

3847.

APPROVAL, BONDS OF MAPLE HEIGHTS CITY SCHOOL DISTRICT,
CUYAHOGA COUNTY, OHIO—\$41,000.00.

COLUMBUS, OHIO, December 11, 1931.

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

3848.

APPROVAL, BONDS OF VILLAGE OF PUT-IN-BAY, OTTAWA
COUNTY, OHIO—\$6,542.00.

COLUMBUS, OHIO, December 11, 1931.

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

3849.

APPROVAL, BONDS OF FRANKLIN RURAL SCHOOL DISTRICT,
MUSKINGUM COUNTY, OHIO—\$120,000.00.

COLUMBUS, OHIO, December 11, 1931.

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

3850.

APPROVAL, NOTES OF NORTHRIDGE RURAL SCHOOL DISTRICT,
MONTGOMERY COUNTY, OHIO—\$170,000.00.

COLUMBUS, OHIO, December 11, 1931.

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

3851.

LIQUOR LICENSE TAX—UPON REPEAL. PROCEEDS DISTRIBUTED
ACCORDING TO PRIOR LAW—FUNDS ARISING SINCE REPEAL.
DISTRIBUTED AS LEGISLATURE MAY PROVIDE.

SYLLABUS:

1. *The proceeds of the liquor license tax arising under Section 6071, and related sections of the General Code, from levies made prior to the effective date*

of the repeal of Sections 6093 et seq. should be distributed in accordance with the law in effect prior to said repeal.

2. *Such funds arising since the date of such repeal, should be held in the county treasury to the credit of the undivided liquor tax fund until such time as the legislature provides for the distribution thereof.*

COLUMBUS, OHIO, December 12, 1931.

HON. E. G. MATHEWS, *Prohibition Commissioner, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of a communication from your predecessor, which reads:

“I have been proceeding with the Dow-Aiken tax as my predecessors had been doing. We are assessing the tax where trafficking is shown, in case, of course, the owner had knowledge, and in cases, where we find from investigation, that the tax has been erroneously and illegally assessed, we proceed to abate the same.

I understand that the disposition of this tax to the state and local subdivisions has been in the past, handled under Section 6093.

The question has now been raised that this section has been repealed and by the Legislature of 1929. Will you kindly advise if this is the case, and if so, what will become of these taxes already collected and under process of collection?”

Section 6071, General Code, which provides for the so-called Dow-Aiken tax, reads as follows:

“Upon the business of trafficking in spiritous, vinous, malt or other intoxicating liquors, there shall be assessed yearly and paid into the county treasury, as provided by Sections 6072, and following, of the General Code, by each person, corporation, or co-partnership engaged therein the sum of one thousand dollars.”

Subsequent sections provide for the placing of the levy upon the tax duplicate by the county auditor to be collected by the county treasurer, and for penalties for non-payment. See Sections 6077 to 6085, inclusive; also Sections 6212-30 to 6212-33, inclusive. The latter group of sections was a part of the so-called prohibition enforcement act, and in some respects, modified the original Dow-Aiken law, but only to the extent of the inconsistency of the two acts. See Opinions of the Attorney General for 1922, page 185.

Sections 6093 to 6096, General Code, provided in detail, for the distribution of the “revenues and fines” arising under the Dow-Aiken law, and as stated in your letter, these sections were repealed by the 88th General Assembly, in an act found in 113 O. L., 685, which was enacted for the purpose of repealing a large group of sections which were described in the title of said act as being “obsolete, unconstitutional or unnecessary.”

It is believed unnecessary, for the purpose of this opinion, to review in detail the various provisions of the Dow-Aiken law, or the prohibition enforcement act. Suffice it to say that it is clear the said tax and penalties are to be collected by the county treasurers, after various steps have been

taken to have the same placed upon the duplicate "in like manner as other assessments." See Sections 6077, 6078, 6080, 6085 and 6212-31, General Code.

It is further clear that there is now no provision in the Dow-Aiken law which provides for the distribution of the said taxes and penalties; on the other hand, the state prohibition enforcement act contains no provision for the distribution of said tax unless it is included within the terms of Section 6212-19, which provides

"Money arising from fines and forfeited bonds shall be paid one-half into the state treasury credited to the general revenue fund, one-half to the treasury of the township, municipality or county where the prosecution is held, according as to whether the officer hearing the case is a township, municipal, or county officer."

While it could be argued with some degree of plausibility that the term "fine" in the section last above quoted, includes the assessments under consideration, for the reason that in view of the fact such business is wholly outlawed the assessment is in the nature of a fine or penalty, however, it seems that the statutes treat such receipts as assessments and I am inclined to the view that the assessments and penalties thereon are not to be regarded as fines. Of course, the conclusion is not so clear, in so far as the penalty is concerned, for the reason that the terms "fine" and "penalty" are frequently synonymous. However, in the strict sense, it is believed that the term "fine" usually has reference to monetary punishment meted out for the violation of criminal law, whereas the term "penalty," generally speaking, refers to a civil obligation arising because of some delay.

While it must be admitted that the distinction above drawn, is not so marked, it is believed that by taking the statutes under consideration as a whole, the conclusion must be that in using the term "fine" in Section 6212-19, supra, the Legislature referred to those instances where a fine is imposed for a criminal violation and does not include within its terms penalties assessed for the non-payment of the liquor tax.

The foregoing impels the conclusion that neither the Dow-Aiken Law nor the Prohibition Enforcement Law provides for the distribution of the liquor license funds. It will therefore be necessary to examine other sections of the General Code, to determine what, if any, provision is made therein for the distribution of such funds. Section 5625-10, General Code, among other things, provides that all revenue derived "from sources other than the general property tax, unless the law prescribes its use for a particular purpose, shall be paid into the general fund." This section last above quoted might dispose of the question were it not for the provisions of Section 2641, General Code, as amended by the 89th General Assembly, in Senate Bill No. 323. Prior to the amendment of Section 2641, supra, in its present form, it contained the same provision relative to the power of the Bureau of Inspection and Supervision of Public Offices to require the county treasurer to carry accounts designated as "the undivided liquor tax fund." It is further understood that the Bureau has for a number of years required such funds to be set up. It would therefore seem that since the Legislature, when it repealed the sections distributing said funds, did not see fit to repeal the sections with reference to placing said funds in the undivided liquor tax fund, did not intend to authorize such tax to be paid into a general fund. In other words,

it would appear the legislature intended that such funds should be divided in some manner. As the law now stands, there is full authority to levy and collect such taxes but there is no provision for the distribution thereof. It would therefore seem advisable to retain such receipts in the undivided liquor tax funds until such time as the legislature by appropriate action provides for their distribution.

The foregoing will apply to those funds which are the proceeds of levies made after the taking effect of the act repealing Section 6093 et seq. General Code. Funds which are the result of levies made before the effective date of said act should be distributed in accordance with the law in force at the time the levy was made. See Opinion No. 3493, issued under date of August 8, 1931, also Opinions of the Attorney General for 1919, page 1628.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion that:

1. The proceeds of the liquor license tax arising under Section 6071, and related sections of the General Code, from levies made prior to the effective date of the repeal of Sections 6093 et seq. should be distributed in accordance with the law in effect prior to said repeal.
2. Such funds arising since the date of such repeal should be held in the county treasury to the credit of the undivided liquor tax fund until such time as the legislature provides for the distribution thereof.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3852.

APPROVAL, CONTRACTS FOR HIGHWAY IMPROVEMENT IN JEFFERSON AND MUSKINGUM COUNTIES.

COLUMBUS, OHIO, December 12, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3853.

APPROVAL, CONTRACT FOR ROAD IMPROVEMENT IN FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, December 12, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*