

**Note from the Attorney General's Office:**

The syllabus paragraph 1 of 1988 Op. Att'y Gen. No. 88-004 was extended on the basis of legislative amendment by 2018 Op. Att'y Gen. No. 2018-010.

**OPINION NO. 88-004****Syllabus:**

1. Moneys derived from the motor vehicle fuel excise tax imposed by R.C. 5735.05 and R.C. 5735.25 may be expended only for the purposes specified in R.C. 5735.27(A)(3) and (A)(4), and such moneys may not be expended to construct a facility for the county engineer other than a building suitable for the housing of road machinery and equipment.
2. Moneys derived from the state motor vehicle license tax imposed by R.C. 4503.02 may be expended only for the purposes specified in that section and in R.C. 4501.04, and such moneys may not be expended to construct any type of facility for the county engineer.

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**To: John J. Plough, Portage County Prosecuting Attorney, Ravenna, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, January 25, 1988**

I have before me your request for my opinion on the issue of whether moneys derived from the motor vehicle tax or gasoline tax may be used to build facilities for

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the county engineer. You indicate that the county general fund does not contain sufficient funds for the building of such facilities, and your county engineer has inquired as to whether, instead, motor vehicle tax or gasoline tax moneys may be used.

I note, first, that Ohio Const. art. XII, §5a restricts the purposes for which moneys derived from motor vehicle license and fuel taxes may be used, as follows:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

The General Assembly has enacted statutes which further specify the purposes for which such tax moneys may be expended. Thus, I must determine whether a county has authority, under the relevant statutes, to expend moneys from the motor vehicle license or fuel taxes to construct facilities for the county engineer. See Ohio Const. art. XII, §5 ("every law imposing a tax shall state, distinctly, the object of the same, to which only, it shall be applied"); *State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 106 N.E. 41 (1914) (where the expenditure of public funds is limited by statute, the funds may not be spent for a purpose not specified by statute). See generally *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947) (as a creature of statute, a board of county commissioners only has the authority expressly granted by statute); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E.571 (1916) (the authority of county commissioners to act in financial transactions must be clearly and distinctly granted).

I consider, first, whether proceeds from the motor vehicle fuel excise tax may be used to build facilities for a county engineer. R.C. 5735.05, which imposes a motor vehicle fuel excise tax and sets forth the purposes for which the tax is to be used, provides in pertinent part:

To provide revenue for maintaining the state highway system; to widen existing surfaces on such highways; to resurface such highways; to enable the counties of the state properly to plan, maintain, and repair their roads...an excise tax is hereby imposed....

See also R.C. 5735.25 (levy of additional motor vehicle fuel tax "to enable the counties and townships of the state to properly plan, construct, widen, reconstruct, and maintain their public highways, roads, and streets").

The counties receive their portion of the fuel tax moneys pursuant to R.C. 5735.27(A)(3). R.C. 5735.27(A)(3) provides, in pertinent part, that such moneys

shall be used only for the purposes of planning, maintaining, and repairing the county system of public roads and highways within such county...the planning, construction, and maintenance of suitable buildings for the housing of county road machinery...the payment of principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under such chapter....

R.C. 5735.27(A)(3) does not expressly authorize the use of fuel tax moneys for the purpose of constructing facilities for the county engineer. Therefore, I must

determine whether the construction of facilities for the county engineer is impliedly authorized by R.C. 5735.27(A)(3).<sup>1</sup>

R.C. 5735.27(A)(3) first provides that fuel tax moneys shall be used by the county "only for the purposes of planning, maintaining, and repairing the county system of public roads and highways within such county." Pursuant to R.C. 5543.01(A), the county engineer has general charge of "[c]onstruction, reconstruction, improvement, maintenance, and repair of all bridges and highways within his county, under the jurisdiction of the board of county commissioners." See also R.C. 5543.01(B) (county engineer has general charge of construction work on township roads); R.C. 5543.09 (county engineer shall supervise construction and maintenance of highways and bridges under jurisdiction of county commissioners). Since the county engineer may use his facilities, for example, for the planning of public roads, the construction of such facilities might arguably be a purpose for which fuel tax moneys may be expended under R.C. 5735.27(A)(3). However, as I noted in a previous opinion, it is firmly established that counties may expend fuel tax and license tax moneys only for those uses "directly related to the actual planning, maintenance, construction, repair, and repaving of roads and bridges," and not for "indirectly-related or contingent uses." 1985 Op. Att'y Gen. No. 85-094 at 2-397 (concluding that fuel or license tax moneys may not be used to purchase liability insurance to protect county commissioners against liability for failure to keep roads in proper repair). See also *Grandle v. Rhodes*, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, first paragraph) (Ohio Const. art. XII, §5a restricts the use of moneys derived from fuel and license taxes "to purposes directly connected with the construction, maintenance and repair of highways and enforcement of traffic laws"). See generally 1950 Op. Att'y Gen. No. 1347, p. 16 (syllabus) ("A county engineer can not expend money from the gasoline tax fund for any improvement unless the benefits of such improvement accrue to the traveling public"). Construction of facilities where the county engineer may, for example, plan public roads is not a use of fuel tax moneys which is "directly related to the actual planning, maintenance, construction, repair, and repaving of roads and bridges." Therefore, I find that the language in R.C. 5735.27(A)(3), which authorizes the expenditure of fuel tax moneys "only for the purposes of planning, maintaining, and repairing...public roads," does not impliedly authorize the expenditure of such moneys to construct facilities for the county engineer.

R.C. 5735.27(A)(3) also expressly authorizes the use of fuel tax moneys for "the planning, construction, and maintenance of suitable buildings for the housing of county road machinery." One of my predecessors concluded that this language authorizes only the construction and maintenance of buildings for road machinery and not the construction and maintenance of a multiple-purpose building for road machinery and county engineer offices.<sup>2</sup> 1963 Op. Att'y Gen. No. 152, p. 230. See also 1964 Op. Att'y Gen. No. 1499, p. 2-388 (modifying 1963 Op. No. 152, and concluding that while fuel tax money may be used to construct a building to house county road equipment such money may not be used to purchase the land on which the building is to be built). Since the statute expressly authorizes construction of only one specific type of building with fuel tax moneys, I conclude that the General Assembly did not intend to authorize the construction of other types of buildings with such moneys. See generally *State ex rel. Alden E. Stilson & Associates v.*

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<sup>1</sup> The moneys from the additional fuel tax levied by R.C. 5735.25 are distributed to the counties pursuant to R.C. 5735.27(A)(4). Those uses listed in R.C. 5735.27(A)(4) are, for purposes of this opinion, identical to those uses listed in R.C. 5735.27(A)(3). However, R.C. 5735.27(A)(3) authorizes the expenditure of fuel tax moneys for more uses than does R.C. 5735.27(A)(4). Therefore, for ease of discussion I will refer specifically to the language in R.C. 5735.27(A)(3) although my analysis applies to both provisions.

<sup>2</sup> Whether a building is solely for the housing of road machinery or is a multiple-purpose building is a question of fact, and therefore is not a question which may properly be resolved by way of an opinion. See 1986 Op. Att'y Gen. No. 86-076 at 2-422.

*Ferguson*, 154 Ohio St. 139, 93 N.E.2d 688 (1950) (citing the general rule of statutory construction that the specification of one thing implies the exclusion of another).<sup>3</sup>

Finally, R.C. 5735.27(A)(3) provides that the county may expend fuel tax moneys for "the payment of principal, interest, and charges on bonds and other obligations issued pursuant to Chapter 133. of the Revised Code for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements...." R.C. 133.24 authorizes the taxing authority of subdivisions<sup>4</sup> to issue bonds for the purpose of acquiring or constructing permanent improvements. While a "facility" for the county engineer may qualify as a "permanent improvement," R.C. 5735.27(A)(3) requires that the bonds be used to acquire or construct "roads, highways, bridges, or viaducts" or be used to make or acquire other "highway improvements." Clearly, the facility in question is not a road, highway, bridge or viaduct. The term "highway improvement" is not defined for purposes of R.C. Chapter 5735. R.C. 5553.01 defines "improvement," for purposes of R.C. Chapter 5553, as "any location, establishment, alteration, widening, straightening, vacation, or change in direction of a public road." Although this definition is not controlling, I find it instructive. Therefore, I am not persuaded that construction of a facility for the county engineer is a "highway improvement" as that term is used in R.C. Chapter 5735. Accordingly, I see no basis upon which to conclude that moneys derived from the motor vehicle fuel tax may be expended to retire bonds issued under R.C. Chapter 133 for the purpose of constructing a facility for the county engineer unless it is a building used strictly to house road machinery and equipment.

Thus, with respect to moneys derived from the motor vehicle fuel tax imposed under R.C. 5735.05 and R.C. 5735.25, it is my conclusion that such moneys may only be expended in accordance with R.C. 5735.27(A)(3) and (A)(4) and may not be used by a county to construct a facility for the county engineer unless it is a building used strictly for the housing of road machinery and equipment.

Having addressed the authority of the county to spend moneys derived from the motor vehicle fuel tax, I turn to the question of whether a county may expend funds derived from the motor vehicle license tax for the construction of a facility for the county engineer.

R.C. 4503.02, which provides for the levy of a state motor vehicle license tax and enumerates the purposes of the tax, states, in pertinent part:

An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways, for the purpose of...paying the counties' proportion of the costs and expenses of

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<sup>3</sup> R.C. 5735.27(A)(4) omits the provision for the construction and maintenance of buildings to house county road machinery. In light of this omission, I conclude that the General Assembly did not intend to authorize the expenditure of the additional fuel tax moneys distributed pursuant to R.C. 5735.27(A)(4) even for construction of any buildings to house county road machinery. See 1944 Op. Att'y Gen. No. 6740, p. 121 at 123-24 (city shall not use fuel tax moneys to construct a building to house road machinery and equipment, since "when the Legislature intended that the use of funds levied for maintenance could be used to construct buildings, it so expressed such intent in a legislative enactment"). See generally *Lake Shore Electric Ry. Co. v. PUCO*, 115 Ohio St. 311, 319, 154 N.E. 239, 242 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used such language in other connections).

<sup>4</sup> R.C. 133.01(C) states that the taxing authority of a county is the board of county commissioners.

cooperating with the department of transportation in the planning, improvement, and construction of state highways, paying the counties' portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads....

R.C. 4501.03 provides that the Registrar of Motor Vehicles shall pay the moneys received from the motor vehicle license tax into the state treasury to the credit of the auto registration distribution fund for distribution pursuant to R.C. 4501.04. R.C. 4501.04 provides in pertinent part:

(A) Thirty-four per cent of all such moneys are for the use of the municipal corporation or county which constitutes the district of registration....

The county portion of such funds shall be retained in the county treasury and shall be used *for the planning, maintenance, repair, construction, and repaving of public streets, and maintaining and repairing bridges and viaducts...[payments on highway improvement bond obligations]; and for no other purpose.*

....

(C) Forty-seven per cent of all such moneys shall be for the use of the county...*for the planning, construction, reconstruction, improvement, maintenance, and repair of roads and highways; maintaining and repairing bridges and viaducts...[and payments on highway improvement bond obligations].* (Emphasis added.)

See R.C. 4501.04(B) and (D) (providing for the distribution of additional moneys from the auto registration distribution fund for use by the counties for the purposes specified in R.C. 4501.04(C)). R.C. 4501.04 does not expressly authorize the expenditure of license tax moneys to build facilities for the county engineer. Moreover, since the permissible uses of the motor vehicle license tax are even more limited than the permissible uses of the motor vehicle fuel excise tax, *see* 1980 Op. Att'y Gen. No. 80-016 at 2-74, I find no authority for a county to expend moneys derived from the motor vehicle license tax for construction of a facility for the county engineer. In fact, unlike R.C. 5735.27(A)(3), R.C. 4501.04 does not even authorize the use of motor vehicle license tax revenues for the construction of a building to house road machinery and equipment. Therefore, I conclude that a county may not expend moneys derived from the motor vehicle license tax for the construction of a facility for the county engineer.<sup>5</sup>

Therefore, it is my opinion and you are hereby advised that:

1. Moneys derived from the motor vehicle fuel excise tax imposed by R.C. 5735.05 and R.C. 5735.25 may be expended only for the purposes specified in R.C. 5735.27(A)(3) and (A)(4), and such moneys may not be expended to construct a facility for the county engineer other than a building suitable for the housing of road machinery and equipment.
2. Moneys derived from the state motor vehicle license tax imposed by R.C. 4503.02 may be expended only for the purposes specified in that section and in R.C. 4501.04, and such moneys may not be expended to construct any type of facility for the county engineer.

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<sup>5</sup> R.C. 4504.02 provides that each county may impose an additional motor vehicle license tax of five dollars per vehicle to be used for certain enumerated purposes. R.C. 4504.05 provides for distribution of the county tax proceeds in accordance with R.C. 4504.02. Since the purposes enumerated in R.C. 4504.02 are identical to those enumerated in R.C. 4503.02, my conclusion that state motor vehicle tax moneys may not be used to construct facilities for the county engineer applies also to moneys derived from the county license tax.