

2889.

GASOLINE AND MOTOR VEHICLE LICENSE TAX—CONSTRUCTION AND REPAIR OF SIDEWALKS—MUNICIPALITY MAY NOT USE ITS PORTION OF TAX FOR THIS PURPOSE.

SYLLABUS:

The municipality's portion of the proceeds of the gasoline and motor vehicle license taxes may not properly be used for the purpose of constructing and repairing sidewalks.

COLUMBUS, OHIO, January 30, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication reads:

“Question: May a municipality’s portion of the motor vehicle license and gasoline tax receipts be legally used for the purpose of constructing and repairing sidewalks along the streets of said municipality?”

The statutes providing for the use of the motor vehicle license tax and the gasoline tax have so frequently been set forth in previous opinions as to make it unnecessary to quote the statutes extensively herein. My opinion found in *Opinions of the Attorney General* for 1929, page 452, contains a rather lengthy discussion of the uses of said tax by municipalities. The syllabus of said opinion, reads:

“1. The cost of posts and wire mesh for repairing safety fences along the sides of streets and roadways and the cost of repairing loading platforms constructed in streets for the use of street car passengers may be paid from the funds arising from the motor vehicle license and gasoline tax receipts.

2. The proceeds of such taxes may not be used for the purposes of cleaning streets or removing ice and snow.

3. The cost of removing right angle curbs at street intersections and installing circular curbs may properly be paid from said tax receipts.”

The fundamental purpose of said taxes, as expressed by the legislature, was to benefit the users of motor vehicles and to defray certain normal public expenses occasioned by the operation of such vehicles. Ordinarily, it is difficult to see how a sidewalk could be said to be of any benefit to motorists, as such walks are clearly for the use of pedestrians. Of course, it could be argued that inasmuch as good sidewalks might prevent pedestrians from using the paved portion of the street proper, thereby aiding in the expeditious moving of motor traffic and also lessening the danger from accidents, they could be constructed from the funds considered. The conclusion of my opinion above mentioned, relative to the use of said funds for constructing a loading platform, in some respects tends to support the view that said funds may be used for sidewalks. However, there is a distinction for the reason that the loading platform comes directly in contact with the paved portion of the street, and its use in connection with aiding traffic, is real rather than imaginary. In view of the provisions of Section 5 of Article 12 of the Ohio Constitution, which requires a strict application of tax levies to the purpose for which they are levied, it would seem improper to use such funds for paying for sidewalks.

It is therefore my opinion that the municipality’s portion of the proceeds of the

gasoline and motor vehicle license taxes may not properly be used for the purpose of constructing and repairing sidewalks.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2890.

TOWNSHIP ROAD—MAINTENANCE AND REPAIR FUND—NO PORTION
MAY BE PAID TO A MUNICIPALITY SITUATED IN WHOLE OR IN
PART WITHIN SUCH TOWNSHIP.

SYLLABUS:

No part of the money in the road maintenance and repair fund of a township may be paid to a municipality situated either in whole or in part within such township, notwithstanding the fact that a portion of such money has theretofore been transferred under Section 5625-13c, General Code, to the township road maintenance and repair fund from another fund raised by taxes levied upon all the property within the township, including the property within such municipality.

COLUMBUS, OHIO, January 30, 1931.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“In 1917, the Township Trustees of Orwell Township issued bonds for the construction of a part of the Cleveland-Meadville Road, I. C. H. No. 15. Said road was constructed and part of it was in Orwell Township and part in the Village of Orwell, which is also in Orwell Township.

In order to pay the bonds as they fall due, a levy was made on all the taxable property in the township, including, of course, the Village, which levy ran for a period of ten years, the last money being raised in 1926, in accordance with said levy. In 1928, all the bonded indebtedness for said road had been fully paid, and, in fact, there was no bonded indebtedness at that time of said township for any other bonds, all outstanding obligations having been paid, of every kind and description.

At that time, there remained in the Bond an Interest Fund the sum of \$4,693.72, which had been raised by the tax levy above mentioned, and which was left over after all the bonds had been paid. In January of this year the Trustees of the township filed a petition in Common Pleas Court asking for a transfer of said money from the Bond and Interest Fund to the Township Road Maintenance and Repair Fund, by authority of General Code Section 5625-13c, there being no Sinking Fund in said township to which said money could be transferred. Upon hearing of the application, the Court ordered said money transferred, and it was so transferred by the Trustees and is now in the Township Road Maintenance and Repair Fund.

The Village of Orwell, which is located in Orwell Township, discovered that the transfer had been made, and is now demanding a part of this money due to the fact that the levy was made over the whole township. The trans-