

I am therefore of the opinion that, boards of education are not empowered by Section 7732, General Code, as enacted in House Bill No. 150, of the 93rd General Assembly, to borrow money and issue notes to enable them to obtain funds to purchase school busses and other transportation equipment as provided by statute. The statute merely extends to boards of education the power to purchase transportation equipment on the installment plan and to enter into contracts with dealers for the purchase of such equipment by the payment of not less than one-fourth of the purchase price in cash and the balance in payments as provided by statute. Deferred payments to be evidenced by notes issued to the person or persons who sell the equipment.

Respectfully,

THOMAS J. HERBERT,

Attorney General.

1162.

TOWNSHIP ROADS—WORK-RELIEF EMPLOYEES' COMPENSATION FUND—PREMIUMS, HOW PAID—MEN EMPLOYED SOLELY IN CONSTRUCTION, MAINTENANCE, WIDENING OR RECONSTRUCTION—SECTIONS 3496-1 TO 3496-16, 5541-8, G. C.

SYLLABUS:

Funds distributed to a township under the provisions of Section 5541-8, General Code, may be used to pay premiums to the Work-Relief Employees' Compensation Fund pursuant to Sections 3496-1 to 3496-16, inclusive, General Code, for the protection of men employed by the township SOLELY in connection with the construction, maintenance, widening or reconstruction of township roads.

COLUMBUS, OHIO, September 9, 1939.

HON. T. B. WILLIAMS, *Prosecuting Attorney, New Lexington, Ohio.*

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

"I would like to have your opinion on the following statement of facts—

Monday Creek Township in this county has several men who are hired by the township to work on the township roads. In order to protect such employees the township must contribute to the State Insurance Fund under the Workmen's Compensation Law. The Industrial Commission has sent the township

a bill for the amount due it from the township. What I desire to know is must this be paid out of the General Fund of the township, or can it be paid out of the 'gasoline money' obtained by the township under Section 5442-8, General Code."

You have orally advised that your letter refers to work-relief as defined in Section 3496-1(b), General Code.

The Public Work-Relief Compensation Act was passed by the 91st General Assembly, effective May 17, 1936, being House Bill No. 495. Said act, which has been codified as Sections 3496-1 to 3496-16, inclusive, General Code, provides as stated in its title:

"A system of compensation, death benefits, and the payment of medical, nurse and hospital services, medicine and funeral expenses for public work-relief employees who are injured, and the dependents of such as are killed, in the course of their employment."

Section 3496-1 (c), General Code, declares a township to be an employer within the meaning of the act. Section 3496-5, General Code, reads in part as follows:

"Every employer mentioned herein, shall contribute to the public work-relief employees' compensation fund the amount of money determined by the industrial commission. *Such contributions may be made in whole or in part out of any relief funds or any other available public funds, regardless of the manner in which said funds were raised.* The officer of any employer mentioned herein having charge of the expenditures of funds for relief purposes, shall immediately upon the operative date of this act and from time to time thereafter, set aside and maintain as a special fund out of which contributions to the work-relief funds as the industrial commission may determine on an actuarial basis as reasonably necessary to cover the premium obligations of such employer." (Emphasis the writer's.)

The italicized language of the above quoted section would appear to authorize payment of premiums by the township into the Public Work-Relief Employees' Compensation Fund out of any township funds, regardless of how same were raised. Where taxes are levied for a specific purpose, however, said language would be in contravention of the provisions of Section 5 of Article XII of the Ohio Constitution, which reads as follows:

"No tax shall be levied, except in pursuance of law; and

every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

It, therefore, becomes apparent that authority must be found in the levying and distributive sections of the additional Gasoline Tax Law for payment of said premiums from funds derived by the township under the provisions of Section 5541-8, General Code, (inadvertently referred to in your letter as Section 5442-8, General Code).

Section 5541, General Code, levies said tax and sets forth the purpose of the same in part as follows:

"For the purpose of providing revenue for supplying the state's share of the cost of constructing, widening and reconstructing the state highways of this state, and also for supplying the state's share of the cost of eliminating railway grade crossings upon such highways, and also for enabling the several counties, townships, and municipal corporations of the state properly to construct, widen, reconstruct and maintain their public highways, roads and streets, * * *."

Section 5541-8, General Code, provides for the distribution of said gasoline tax funds and more specifically defines the purpose for which they may be expended. Said section, as amended by House Bill No. 17, of the 93rd General Assembly, effective July 18, 1939, in so far as pertinent to your inquiry, reads as follows:

"When appropriated by the General Assembly such highway construction fund shall be appropriated and expended in the following manner and subject to the following conditions:

* * * * * * * * *

Seventeen and one-half per cent of said highway construction fund shall be appropriated for and divided in equal proportions among the several townships within the state, and shall be paid on vouchers and warrants drawn by the auditor of state to the county treasurer of each county for the total amount payable to the townships within each of the several counties. Upon receipt of said vouchers and warrants each county treasurer shall pay to each township within the county its equal proportional share of said funds which shall be expended by each township for the sole purpose of constructing, maintaining, widening and reconstructing the public roads and highways within such township.

Provided, however, that no part of said funds shall be used for any purpose except to pay in whole or part the contract price

of any such work done by contract *or to pay the cost of labor in constructing, widening and reconstructing such roads and highways* and the cost of materials forming a part of said improvement; * * *." (Emphasis the writer's.)

You state that the men are hired by the township to work on township roads and I am assuming that said work consists of constructing, maintaining, widening or reconstructing said roads and that they perform no other duties apart from their work on said roads.

The term "cost" has been defined in Webster's New International Dictionary as:

"Expenditure; outlay, as of money, time, labor, etc; that which has involved the expenditure of money."

As above noted, the township is required by law to give its relief employes the same protection against injury as are other public employers by contributing to the Work-Relief Employees' Compensation Fund and as this expense, in the case you present, is one required as part of the cost of labor and as a direct result of keeping its roads in condition for the traveling public, it is my opinion that it falls within the spirit, as well as the letter, of Section 5541-8, General Code, *supra*, which permits a township to use said gasoline tax fund "to pay the cost of labor in constructing, widening or reconstructing such roads and highways."

You are probably familiar with the provisions of House Bill No. 675, enacted by the 93rd General Assembly, under the provisions of which, on July 1, 1939, cities and counties became the sole relief areas and as such are now charged with payment of premiums to the Industrial Commission for work-relief employes, Section 3391-9, General Code. This opinion is, therefore, limited to premiums due from the township prior to the date said House Bill No. 675 went into effect.

It is my opinion, therefore, in specific answer to your question, that funds distributed to a township under the provisions of Section 5541-8, General Code, may be used to pay premiums to the Work-Relief Employees' Compensation Fund pursuant to Sections 3496-1 to 3496-16, inclusive, General Code, for the protection of men employed by the township *solely* in connection with the construction, maintenance, widening or reconstruction of township roads.

Respectfully,

THOMAS J. HERBERT,
Attorney General.