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MUNICIPALITY — GASOLINE TAX — INCLUSION WITHIN CORPORATE LIMITS OF TWO OR MORE MUNICIPALITIES OF ALL TERRITORY OF TOWNSHIP DOES NOT DESTROY TOWNSHIP OR ITS OFFICIAL ORGANIZATION—TOWNSHIP ENTITLED TO RECEIVE ITS SHARE OF THAT PORTION OF GASOLINE TAX, WHICH BY TERMS OF SECTION 5541-8, G. C., IS TO BE APPORTIONED TO SEVERAL TOWNSHIPS OF STATE—STATUS WHERE SEVERAL MUNICIPALITIES IN TOWNSHIP ARE ENTITLED TO RECEIVE DISTRIBUTION ALLOTTED TO THEM BY SECTION 5541-8, G. C.

SYLLABUS:

The inclusion within the corporate limits of two or more municipalities of all of the territory of a township does not destroy the township or its official organization, and such township is entitled to receive its share of that portion of the gasoline tax, which by the terms of Section 5541-8, General Code, is to be apportioned to the several townships of the state, notwithstanding the fact that the several municipalities in such township are also entitled to receive the distribution allotted to them by said Section 5541-8 General Code.

Columbus, Ohio, July 14, 1945

Hon. Joseph T. Ferguson, Auditor of State
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“We are attaching hereto copy of letter dated June 27, 1945, from Mr. F. M. Cornwell; Assistant Prosecuting Attorney of Ashtabula County, in response to our request of June 16th (copy attached) to Mr. W. R. Hillyer, Ashtabula County Auditor, for the return of gasoline tax distribution for Conneaut Township, Ashtabula County, based on Attorney General’s Opinion No. 310.

In order that we may be guided in making distributions to the county treasurers for various townships, under provisions of Sections 5541-8, General Code, we kindly request your opinion as to what constitutes a township for the purpose of making such distributions when such township continues to function after being absorbed into the incorporated village and city, and such

corporations participate in distributions of the gasoline tax based on the motor-car registration as certified to this office by the Bureau of Motor Vehicles.

Can distributions be made to the same district from both the township and the municipal share of the gasoline tax?"

From a reading of the correspondence which you attach, it appears that certain funds arising from the gasoline tax, and distributable under Section 554I-8, General Code, had been paid over to the Auditor of Ashtabula County to the credit of Conneaut Township in that county and that you were requesting the return of such funds, on the theory that Conneaut Township had ceased to exist, and that my Opinion No. 310 rendered June 15, 1945 justified your request.

The syllabus of that opinion reads as follows:

"Where a portion of the gasoline tax arising under Sections 554I to 554I-8, inclusive, of the General Code, is paid over to the treasurer of a county to the credit of a township in such county *which*, prior to such apportionment and payment *has ceased to exist*, such amount credited to such township should be refunded to the state treasury to the credit of the township's share of the highway construction fund, for supplementary distribution to the townships entitled thereto."

(Emphasis added.)

It will be observed that the township in question there had wholly ceased to exist prior to the apportionment and payment of the tax. The facts in respect to Conneaut Township which constitute the subject of your present inquiry, are that in 1944, all that portion of said township that was not included within the City of Conneaut was incorporated as the Village of Lakeville. No action was taken to have either the city or the village made into a new or separate township. If Conneaut Township ceased to exist by reason of the incorporation of Lakeville, then you were justified in applying the law as set forth in the opinion above referred to, and in demanding the return of the funds apportioned to it.

I know of only two processes under the law of Ohio whereby a township may be said to cease to exist or to function as such. One is under the provisions of Section 3512, General Code, where the boundaries of the township and the municipal corporation become identical. The other is where under the provisions of Sections 3249, 3250 and 3250-1

one or more new townships are created out of the territory of an existing township so that the original township is entirely supplanted by new townships.

Section 3512, General Code, provides:

“When the corporate limits of *a city or village* become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of *the city or village*, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. *Such justices and constables shall be elected at municipal elections.* All property, moneys, credits, books, records and documents of such township shall be delivered to the council of *such city or village*. All rights, interests or claims in favor of or against the township may be enforced by or against the corporation.” (Emphasis added.)

This section was under consideration by my immediate predecessor as applying to the situation created by the organization into the Village of Lakeville of all of that portion of Conneaut Township that was situated outside of Conneaut City. In Opinion No. 7038, rendered July 26, 1944, it was held:

“The fact that all the area of a township has been incorporated into two municipalities does not in any way affect the existence or official organization of the township, and taxes levied or to be levied for township purposes will be collected and paid into the township treasury as provided by law.”

In that opinion it was pointed out that Section 3512 only applied to a situation where the corporate limits of a township became identical with the corporate limits of a single city or village. It would be impossible to apply the provisions of that section to a situation where the township had been absorbed by two or more municipal corporations. It might well be argued that some provision ought to be made by law for the disposition of township functions and government, including those relating to the justices of the peace and constables, where the township has been entirely

covered by two or more municipal corporations, but it is sufficient to answer that proposition by saying that the legislature has not seen fit to do so.

In the course of Opinion No. 310 reference was made to an opinion of a former Attorney General found in 1930 Opinions Attorney General, p. 624, in which the same rule was applied as to the township's share of the gasoline tax where the township had become identical with the boundaries of a single municipality. The reason for extending this principle as to the distribution of gasoline tax appeared to the then Attorney General to rest upon the fact that while under the circumstances contemplated by Section 3512, General Code, a township does not absolutely cease to exist, it does cease to exist so far as all general township officers and their powers and duties are concerned.

I realize that some apparent injustice seems to result in the distribution of the townships' share of the taxes which are distributable under Section 5541-8 of the General Code under circumstances such as exist in Conneaut Township, in that the several municipalities which embody the entire area of a township will receive their share of the tax based on the motor vehicle registration, and in addition thereto, the officers of the township covering the same geographical area will receive their apportionment equally with other townships. If, however, there be any unfairness in this, I think you will recognize the fact that this unfairness differs only in degree and not in kind from that prevailing throughout the state in every township in which there is located a municipality whether it be a city or village. For example, if the City of Columbus occupied all of the area of Montgomery Township except one square mile, the city would receive its share of the gasoline tax based on motor vehicle registration and the Township of Montgomery, which included the entire city as well as the square mile in question, would receive its full apportionment. This, as a matter of fact, is the situation in every township in the state in which there exist one or more municipalities.

I shall not undertake to list all of the functions that belong to township trustees which may continue under the circumstances presented in your communication, where the area of a township is entirely covered by two or more municipalities; but I may suggest among others the power of the township trustees to levy a tax for hospital purposes (Section 3411,

General Code); the power to appoint township park commissioners and the power of such commissioners to levy a tax (Section 3415 et seq., General Code); the power to erect a soldier's monument (Section 3474, General Code); and the power to use road funds to improve streets within villages (Section 7467, General Code). The section last above referred to provides in part as follows:

"The state, county or township or any two or more of them may by agreement expend any funds available for road construction, improvement or repair upon roads inside of a village or a village may expend any funds available for street improvement upon roads outside of the village and leading thereto."

This section would appear to give the township trustees the right to use the proceeds of the motor vehicle tax allotted to them in the improvement of streets within the village located in their townships, and in the particular case presented by you would authorize the township trustees of Conneaut Township to spend the funds in question on roads within the Village of Lakeville.

In an opinion found in 1917 Opinions Attorney General, p. 1956, it was held:

"Under Section 7467, G. C., township trustees have authority, by agreement with a village, to contribute to the maintenance and repair of the *roads* of the village, but not of the streets as such, viz., the highways of a village which were laid out by the village as streets."

Examination of Section 5541-8, General Code, which provides for the distribution of the "highway construction fund" arising from the gasoline tax imposed by Section 5541 General Code, will disclose that there are several other respects than the one hereinabove mentioned, whereby a certain territory may reap a benefit through several channels in the distribution of such fund. The sixty-seven and one-half percent allotted to the state is to be used in all of the several counties, and "may be used upon extension of state highways within municipal corporations." The seven and one-half percent allocated to the counties may be used on the county system of roads and highways regardless of the fact that these roads and highways lie within the townships or municipalities.

The seventeen and one-half percent allocated to the townships is to be "divided in equal proportions among the several townships" and is to be used by each township for improving "the public roads and highways within such township"; there is no specific limitation to "township roads" or to roads outside of municipal boundaries.

In specific answer to your question it is my opinion that the inclusion within the corporate limits of two or more municipalities of all of the territory of a township does not destroy the township or its official organization, and that such township is entitled to receive its share of that portion of the gasoline tax which by the terms of Section 554I-8, General Code, is to be apportioned to the several townships of the state, notwithstanding the fact that the several municipalities in such township are also entitled to receive the distribution allotted to them by said Section 554I-8, General Code.

Respectfully,

HUGH S. JENKINS

Attorney General