

"May the municipality's share of gasoline tax be used for the purchase of street repair equipment, such as road rollers, trucks, etc.?"

Section 5537, General Code, of Ohio, provides:

Thirty per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the auditor of state to the municipal corporations within the state in proportion to the total number of motor vehicles registered within the municipalities of Ohio during the preceding calendar year from each such municipal corporation as shown by the official records of the secretary of state, and shall be used by such municipal corporations for the *sole purpose* of maintaining and repairing the public streets and roads within such corporation.

"Wherever a municipal corporation is on the line of an inter-county highway or main market road, one-sixth of the amount so paid to any municipal corporation shall be used by such municipal corporation for the *sole purpose* of maintaining and repairing such streets and roads within such municipal corporation, as may be designated by the director of highways and public works as extensions or continuances of inter-county highways or main market roads.'

I enclose herewith copy of Opinion No. —, to Hon. G. Walter Booth, prosecuting attorney. Akron, Ohio, which deals with this same question as it respects the power of the county to purchase such equipment.

Inasmuch as the municipalities had, prior to the enactment of the gasoline tax act, authority to purchase such machinery and equipment, irrespective of the provisions contained in said act, and in view of the limitation in section 5537, limiting the use of said tax to the "sole purpose of maintaining and repairing the public streets and roads within such corporation," I am of the opinion that the answer to the question you propound is the same as that contained in the enclosed copy of opinion with respect to authority of the county.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

3102.

SCHOOLS—LUNCH ROOM FUND PROVIDED IN SECTION 4762-1 G. C.  
CONSIDERED PART OF GENERAL SCHOOL FUNDS.

*SYLLABUS:*

*The lunch room fund provided in section 4762-1 G. C., shall be considered as a part of the general school funds to be deposited in the usual depositaries and paid out upon warrants properly signed by the president and clerk of the board of education as provided in section 4768 G. C.*

COLUMBUS, OHIO, January 28, 1926.

HON. A. B. PECKINPAUGH, *Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you submit the following inquiry:

"Under the provisions of section 4762-1 G. C., 111 O. L. 316, is the lunch room fund therein provided to be considered as a part of the school funds of the district and deposited in the depositories provided for such school funds, and paid out upon warrants signed by the clerk and president of the board of education, or may such lunch room fund be considered as entirely separate from the regular funds of the school district and deposited in a bank other than the regular depository to be paid out in a manner designated by the board of education?"

Section 4762-1 G. C., to which you refer, reads as follows :

"The board of education of any school district may provide facilities in the schools under its control for the preparation and serving of lunches to the pupils, the teachers, and to other employees therein, and may provide for the operation and management of such lunch rooms, which shall not be operated for profit; provided, that the privileges and facilities granted hereunder by any board of education shall apply to all pupils and teachers, and no restrictions or limitations shall operate against any such pupil or teacher in the use of such facilities except for reasons applicable to all alike. *The accounts of earnings and expenses of school lunch rooms shall be kept in a lunch room fund, separate from other transactions of the board of education. A fund of operating capital for lunch rooms may be provided either by appropriation from the contingent fund or by accumulation from lunch room earnings.*"

Your question necessitates careful analysis of the language of the last two sentences of the above section. The second last sentence above provides that *the accounts of earnings and expenses of school lunch rooms shall be kept in a lunch room fund separate from other transactions.* This provision plainly deals with "the accounts of earnings and expenses" of such lunch rooms and provides that such accounts shall be kept in a lunch room fund.

The last sentence of the above section merely provides from what sources the operating capital for such lunch rooms may be appropriated.

Attention is also directed to the provisions of section 4768 G. C., and 4780 G. C., which read as follows :

"Sec. 4768. *No treasurer of a school district shall pay out any school money except on an order signed by the president or vice-president and countersigned by the clerk of the board of education, and when such school moneys have been deposited as provided by sections 7604-7608, inclusive, no money shall be withdrawn from any such depository, except upon an order signed by the treasurer and by the president or vice-president and countersigned by the clerk of the board of education, and no money shall be paid to the treasurer of the district other than that received from the county treasurer, except upon the order of the clerk of the board, who shall report the amount of such miscellaneous receipts to the county auditor each year immediately preceding such treasurer's settlement with the auditor.*"

"Sec. 4780. *The treasurer's accounts shall show the amounts received from the county treasurer, all sums received from other sources on the order of the clerk, the amounts paid out, and from what funds and for what purposes paid. A separate account of each fund must be kept, and each account balanced at the close of the school year, and the balance in the treasurer's hands belonging to each fund shown.*"

These sections provide the usual method of accounting required of the treasurer of a board of education and I am unable to discover anything in the recent enactment (section 4762-1, 111 O. L., 316) sufficient to remove or exempt the accounting therein provided for from the operation of the two sections last above quoted.

Section 7604 G. C., provides in part :

"That within thirty days after the first Monday in January, 1916, and every two years thereafter, the board of education of any school district by resolution *shall provide for the deposit of any or all moneys coming into the hands of its treasurer.*"

This provision needs no interpretation and is clearly to the effect that all boards of education shall provide a depository for any and all funds in its treasury and section 4762-1 G. C., in no wise exempts the "lunch room fund" from the above section.

Therefore, I am of the opinion that the lunch room fund provided in section 4762-1 G. C., shall be considered as a part of the general school funds to be deposited in the usual depositories and paid out upon warrants properly signed by the president and clerk of the board of education as provided in section 4768 G. C.

Respectfully,

C. C. CRABBE,

*Attorney General.*

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3103.

FINAL RESOLUTION ON IMPROVEMENT ON SANDUSKY-NORWALK  
ROAD, ERIE COUNTY.

COLUMBUS, OHIO, January 28, 1926.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

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3105.

APPROVAL, BONDS OF HARDIN COUNTY, \$6,300.00.

COLUMBUS, OHIO, January 27, 1926.

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