

Note from the Attorney General's Office:

1976 Op. Att'y Gen. No. 76-074 was approved and followed by 2017 Op. Att'y Gen. No. 2017-008.

OPINION NO. 76-074**Syllabus:**

A county may, pursuant to R.C. 4504.02 and R.C. 5535.08, use the proceeds of a county motor vehicle licensed tax to help pay the cost of repairing township roads.

To: Ronald C. Carey, Clinton County Pros. Atty., Wilmington, Ohio
By: William J. Brown, Attorney General, November 8, 1976

I have before me your request for my opinion concerning the use of revenues from a county motor vehicle license tax. Specifically you have asked whether proceeds from a tax authorized by R.C. 4504.01 et seq. may be utilized for the purpose of repairing roads designated as township roads within the county.

The tax to which you refer may be levied by a board of county commissioners pursuant to R.C. 4504.02. The distribution of revenues generated by a county motor vehicle license tax is provided for in R.C. 4504.05 which reads as follows:

The moneys received by a county levying a county motor vehicle license tax shall be allocated and distributed as follows:

(A) First, for payment of the costs and expenses incurred by the county in the enforcement and administration of the tax;

(B) The remainder of such moneys shall be credited to funds as follows:

(1) That part of the total amount which is in the same proportion to the total as the number of motor vehicles registered in the municipal corporations in the county to the total number of motor vehicles registered in the county in the most recent registration year

ending on the thirty-first day of May, and including those vehicles registered during March and April as required in section 4503.10 of the Revised Code, shall be placed in a separate fund to be allocated and distributed as provided in section 4504.04 of the Revised Code.

(2) The remaining portion shall be placed in the county motor vehicle license and gasoline tax fund and shall be allocated and disbursed only for the purposes specified in section 4504.02 of the Revised Code, other than paying all or part of the costs and expenses of municipal corporations in constructing, reconstructing, improving, maintaining, and repairing highways, roads, and streets designated as necessary and conducive to the orderly and efficient flow to traffic within and through the county pursuant to section 4504.03 of the Revised Code.

R.C. 4504.04, to which subsection (B)(1) of the above section refers, provides for the payment of funds to municipal corporations for use in the planning, construction, reconstruction, maintenance or repair of streets within the municipality, which are shown on maps prepared pursuant to R.C. 4504.03. As such it provides no authority for the expenditures you contemplate.

R.C. 4504.05(B)(2) authorizes use of the remaining portion of the tax proceeds for any other purpose specified in R.C. 4504.02. That section provides in pertinent part:

For the purpose of paying the costs of enforcement and administering the tax provided for in this section; and for planning, constructing, improving, maintaining, and repairing public roads, highways, and streets, maintaining and repairing bridges and viaducts; paying the county's portion of the costs and expenses of cooperating with the department of transportation in the planning, improvement, and construction of state highways; paying the county's portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads; paying any costs apportioned to the county under section 4907.47 of the Revised Code; paying debt service charges on notes or bonds of the county issued for such purposes; paying all or part of the costs and expenses of municipal corporations in planning, constructing, reconstructing, improving, maintaining, and repairing highways, roads, and streets designated as necessary or conducive to the orderly and efficient flow of traffic within and through the county pursuant to section 4504.03 of the Revised Code; purchasing, erecting, and maintaining street and traffic signs and markers; purchasing, erecting, and maintaining traffic lights and signals; and to supplement revenue already available for such purposes, any county by resolution adopted by its

board of county commissioners may levy an annual license tax, in addition to the tax levied by sections 4503.02, 4503.07, and 4503.18 of the Revised Code, upon the operation of motor vehicles on the public roads or highways.*** (Emphasis added.)

It should be noted that the above emphasized language is broad in its reference to "public" roads, highways, and streets. Given this language, I refer you to R.C. 5535.08, which states in part that:

The state, county, and township shall each maintain its roads, as designated in section 5535.01 of the Revised Code; however, the county or township may, by agreement between the board of county commissioners and the board of township trustees, contribute to the repair and maintenance of the roads under the control of the other.

It appears then that while primary responsibility for the repair of township roads remains with the township, the county may, pursuant to R.C. 5535.08 contribute to the repair of the township roads, utilizing funds available under R.C. Chapter 4504. Such a conclusion is consistent with 1972 Op. Att'y. Gen. No. 72-080, in which I determined that a board of county commissioners may make cash grants to assist in the repair and maintenance of township roads.

In answer to your question it is therefore my opinion and you are so advised that a county may, pursuant to R.C. 4504.02 and R.C. 5535.08, use the proceeds of a county motor vehicle licensed tax to help pay the cost of repairing township roads.