

it is necessary, in order to hold said lands, to pay taxes on the same the trustees would be authorized to pay those taxes from the general appropriations made by the General Assembly to the college, the same as they would be authorized to make any other expenditure from said appropriation for the purpose of preserving and protecting the donated property.

While the authority extended to the trustees by the statute in question is broad and limited only by an abuse of discretion in accepting such donations, it does not extend authority to trustees, in my opinion, to accept property for speculative purposes. To accept a donation of property which is of no practical benefit whatever to the college would clearly be beyond the authority of the trustees and especially so if the donation carried with it an obligation to expend money for its preservation. Clearly, if property were unproductive and had no immediate prospects of becoming productive but on the other hand entailed some expense for its preservation, it could not be accepted by authority of the aforesaid statute.

While you state in your communication that although this property is now unproductive it may prove to have some value to the college in later years, I am of the opinion that unless there is some prospect of its immediate productivity, or unless it is now of some practical value to the college or will in the immediate future serve some useful purpose of the college, it would be an abuse of discretion on the part of the trustees to accept it.

It is possible, of course, that land of that kind may now be unproductive and may have been so far some time because of the lack of proper care or cultivation and that it may be made productive immediately by proper cultivation. In that case it would not be said that it was entirely unproductive but held possibilities of serving some immediate good by way of helping the college. To simply say, however, that it is unproductive and may possibly prove of some value to the college in later years does not take it out of the field of pure speculation and under such circumstances the trustees are without authority to receive it.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

2210.

MUNICIPALITY—PROCEEDS OF GAS AND MOTOR VEHICLE LICENSE TAXES APPLICABLE FOR TRAFFIC SIGNS AND PAINT FOR MARKING PARKING SPACES AND TRAFFIC LINES.

*SYLLABUS:*

*A municipality may legally expend its portion of the gasoline and motor vehicle license taxes for the purpose of purchasing and installing traffic signs and to pay the cost of paint used in marking spaces and traffic division lines.*

COLUMBUS, OHIO, August 6, 1930.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“May a municipality’s portion of the Motor Vehicle License and Gasoline

Tax receipts be legally used for the purpose of purchasing and installing 'No Parking', 'Boulevard Stop', 'Stop', and other traffic signs, and to pay the cost of paint used to mark parking spaces and traffic division lines.

Opinions Nos. 1370, dated January 7th, 1930, and 1896, dated May 22nd, 1930, are pertinent."

In view of the opinions to which you refer it will be unnecessary to discuss at length the provisions of the statutes relating to the distribution of the taxes to which you refer. Suffice it to say that Sections 5541-8 and 6309-2, General Code, in substance authorize the funds arising thereunder to be used for the purpose of maintenance, repair and construction of public streets, and Section 5537, General Code, authorizes the funds distributed thereunder to be used for maintenance and repair of streets. There are, of course, technical distinctions which need not be considered for the purposes of this opinion.

In my Opinion No. 1370, to which you refer, it was held, as disclosed by the syllabus, that:

"A municipal corporation may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purpose of paying the cost of installing traffic signals or the cost of rentals thereof."

In the body of said opinion it is stated:

"The basic idea of the gasoline tax and the motor vehicle license fee seems to be the physical improvement of the surface of the streets."

It is further stated in said opinion that:

" \* \* \* While undoubtedly traffic signals contribute to the safety of the traveling public, it must be said that such signals have no relation whatever to the actual preservation of the life of the pavement itself. It is a police regulation pure and simple. The convenience of the traveling public is aided by police officers who afford protection to motorists and, in view of congested traffic conditions, the need of such officers becomes more important. Prior to the adoption of traffic signals police officers performed the duties at busy intersections which traffic signals are now supposed to perform. It is believed that it would be just as logical to hold that the salary of police officers should be paid out of the gasoline tax as it would be to hold that the cost of traffic signals should be paid therefrom. While traffic signals are necessary incidents in connection with the utility of streets, it would seem that the Legislature as yet has not authorized the cost of the same to be paid out of the gasoline tax. The maintenance of traffic while a necessary police function, is not the 'maintenance' of the street itself, and the purpose of said tax as hereinbefore stated, is for the physical improvement of the surface of the street."

In my Opinion No. 1896, to which you refer, it was held that the cost of metal disks could be paid from such funds on the theory that they actually became a part of the street itself.

It is a difficult task to determine whether expenditures for the purposes concerning which you inquire may properly be made from the funds in question. In one sense, of course, parking, stop and similar signs are placed upon the public streets solely for purposes of police regulation, and constitute warnings which assist in the prevention of the violation of law or constitute safeguards for traffic. So also with respect to the painting of parking spaces and traffic division lines. Viewed in this

light, these expenditures might be treated as unauthorized, although the objects purchased are placed upon the highways, or at least within the rights of way. I feel, however, that such a construction is too narrow. For years it has been the practice of the Department of Highways of the State to expend the funds which it derives from these same taxes for the purposes concerning which you inquire. In days of modern traffic a public highway can scarcely be said to be complete without the appropriate markings universally used. In my opinion, the marking of a public highway constitutes a legitimate part of its construction and maintenance. Hence, it must be concluded that funds available for construction and maintenance may be expended for such marking.

There exists no reason why the same rule should not be recognized with regard to municipal streets. If the marking of highways be a legitimate part of the construction, then certainly the municipality may use these funds for the same type of marking with respect to its streets, for I am unable to say that more restrictive language is used with respect to the application of these funds by municipalities than is used with reference to the expenditure of the State's portion by the State Highway Department.

It must be conceded that the distinction between expenditures for these purposes and for traffic lights is of considerable difficulty. I feel, however, that traffic lights are not such a part of street construction or maintenance as to warrant including their cost within the purposes of these taxes. They constitute, as was stated in my previous opinion, substantially a substitution for a police officer in the regulation of traffic and, until the Legislature has spoken, I do not feel warranted in extending the purposes of the taxes here in question to that point.

In view of the foregoing, I am of the opinion that a municipality may legally expend its portion of the gasoline and motor vehicle license taxes for the purpose of purchasing and installing traffic signs and to pay the cost of paint used in marking parking spaces and traffic division lines.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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2211.

APPROVAL, BONDS OF MARTINS FERRY CITY SCHOOL DISTRICT,  
BELMONT COUNTY, OHIO—\$8,500.00.

COLUMBUS, OHIO, August 6, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

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2212.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND UNITED  
CORK COMPANIES, CLEVELAND, OHIO, FOR INSULATION IN  
STORE ROOM, COLD STORAGE, KITCHEN AND EQUIPMENT BUILD-  
ING, CLEVELAND STATE HOSPITAL, CLEVELAND, OHIO, AT AN  
EXPENDITURE OF \$6,950.00—SURETY BOND EXECUTED BY AMER-  
ICAN SURETY COMPANY, OF NEW YORK.

COLUMBUS, OHIO, August 6, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State