

2403.

FUNDS—UNEXPENDED BALANCE OF SPECIAL LEVY OF LOUDON TOWNSHIP, CARROLL COUNTY, APPLIED TO ITS STATE ROADS—QUESTION IN OPINION NO. 2298, DISCUSSED.

SYLLABUS:

Further discussion of question under consideration in Opinion No. 2298, dated June 30, 1928.

COLUMBUS, OHIO, July 30, 1928.

HON. FRANK F. COPE, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, as follows:

“In reply to your Opinion No. 2298, of June 30, 1928, wish to say that we are still at a loss as to the disposition to make of the money, as I. C. H. No. 371, Sections A and B have, under the new laws become a state road and the state is maintaining them. Consequently this fund, if it remains in a special fund, would be absolutely useless.

I am enclosing a copy of the legal advertisement published pursuant to the resolution of the board. It appears to me that this is of such general nature that we may be able to utilize the fund. I am unable to get a copy of the ballot but I am informed that it was printed substantially from the advertisement.

In event this money cannot be used by the township trustees for other road purposes, what disposition shall we make of it, and if it can be transferred, how may it be accomplished?”

The copy of the legal notice which you enclose is as follows:

“Notice is hereby given to the qualified electors of Loudon Township, Carroll County, Ohio, that at the regular election to be held on the third day of November, 1915, it will be submitted to the qualified electors of Loudon Township, Carroll County, Ohio, the proposition to increase the tax rate of Loudon Township, Carroll County, Ohio, two mills for a period not to exceed five years beginning with the fiscal year of 1916.

The amount of taxes that may be raised by the levy of taxes at the maximum rate authorized by Sections 5649-2 and 5649-3 of the General Code of Ohio will be insufficient to pay the indebtedness of said township for its share of the costs and expenses for the maintenance, repair and improvement of the inter-county highways constructed in said township, Carroll County, Ohio.

Said election will be held at the regular voting precinct of Loudon Township, Carroll County, Ohio.

By order of the Trustees.

T. O. RICHARDS,
W. S. BINGER,
E. E. ROOF.”

In your original letter, in response to which Opinion No. 2298 was rendered, the language of the ballot used in the vote for the proposed levy was not set forth and consequently it was necessary to make certain assumptions in the disposition of your question. You will observe that the second paragraph of my prior opinion is as follows:

"At the outset, it should be noted that the resolution of the township trustees, as copied in your letter, is much broader in its terms than your statement as to the nature of the proposition submitted to and voted upon by the electors. The resolution reads, 'to pay the indebtedness of said Loudon Township for its share of cost and expenses, for the maintenance, repair and improvement of inter-county highway to be constructed in * * * Loudon Township', while, according to your statement, the proposition submitted to and voted by the electors was whether or not a special levy should be authorized to improve a certain road known as 'I. C. H. No. 371, sections A and B'. In this opinion I shall assume that you have correctly stated the contents of the ballot, though I think it manifest that, if the legal notice and the question submitted were as broad in their terms as the resolution, the funds in question may be expended according to law for the maintenance and repair or to improve any inter-county highway in the township."

Again, later in the opinion, appears the following language:

"Although the question of permitting a levy of taxes at the rate of two mills in excess of the maximum rate of taxation provided by Sections 5649-2 and 5649-3, General Code, for a period of five years, beginning with the fiscal year 1916, was contained in the resolution of the board of county commissioners, a copy of which was certified to the deputy state supervisors of elections, the electors apparently only authorized a special levy for the improvement of certain sections of a particular inter-county highway. In so stating, I am assuming that the ballot made reference to the specific highway, the improvement of which was then contemplated."

Consequently my conclusion that the fund in question could only be used for the maintenance, repair and improvement of the particular highway, the improvement of which was then contemplated, was predicated upon an erroneous assumption in view of the additional facts which you have now supplied. The legal notice heretofore quoted refers to the additional levy as being necessary for the purpose of paying the township's share of the cost and expense of maintenance, repair and improvement of inter-county highways constructed in said township. You further state in your letter that you are unable to get a copy of the ballot but that you are informed that it was printed substantially from the advertisement. In view of these additional facts, which were not before me in my earlier consideration of the question, I think it may fairly be assumed that the ballot, and consequently the authority of the affirmative vote, authorized the levy of taxes for the maintenance, repair and improvement of all inter-county highways located within the township. This being so, it of course follows that the unexpended balance of this fund may be used for the purpose of improving, maintaining and repairing any inter-county highway located within the township. While, as you state, the Norton-Edwards act has placed the primary duty of maintaining state roads upon the state, it does not follow that a township may not expend money for the same purpose. As pointed out in my prior opinion, under authority of Section 1203, General Code, (112 O. L. 444), the township trustees may still cooperate in the construction of a part of the state highway system and the unexpended balance in this fund could be utilized for this purpose. Again, Section 3298-1, General Code, provides as follows:

"The board of trustees of any township shall have power, as hereinafter provided, to construct, reconstruct, resurface or improve any public road or roads, or part thereof, under their jurisdiction. Such trustees shall also have the power to construct, reconstruct, resurface or improve any county road or

inter-county highway or main market road within their township; provided, however, that in the case of a county road the plans and specifications for the proposed improvement shall first be submitted to the county commissioners of the county and shall receive their approval and in the case of an inter-county highway or main market road such plans and specifications shall first be submitted to the state highway commissioner and shall receive his approval. The township trustees shall have power to widen, straighten or change the direction of any part of a road in connection with the proceedings for its improvement."

Accordingly, township trustees still have the power to improve state roads, provided that the plans and specifications for such improvement are first submitted to the director of highways and his approval thereof secured. The language of the ballot, as I assume it to be, and the ensuing tax levy were broad enough to authorize the township trustees to utilize the fund for the payment of the township's portion of the maintenance, repair and improvement of any inter-county highway within the township, and I believe that an improvement of such a highway, undertaken under Section 3298-1 et seq. of the General Code, could be made from the unexpended balance here under consideration.

I am accordingly of the opinion that, in view of the additional facts you have submitted to me, the unexpended balance of the special levy may be used in the improvement of any state road located within the township, but such balance may not be used upon any township or county road. Such unexpended balance cannot be transferred to any other purpose because of the restrictions now imposed by law, a discussion of which is found in my prior opinion and which need not be here repeated.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2404.

TAX AND TAXATION—AUTHORITY OF TOWNSHIP TRUSTEES TO
SUBMIT TO ELECTORS TAX LEVY FOR GENERAL CONSTRUCTION
AND REPAIR OF ROADS—FOR SPECIFIC ROAD IMPROVEMENT.

SYLLABUS:

1. *Township trustees are not authorized by the terms of paragraph 7 of Section 5625-15, General Code, to submit to the electors of the township the question of making a tax levy over and above fifteen mills for the general construction, reconstruction, resurfacing and repair of roads.*

2. *Under authority of paragraph 6 of Section 5625-15, General Code, township trustees may, however, submit to the electors of the township the question of levying a tax in excess of the fifteen mill limitation for the purpose of constructing a specific road improvement, if the estimated life of such improvement is five years or more.*

COLUMBUS, OHIO, July 30, 1928.

HON. J. R. POLLOCK, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion as follows: