

2795.

STREET SIGNS—PURCHASING AND ERECTING—MUNICIPAL CORPORATION—MOTOR VEHICLE LICENSE AND GASOLINE TAX RECEIPTS MAY NOT BE USED FOR SUCH PURPOSE.

SYLLABUS:

A municipality's portion of the motor vehicle license and gasoline tax receipts may not be used for the purpose of purchasing and erecting signs bearing the names of streets at street intersections.

COLUMBUS, OHIO, January 5, 1931.

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

GENTLEMEN :—Your letter of recent date is as follows :

“May a municipality's portion of the motor vehicle license and gasoline tax receipts be used for the purpose of purchasing and erecting street signs, that is, names of streets which are placed on standards at the curbs, and on buildings at corners?”

Various purposes for which the municipality's portion of the motor vehicle license and gasoline tax receipts may be used have been considered in a number of opinions of this office rendered to your bureau. A few of these which are pertinent to your inquiry should be here mentioned.

My opinion No. 1370 held that :

“A municipal corporation may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purpose of paying the cost of installing traffic signals or the cost of rentals thereof.”

Opinion No. 1896 held that the cost of metal discs placed on streets to mark off traffic zones could be paid by a municipality from these funds.

My opinion No. 2210 held as disclosed by the syllabus :

“A municipality may legally expend its portion of the gasoline and motor vehicle license taxes for the purpose of purchasing and installing traffic signs and to pay the cost of paint used in marking parking spaces and traffic division lines.”

In this last mentioned opinion, the following language is used :

“In days of modern traffic a public highway can scarcely be said to be complete without the appropriate markings universally used. In my opinion, the marking of a public highway constitutes a legitimate part of the construction and maintenance. Hence, it must be concluded that funds available for construction and maintenance may be expended for such marking.

There exists no reason why the same rule should not be recognized with regard to municipal streets. If the marking of highways be a legitimate part of the construction, then certainly the municipality may use these funds for the same type of marking with respect to its streets, for I am unable to say that more restrictive language is used with respect to the application of these funds by municipalities than is used with reference to the expenditure of the State's portion by the State Highway Department.”

The question which you present resolves itself into a determination of whether or not placing street signs either on standards at the curbs or upon buildings at street intersections constitutes part of the construction or maintenance of the street. Municipalities customarily place the names of streets at street corners regardless of whether the streets so marked be improved or maintained. These signs or name plates are not, like state highway markings, primarily for the convenience, benefit or safety of the motorists but rather are for the convenience of the municipality at large. In my view, the erection of street signs does not have any direct relation or bearing upon the matter of the construction or maintenance of a street, but is a distinct and separate municipal function the cost of which should be borne by the taxpayers at large rather than by the motorists.

Specifically answering your question, it is my opinion that a municipality's portion of the motor vehicle license and gasoline tax receipts may not be used for the purpose of purchasing and erecting signs bearing the names of streets at street intersections.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2796.

APPROVAL, BONDS OF BOARDMAN RURAL SCHOOL DISTRICT, MAHONING COUNTY, OHIO—\$170,000.00.

COLUMBUS, OHIO, January 5, 1931.

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

2797.

APPROVAL, ABSTRACT OF TITLE TO LAND OF WILLIAM J. O'BRIEN AND ELLA CROWE IN UNION TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, January 6, 1931.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—Some time ago you submitted to me for examination and approval an abstract of title, warranty deed, encumbrance estimate No. 1126 and certificate of the board of control, relating to the proposed purchase of three several tracts of land aggregating in amount 541.6 acres, which tracts of land are situated in Union Township, Scioto County, Ohio, and which are owned of record by William J. O'Brien and Ella Crowe, children and sole devisees of John W. O'Brien, deceased. The property here in question is more particularly described as follows:

"FIRST TRACT. A part of Surveys Nos. 15496 and 15836, beginning at a stake in Englebrecht run and in the n. e. corner of the Dosa Swords 5 acre tract, said stake is ten feet north of an old gate post in the former fence line;