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1. TOWNSHIPS, SEVERAL WITHIN STATE CURRENTLY ENTITLED TO DISTRIBUTION OF AGGREGATE AMOUNT OF \$500,000.00 FROM REVENUES COLLECTED UNDER SECTIONS 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., 4517., RC, OR UNDER PRIOR ANALOGOUS STATUTES—PERIOD MARCH 1, 1953, TO NOVEMBER 6, 1953—DISTRIBUTION TO BE MADE IN RATIO AND IN MANNER PROVIDED IN SECTION 4501.04 RC — TOWNSHIP ROADS — MOTOR VEHICLE LICENSE TAX—SECTIONS 4501.04 RC, 6309-2 GC.
2. REVENUES REALIZED BETWEEN PERIOD NOVEMBER 7, 1953 AND FEBRUARY 28, 1954, SHOULD BE DISTRIBUTED, SECTION 4501.04 RC, AM. SUB, HB 734, 100 GA, EFFECTIVE NOVEMBER 7, 1953.

SYLLABUS :

1. Under the provisions of Section 4501.04, Revised Code, Section 6309-2, General Code, the several townships within the state are currently entitled to a distribution of the aggregate amount of \$500,000 from such revenues as are collected under the provisions of Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code, or under prior analogous statutes during the period March 1, 1953, to November 6, 1953, both inclusive, such distribution to be made in the ratio and in the manner currently provided in Section 4501.04, Revised Code.

2. Any such revenues realized between the period November 7, 1953, and February 28, 1954, both inclusive, should be distributed as provided in Section 4501.04, Revised Code, as amended, effective November 7, 1953, by the enactment of Amended Substitute House Bill 734, 100th General Assembly.

Columbus, Ohio, October 20, 1953

Hon. R. E. Foley, Registrar, Bureau of Motor Vehicles
Columbus, Ohio

Dear Sir :

Your request for my opinion reads as follows :

“With reference to the provisions of Section 4501.04 (6309-2) of the Revised Code, will you please give us your formal opinion as to whether or not the total sum of \$500,000 should be distributed to the several townships in the ratio as now provided for under this section of the code.

“Section 4501.04 states in part:

“From the remainder of the revenue collected under chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code, after payment of the expenses of the bureau of motor vehicles, including the payment of claims authorized by Section 4515.08 of the Revised Code, there shall be distributed *annually* (we underline this for emphasis) to the several townships within the state five hundred thousand dollars in the ratio which the total number of miles of township roads under the jurisdiction of the board of township trustees in the township bears to the total number of miles of township roads certified to the director of highways on or before the first day of October of each year.’ etc.

“Am. Sub. House Bill No. 267 of the 99th General Assembly (124 O.L. 840) created the provision for the distribution of the \$500,000.00 to the several townships. All provisions including the distribution of this \$500,000.00 of Am. Sub. House Bill No. 267 were effective only until June 30, 1953.

“Am. Sub. House Bill No. 24 enacted by the 100th General Assembly, continued in full force and effect beyond June 30, 1953, the provisions of Am. Sub. House Bill No. 267 of the 99th General Assembly.

“Am. Sub. House Bill No. 734 enacted by the 100th General Assembly, deleted the sum of \$500,000.00 to be distributed to the several townships and amended the formula for distributing the motor vehicle license tax fund, the provisions of this bill to become effective November 7, 1953.

“Your opinion is requested whether or not the total sum of \$500,000.00 shall be distributed to the several townships. The township trustees of the several counties have complied with the requirements in the statutes and have certified in writing to the Director of Highways, the actual number of miles of township roads under their control and jurisdiction.

“It is desired to make a distribution of the funds to the townships and your early opinion will be appreciated.”

We may first briefly note the legislative history of the statutory provisions here in question. Prior to the recent session of the 100th General Assembly, the provision for the distribution of revenues arising under the chapter relating to registration, etc., of motor vehicles was found in Section 6309-2, General Code. This section provides in part:

“From the remainder of the revenue collected under the provisions of this chapter, after payment of the expenses of the bureau of motor vehicles, including the payment of claims authorized by section 6308-12 of the General Code, there shall be dis-

tributed annually to the several townships within the state the sum of \$500,000.00 in the ratio which the total number of miles of township roads under the control and jurisdiction of the township trustees in the township bears to the total number of miles of township roads certified to the highway director on or before October first of each year. The number of miles of township roads within townships and the total number of miles of township roads to be used in the computation of such ratio shall be the aggregate number of miles of township roads in the township which apply for distribution of funds. Before distribution shall be made under the provisions of this paragraph the township trustees shall certify in writing to the director of highways the actual number of miles of township roads under their control and jurisdiction which are kept open and maintained for public use. Upon receipt of such certification, the director of highways shall transmit to the auditor of state, a statement showing the proportionate distributive share of funds to which each township of the several counties is entitled, such share to be paid on vouchers and warrants drawn by the auditor of state to each county treasurer for the total amount payable to the townships within the county * * *."

It may be noted in passing that the language "from the remainder of the revenue collected" is used in the opening sentence in this section for the reason that the preceding section, Section 6309, General Code, required the reservation from these revenues by the treasurer of state of amounts sufficient to defray the expense of the bureau of motor vehicles and the state highway patrol "for the current fiscal year."

In February, 1953, the 100th General Assembly enacted House Bill No. 1 with the purpose and effect of recodifying the entire statutory law of the state in what was designated as the Revised Code of Ohio. This bill was not an emergency measure and by its terms became effective October 1, 1953. In this enactment there was very little change in the language noted above in Section 6309-2, supra, the principal one being the deletion of the expression "revenue collected under the provisions of this chapter" and the substitution in lieu thereof of the expression "revenues collected under Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515., and 4517. of the Revised Code."

On May 19, 1953, the 100th General Assembly enacted Amended House Bill 243, thereby effecting the amendment of certain sections of the Revised Code, among them Section 4501.04, supra. This bill was ap-

proved by the Governor June 6, 1953, and filed in the office of the secretary of state on June 9, 1953. The bill was not an emergency and by its terms became effective October 2, 1953.

The principal change in Section 4501.04, Revised Code, effected by this enactment, was the substitution of the director of highway safety for the director of highways as the officer to whom the township officials were to make their certification as to the total number of miles of township roads under their jurisdiction, the principal purpose of the enactment of Amended House Bill 243 being to create the new department of highway safety.

Thereafter it was brought to the attention of the Legislature that under the provisions of Section 2 of Amended Substitute House Bill 267, 99th General Assembly, certain statutory provisions, including Section 6309-2, General Code, would expire by operation of law on June 30, 1953. Accordingly, with the obvious purpose of providing stopgap legislation for the period July 1, 1953 to the effective date of the Revised Code, the Legislature enacted Amended Substitute House Bill 24 as an emergency measure on June 29, 1953. This act was approved by the governor and became law on June 30, 1953. The act by its terms continued in effect the statutory provisions above referred to, and reenacted Section 6309-2, General Code, with one important change. This change consisted of the requirement that the township trustees were to supply their "mileage certificates" to the highway director on or before *August* 1st of each year rather than *October* 1st, as previously provided.

The change of this date appears to me to be of considerable significance, for it leads to the inference (1) that the Legislature regarded Amended Substitute House Bill 24 as stopgap legislation which would expire October 1, 1953, when the Revised Code became effective; and (2) that the two-month period intervening between August 1 and October 1 was provided for the purpose of completing the distribution of the \$500,000.00 to the several townships within the state in advance of the date on which the Revised Code would take effect.

It should perhaps be observed in passing that Amended Substitute House Bill 24 was the most recent expression of the legislative will among the several enactments mentioned above; and that it contained no provision for its termination. It may be pointed out also that it can hardly be supposed that the two prior enactments, i.e., Amended House Bill No. 1

and Amended House Bill 243 could have the effect of repealing Section 6309-2, General Code, as amended by Amended Substitute House Bill 24, even though the prior acts became effective after the date of the emergency act, this for the reason that at the time such prior enactments were under consideration by the Legislature, Amended Substitute House Bill 24 had not been enacted.

It is true that the Ohio courts ordinarily give effect to the latest expression of the legislative will, but this rule is by no means without exception. Thus in *State v. Lathrop*, 93 Ohio St., 79 (85), the court cited with approval the holding in *Southwark Bank v. Commonwealth*, 26 Pa. St., 446, as follows:

“1. The general rule is that where two statutes contain repugnant provisions, the one last signed by the governor is a repeal of the one previously signed.

“2. This is so merely because it is presumed to be so intended by the lawmaking power; but where the intention is otherwise, and that intention is apparent from the face of either enactment, the plain meaning of the legislative power thus manifested is the paramount rule of construction.”

In the instant case I am of the opinion that the intention of the Legislature that the provisions of Amended Substitute House Bill 24 should expire on October 1, 1953, is apparent from the face of the enactment itself. This intention is evidenced first by the change in the reporting date from October 1 to August 1, thus evincing an intention that the distribution of the \$500,000 to the township authorities should be completed well in advance of October 1, thereby indicating a legislative notion, or understanding, that Amended Substitute House Bill 24 would expire on that date.

The second indication is the placing of the responsibility for receipt of the reports of the township officials with the director of highways rather than the director of highway safety. The Legislature may be presumed to have had in mind, in this connection, its previous enactment of Amended House Bill 243, under the terms of which the department of highway safety was created. For these reasons I conclude that the provisions of Amended Substitute House Bill 24 expired by operation of law on October 1, 1953.

We now come to a third legislative enactment by which the provisions of Section 4501.04, Revised Code, were changed by the 100th Gen-

eral Assembly. This enactment is Amended Substitute House Bill 734, passed July 9, 1953, vetoed by the governor July 27, 1953, and passed notwithstanding the objections of the governor on August 7, 1953. This enactment will become effective on November 7, 1953.

By this enactment the entire distribution formula of motor vehicle license fee revenues will be changed. Stricken out entirely is the provision for the payment of the aggregate sum of \$500,000 to the township authorities, and the formula to be established will provide for a percentage distribution of these revenues among the municipal corporations, the counties and the townships of the state, the townships' share being 5% of the remainder of all such revenues after provision for the expenses of the department of highway safety. In this situation your precise question is whether or not, under presently existing legislation, i.e., Section 4501.04, Revised Code, as amended in Amended House Bill 243, and effective during the period October 2, 1953, to November 6, 1953, inclusive, the distribution of the aggregate of \$500,000 to the township authorities as therein provided should now be made.

It is my opinion that such distribution should be made, for it appears to me to be the plain purpose and intent of the Legislature, by the enactment of Amended Substitute House Bill 24, supra, and particularly by the change therein of the reporting date from October 1st to August 1st, to insure that the townships should receive their share on the basis of the old formula prior to the date when the Revised Code was expected to take effect. This, I understand, has not been done, but it very clearly appears to me that the right of the townships to such distribution, having once been established by law, cannot be defeated by a mere failure of the administrative officers concerned to carry out the legal duties imposed upon them. Particularly is this true when, as in the instant case, the statute, Section 4501.04, Revised Code, now provides, and will provide until November 7, 1953, that such \$500,000 distribution to the townships shall be made.

I am impelled, therefore, to answer your inquiry on this point in the affirmative.

There is latent in your inquiry a further question which perhaps should be disposed of. This question concerns the application of the new statutory formula on and after November 7, 1953.

It is axiomatic that laws operate prospectively from the date on which they take effect, and effect must of course be given to the provisions of Section 2, Article II, Ohio Constitution, inhibiting the General Assembly in the passage of retroactive laws. This being the case, it seems to me that it will become necessary to make a segregation of the revenues which are realized from the source in question up to and including November 6, 1953, and those revenues which are thereafter realized. As to the former, I think it is plain that they must be distributed under the formula set out in the several prior enactments already noted, and it appears equally plain to me that the latter revenues should be distributed under the formula set out in Section 4501.04, Revised Code, as amended, effective November 7, 1953, by the enactment of Amended Substitute House Bill 734.

In this connection we may note that the earlier formula referred to the payment of the aggregate of \$500,000 to the township authorities "annually." Nowhere in the act do I find any indication whether this is to be on the basis of the calendar year, or the state's fiscal year of July 1 to June 30, or on the basis of the so-called "motor vehicle license tax year." The concept of such a "license year" finds some support in the provisions of Section 4503.02, Revised Code, Section 6291, General Code, under the terms of which "an annual license tax" is levied; and in the provisions of Section 4503.10, Revised Code, Section 6294, General Code, to the effect that the owner of a motor vehicle may use the license placards of either the current registration year or the next succeeding registration year from the 1st day of March to the 1st day of April in any given year. By reason of these provisions, I am informed, it has for many years been the practice of the Bureau of Motor Vehicles to regard the period of March 1 to the last day of February next following as a "license year." Moreover, it appears that it has long been the practice of the Bureau to use the last day of February in each year as the end of an accounting period for the purpose of calculating the amount of revenues available for distribution "annually" under the provisions of Section 6309-2, General Code, now Section 4501.04, Revised Code.

In this situation, because the statute is clearly ambiguous as to the precise meaning of the word "annually," because there is a logical basis for the concept for the "license year" above described, and because such concept lends itself to administrative efficiency and certainty, I am inclined to the view that the distribution of revenues on this basis represents a long continued administrative interpretation of the statute which "is not

to be disregarded or set aside unless judicial construction makes it imperative to do so." *Industrial Commission v. Brown*, 92 Ohio St., 309 (311). For this reason I conclude that in the instant case the prior formula should be applied to the distribution of the revenues here involved which were realized during the period March 1, 1953, to November 6, 1953, both inclusive; and that the new formula should be applied to the distribution of such revenues as will be realized during the period November 7, 1953, to February 28, 1954, both inclusive, and thereafter.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. Under the provisions of Section 4501.04, Revised Code, Section 6309-2, General Code, the several townships within the state are currently entitled to a distribution of the aggregate amount of \$500,000 from such revenues as are collected under the provision of Chapters 4501., 4503., 4505., 4507., 4509., 4511., 4513., 4515. and 4517. of the Revised Code, or under prior analogous statutes during the period March 1, 1953 to November 6, 1953, both inclusive, such distribution to be made in the ratio and in the manner currently provided in Section 4501.04, Revised Code.

2. Any such revenues realized between the period November 7, 1953, and February 28, 1954, both inclusive, should be distributed as provided in Section 4501.04, Revised Code, as amended, effective November 7, 1953, by the enactment of Amended Substitute House Bill 734, 100th General Assembly.

Respectfully,

C. WILLIAM O'NEILL

Attorney General