

Note from the Attorney General's Office:

1931 Op. Att'y Gen. No. 31-3305 was modified by
1977 Op. Att'y Gen. No. 77-079.

council to sit with open doors extends to a session of a city council while sitting as a 'committee of the whole,' and the public can not be excluded therefrom."

The only case there cited in support of the rule that meetings of the municipal council are not open to the public, in the absence of statute, is an English case decided in 1908, *Mayor, Aldermen and Burgesses of Tenby v. Mason*, 1 Ch. 403, 1 B. R. C. 282, where it is held as stated in the syllabus:

"In a municipal burough neither the public, nor the burgesses, nor reporters for newspapers, have the right to attend the meetings of the borough council without the consent of the council, expressed or implied."

With respect to its public aspects there is a close analogy between the council of a municipal corporation and other public boards. Each transacts public business and there is probably no good reason why one should be open to the public any more than the other. The English case cited above, while entitled to considerable weight, can not be said to be entirely dispositive of the question in this country because of the fundamental difference in viewpoint which exists with respect to the relation of the individual citizen to the governing authorities under the English and American systems of government. However, in the absence of any controlling American decision, I am inclined to follow this holding, especially since the doctrine of this case is stated as the rule in the text of *Corpus Juris* cited above.

Another circumstance that is entitled to some weight, at least, is that the Legislature of Ohio has specifically provided in Section 4239, General Code, that the meetings of a municipal council "shall be open at all times to the public." This would seem to indicate that if this provision had not been made, the Legislature would not have intended that such meetings need necessarily be open, and fortifies the conclusion that the meetings of the conservation council may be closed to the public since no provision is made requiring them to be open.

It is, of course, not my province to discuss questions of policy, and I am accordingly not expressing any opinion with respect to the wisdom of the adoption by the council of a course which might be misconstrued by the public. "Star Chamber" sessions are peculiarly susceptible of misinterpretation, since they are in a sense contrary to the spirit of free government. However, this may be, it follows from what I have heretofore said, that the conservation council may lawfully hold executive sessions from which all persons except members of the council are barred.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3305.

COUNTY FUNDS—GASOLINE TAX FUND RECEIVED UNDER SECTION 5537, G. C., NOT APPLICABLE FOR COMPENSATING ROAD PATROLMEN BUT MAY BE USED FOR PURCHASE AND ERECTION OF ROAD LIMIT SIGNS—SPECIFIC APPROPRIATION FROM ROAD AND BRIDGE FUND FOR ROAD PATROLMEN'S COMPENSATION, NECESSARY.

SYLLABUS:

1. *The funds derived from the gasoline tax as distributed to the county under section 5537, General Code, may not be expended for the compensation of a deputy detailed by the sheriff for the work of enforcing traffic regulations under sections 7246 et seq. of the General Code.*

2. *The funds distributed to the county under the provisions of section 5537, General Code, may be used to cover the cost of purchasing and erecting signs, as required by section 7250, General Code.*

3. *In providing for a deputy for the purpose of patrolling the roads under section 7251-1, General Code, a separate and specific appropriation should be made from the county road and bridge fund.*

COLUMBUS, OHIO, June 6, 1931.

HON. FANNIE M. MYERS, *Prosecuting Attorney, Mount Gilead, Ohio.*

DEAR MADAM:—Acknowledgment is made of your recent communication which reads:

“I am desirous of your written opinion relative to the appropriation and payment of compensation of a Road Patrolman, as provided in Section 7251-1.

1st (a) May the funds derived from the gasoline tax as distributed to the County under provision of 5537, be appropriated and expended for the compensation of such Road Patrolman?

1st (b) May said funds be used in payment for (road limit) signs as provided in 7250, G. C.?

2nd. Is the general appropriation as made by the County Commissioners at the beginning of each year for the purposes of labor and material from the County Road and Bridge Fund or gasoline M. and R. sufficient to comply with the provision of Section 7251-1 relative to the appropriation or should a separate and specific appropriation be made to equip and compensate such deputy or deputies for services rendered?”

Section 7251-1, General Code, to which you refer, is found in Chapter 19, Title IV, of the General Code. A group of sections in the chapter above mentioned relates to traffic regulations and has to do principally with enforcing the law with reference to maximum loads permitted on public highways or streets.

Section 7251, General Code, creates a liability for damages resulting to any street, highway or bridge by reason of such violation. This section also provides a fine for such violation.

Said Section 7251-1, General Code, reads:

“In those counties having forty miles or more of improved inter-county or main market roads the sheriff of each county shall and in all other counties may detail one or more deputies for the work of enforcing the provisions of this act (G. C. §§ 7246 to 7251-1); and the county commissioners of each county shall appropriate such amount of money annually, from the road fund of such county as shall be necessary to equip and to compensate such deputy or deputies for services rendered hereunder. The road superintendents and assistant road superintendents of the state highway department and patrolmen of the county highways may be deputized by the sheriffs of the counties in which they are employed, as deputy sheriffs, but shall receive no extra compensation.”

In analyzing the section last above mentioned, which was enacted by the 85th General Assembly (110 v., 319) it clearly appears that the appropriation for such a service as is contemplated in the section shall be appropriated "from the road fund of such county." It will be noted in connection with your inquiry, that the provisions of the so-called gasoline tax law were not in existence at the time of the enactment of said section. Your question then would appear to be whether the gasoline tax which is distributed to the counties may be said to be a "road fund" within the meaning of Section 7251-1, General Code.

Section 6956-1, General Code, expressly provides for a two mill levy to be made upon each dollar of taxable property of the county, for road purposes. It will be observed that at the time of the enactment of Section 7251-1, General Code, there was a "road and bridge fund."

Section 5537, General Code, which relates to the distribution of the first gasoline tax fund, contains the following:

"Twenty-five per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the auditor of state in equal proportions to the county treasurer of each county within the state, and shall be used for the sole purpose of maintaining and repairing the county system of public roads and highways within such counties."

Section 5541-8, General Code, which relates to the distribution of the so-called "second gasoline tax," contains the following:

"Five per cent of said highway construction fund shall be paid on vouchers and warrants drawn by the auditor of state in equal proportions to the county treasurer of each county within the state, and shall be expended by each county for the sole purpose of constructing, widening and reconstructing the county system of public roads and highways within such county."

From the foregoing it would appear that the enforcement of a criminal law which may indirectly tend to preserve the highways can not be said to be either maintenance or repair or the construction of a highway. While the term "road fund" as used in the section authorizing the appointment of a deputy to enforce the law might be broad enough to include any funds that could be used for road purposes, the provisions in the tax laws limiting the use to maintenance and construction respectively, would seem to be inconsistent with the use mentioned in Section 7251-1, General Code. Therefore, the gasoline tax laws being later in the order of enactment would control over the former ones.

It is believed that the foregoing will dispose of the first branch of your first inquiry. In considering the second branch of your first inquiry, it will be noted that Section 7250, to which you refer, authorizes the Director of Highways or the county commissioners to purchase and erect signs of substantial construction which will conspicuously indicate the limitation of weight of vehicle and load, and speed which will be allowed under the circumstances set forth in the section. The section further provides:

"The expense of the purchase and erection of signs provided for in this section shall be paid for from funds for the maintenance and repair of roads."

It may further be noted that under the provisions of Section 5625-9, General Code, each subdivision is required to establish a special fund for each special levy. In compliance with the provisions of this section and the instructions of the Bureau of Inspection and Supervision of Public Offices, it is believed that each county maintains a road and bridge fund and also a gasoline tax fund.

Section 5625-29, General Code, provides for the annual appropriation to be made by the taxing authority of each subdivision on or about the first day of each year, and authorizes supplemental appropriation measures which are found necessary, based on the revised tax budget.

From the foregoing, it would appear that in appropriating the money from the road fund, as authorized by section 7251-1, General Code, in order to comply with the provisions of other related sections of the so-called budget law, a specific appropriation should be made for the purposes contemplated.

In specific answer to your questions it is my opinion that:

1. The funds derived from the gasoline tax as distributed to the county under Section 5537, General Code, may not be expended for the compensation of a deputy detailed by the sheriff for the work of enforcing traffic regulations under Sections 7246 et seq. of the General Code.

2. The funds distributed to the county under the provisions of Section 5537, General Code, may be used to cover the cost of purchasing and erecting signs, as required by Section 7250, General Code.

3. In providing for a deputy for the purpose of patrolling the roads under Section 7251-1, General Code, a separate and specific appropriation should be made from the county road and bridge fund.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3306.

APPROVAL, BONDS OF WAYNE TOWNSHIP RURAL SCHOOL DISTRICT, PICKAWAY COUNTY, OHIO—\$35,000.00.

COLUMBUS, OHIO, June 6, 1931.

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

3307.

BOARD OF EDUCATION—CLERK-TREASURER UNAUTHORIZED TO WITHHOLD FROM TEACHERS' SALARIES, DUES IN MUTUAL BENEFIT ASSOCIATION AND PAY SAME TO SAID ASSOCIATION'S TREASURER.

SYLLABUS:

A board of education may not permit its clerk-treasurer to deduct from the salaries of teachers, with their consent, the amount of membership fees, dues, and