

residence of the child or its parents. It follows therefore, that when a child is found to be dependent within the jurisdiction of the court, such court may properly assume jurisdiction for commitment of such child in the manner provided by law either permanently or temporarily.

In the case of *State ex rel vs. Wead, Auditor*, 113 O. S. 692, it was held that the traveling expenses and board, if any, for the care of a dependent child, the expenses of providing suitable clothing, etc., shall be charged by the Board of State Charities to the county from which such child was committed. It was further held that the same expenses may also be charged to the county from which the child was transferred, as provided in Section 1352-3 of the Code.

Based upon the foregoing, it is my opinion that a juvenile court has jurisdiction to declare any child to be a dependent, which is found within the county under facts and circumstances which constitute dependency. The legal residence of the child or its parents or those standing in loco parentis do not determine the jurisdiction of the court.

It is believed a more specific answer to your inquiry is unnecessary.

Respectfully,

GILBERT BETTMAN,

Attorney General.

756.

GENERAL APPROPRIATION BILL—APPROPRIATION OF PORTION OF
HIGHWAY CONSTRUCTION FUND FOR 1930 MAY NOT BE EX-
PENDED FOR OBLIGATIONS ARISING BEFORE JANUARY 1, 1930.

SYLLABUS:

Forty per cent of the eighty per cent of the Highway Construction Fund allotted to the counties under the provisions of Section 5541-8 of the General Code of Ohio, and appropriated by the General Assembly under the column designated "1930" may not be legally expended to cover obligations arising prior to January 1, 1930.

COLUMBUS, OHIO, August 17, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

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

"Your official opinion is respectfully requested in connection with the use of 40% State Highway Construction Funds during the present biennium.

The 87th General Assembly of Ohio, 1927, under Section 5541-8, apportioned and distributed State Highway Construction Funds in part as follows:

'Forty percent thereof shall be appropriated for use in and shall be used in the several counties in the State in proportion to the number of motor vehicles registered from each of said counties during the calendar year preceding the making of such appropriation.'

The 88th General Assembly of Ohio, 1929, House Bill No. 510, apportioned for Additions and Betterments Highway Improvement Funds \$8,000,000 in 1929 and \$8,500,000 in 1930, making a total appropriation for the biennium of \$16,500,000. 'Any revenue in excess of the amounts above appropriated for total operation and maintenance of Highway Improvement Funds shall be

available and shall be distributed to the classifications above enumerated as provided by Law.'

In many counties of the State it has been found desirable in 1929 to use a much larger amount of State Highway Construction Funds than the 40% which is allotted to each county by law. In fact, the Highway Department has allotted and will use in various counties in 1929 more money out of the State Highway Construction Fund than will necessarily accrue to the county under the 40% stipulation during the two years of the biennium.

QUESTION: Can all of the 40% funds which will accrue to any particular county for the biennium covered by Appropriation Act contained in House Bill No. 510 be obligated by contract during the first year of the biennium or is it necessary that each county in the state shall receive as a minimum its 40% money in the last year of the biennium regardless of the amount which may have been expended in that particular county during the first year of the appropriation period?"

Section 5541-8 of the General Code, a part of which you quote, is a part of an act levying a tax for the purpose of providing revenue for supplying the State's share of the cost of construction of main market roads of the inter-county highways and other state highways as created by law. It was also levied for the purpose of supplying the state's share of the cost of abolishing railway grade crossings, the tax being levied and imposed upon the sale and use of each gallon of motor vehicle fuel by any dealer, etc., and which said tax is in addition to the tax imposed for similar purposes upon the gasoline or motor vehicle fuel under the provisions of Sections 5527 et seq. of the General Code. This fund arising from such tax levy shall be known as the State Highway Construction Fund.

It appears to be the intent of said act that the Director of Highways shall expend the portion of the tax, which is to be for the use of counties, in proportion to the number of automobiles that are registered, as well as other portions of the tax, as suggested in your communication, in pursuance of the provisions of Section 5541-8. The 88th General Assembly appropriated to the Department of Highways such moneys under the heading of "Additions and Betterments—Highway Improvement Fund." A technical examination of said Appropriation Act and of the items which you mention discloses clearly that \$8,000,000 is appropriated under the column designated "1929," and \$8,500,000 under the column designated "1930," and following said designations the total is given for the biennial period, followed by a clause which appropriates any revenue in excess of the amount set forth in said columns that may come into the Highway Improvement Fund for the purposes enumerated as provided by law.

Unquestionably, Section 5541-8 must be read in connection with the Appropriation Act in order to determine the intent of the Legislature. The two acts construed together, which necessarily must be done, makes an appropriation for specific purposes, one of which is that 40% of the 80% of such Highway Construction Fund shall be expended in each county of the state in proportion to the number of automobiles that are registered from said county.

Section 5 of Article XII of the Constitution of Ohio provides that no tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied. The Legislature having definitely stated the object of the tax, and in the case you mention, it being required that 40% shall be expended in the counties, the Legislature in its appropriation must necessarily carry out said intent.

It could be argued, of course, that the purpose would be the same whether all of the money for the biennium was expended during the first year or otherwise. However, on the other hand, it might logically be claimed that the Legislature has

indicated in levying the tax that the 40% allotted to the counties would be required to be expended in each year. In any event, the Legislature having full power to make such appropriations within the limits of the purpose for which the tax was levied, may attach such conditions to the use of such fund as seem to it wise.

Section 1 of the General Appropriation Bill of the 88th General Assembly, House Bill No. 510, contains, among other things, the following:

"The sums herein named in the column designated '1929' shall not be expended to pay liabilities or deficiencies existing prior to January 1, 1929, nor to pay liabilities incurred subsequent to December 31, 1930; those named in the column designated '1930' shall not be expended to pay liabilities or deficiencies existing prior to January 1, 1930, or incurred subsequent to December 31, 1930."

An examination of the language of the section above quoted discloses that the Legislature has stated in clear and unambiguous language that the sums in said bill named in the column designated "1930" shall not be expended to pay liabilities existing prior to January 1, 1930, as hereinbefore indicated. As the second year's appropriation is carried under the column designated "1930," it follows that if an attempt were made to expend such funds as will be distributed to the counties for the year 1930, during the year 1929, such act would constitute a violation of the express provision of the Appropriation Bill, for the reason that it requires only a mathematical computation to determine the amount to which each county is entitled, which is included within the appropriation for such year. In other words, it is believed that the situation in so far as your question is concerned, is no different than if the Legislature had indicated a definite amount for each county in each year in making the appropriation.

It may be mentioned that in a number of instances the Legislature in its enactment of the Appropriation Bill, has seen fit to make appropriations in which there is no designation for the year 1930. However we have no such situation before us.

Based upon the foregoing, you are specifically advised that the 40% of the 80% of the Highway Construction Fund allotted to the counties under the provisions of Section 5541-8 of the General Code of Ohio, and appropriated by the General Assembly under the column designated "1930" may not be legally expended to cover obligations arising prior to January 1, 1910.

It is believed a more specific answer to your inquiry is unnecessary.

Respectfully,

GILBERT BETTMAN,
Attorney General.

757.

TAX COLLECTOR—ILLEGALLY EMPLOYED TO RECOVER DELINQUENT PERSONAL TAXES—RIGHT TO FEES DISCUSSED—JOINT LIABILITY WITH COUNTY TREASURER FOR COLLECTED TAXES NOT TURNED INTO TREASURY.

SYLLABUS:

1. *An employment of a collector to collect delinquent taxes without complying with the provisions of Section 5696, General Code, relative to the public reading of the list of persons delinquent, is illegal and void, whether such collector was employed by*