.

*SYLLABUS:*

*The county commissioners of Paulding County may enter into a personal service contract with an engineering company, an officer of which is employed as deputy surveyor in said county, and the county auditor may in accordance with law issue a warrant in favor of said company in payment of services so rendered.*

COLUMBUS, OHIO, June 22, 1939.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR: This will acknowledge receipt of your request for my opinion, which reads in part as follows: