

3664.

TRAFFIC SIGNALS—COUNTY COMMISSIONERS, WITH CONSENT OF DIRECTOR OF HIGHWAYS, MAY ERECT SUCH ON STATE HIGHWAYS LOCATED OUTSIDE OF MUNICIPALITIES—GASOLINE TAX FUND MAY NOT BE USED.

*SYLLABUS:*

1. *With the consent and approval of the Director of Highways, a board of county commissioners may purchase, erect and maintain automatic traffic signals at the intersection of public highways, outside of municipalities, on the state highway system.*

2. *The cost of purchasing and maintaining automatic traffic signals at the intersection of public highways, outside of municipalities, on the state highway system, may not be paid by a board of county commissioners from moneys arising from the county's share of the proceeds of the gasoline taxes.*

COLUMBUS, OHIO, October 17, 1931.

HON. RALPH G. SEVER, *Prosecuting Attorney, Eaton, Ohio.*

DEAR SIR:—This will acknowledge your recent request for my opinion which reads:

“Our Board of County Commissioners are in receipt of the following letter relative to a proposed installation of a traffic signal at the intersection of U. S. Route No. 127 and U. S. Route No. 40 in this county.

The letter in full being as follows:

‘State of Ohio, Department of Highways, Columbus.  
Cincinnati, Ohio, September 2, 1931.  
Board of County Commissioners,  
Prebel County,  
Eaton, Ohio.  
Gentlemen:

Realizing the extremely hazardous condition at the intersection of Route No. 127 and No. 40, in Prebel County, this Department is willing to assume the cost of a traffic actuated control, together with the installation of the control and signal, if the County will pay the cost of the signal, which will be about \$135.00, and its maintenance, around \$6.00 per month.

This is to be a three-color signal traffic actuated, so that it only works when traffic is moving in either direction, and in my opinion the only solution to the numerous accidents, caused by the extremely high speed of vehicles moving both ways across this intersection.

If your Board would be willing to assume this obligation, I would appreciate a letter indicating their approval, so that plans may go forward at once for the installation before winter.

Very truly yours,

LUKE BRANNON,  
Resident Division Deputy Director.’

Our local Board of Commissioners are willing to cooperate with the State, providing that they can pay for the cost of the signal and its maintenance out of the gas tax money. I am informed that Montgomery County is contemplating cooperating with the State on a similar project at the intersection of State Route 51 and U. S. Route 40 in their county, so I presume this matter has been before your Department heretofore, and will appreciate your early advices so that the signal may be installed in the near future, for we are all aware that it is a very dangerous intersection here in this county."

Your attention is directed to section 6906, General Code, which provides in part, as follows:

"\* \* The board of county commissioners shall also have authority to purchase, erect and maintain automatic traffic signals at such intersections of public highways outside of municipalities, as they deem necessary for the protection of the public traveling upon such highways; provided, however, such power and authority shall not extend to intersections of public highways on the state highway system unless the board of county commissioners first obtain the consent and approval of the director. \* \*"

Owing to the fact that the intersection in question, does not come within a municipal corporation, the provisions of the section quoted above would apply to the proposed installation of a traffic signal at such intersection. I gather from a reading of the letter from the resident division deputy director, that the approval of the Director of Highways could be obtained for such a project.

You next present the question as to whether the board of county commissioners would be permitted to pay the cost of such traffic signal, and its maintenance, from the proceeds of the gasoline tax. Section 5537, General Code, relative to the distribution of funds derived from the first two cent gasoline tax reads in part as follows:

"\* \* 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, relative to the use of the proceeds of the second two cent gasoline tax distributed to counties, reads in part, as follows:

"\* \* Seven and one-half 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 for the sole purpose of maintaining, constructing, widening and reconstructing the county system of public roads and highways within such county. \* \*"

Your second question then resolves itself into a determination of whether or not the cost and maintenance of a traffic signal comes under the provisions of sections 5537 and 5541-8, General Code, above quoted.

In this respect, your attention is called to an opinion found in Opinions of

the Attorney General for 1930, page 1286, where there was under consideration the question as to whether or not a municipality's share of the proceeds of the gasoline and motor vehicle license taxes could be used for traffic signals and paint to be used for marking spaces and traffic division lines under the above sections before amendment, which sections permitted the same use of gasoline tax moneys by municipalities as is now granted to the various counties with the addition of repaving.

"Traffic lights are not such a part of street construction or maintenance as to warrant including their cost within the purposes of these taxes. They constitute, as was stated in my previous opinion, substantially a substitution for a police officer in the regulation of traffic and, until the Legislature has spoken, I do not feel warranted in extending the purposes of the taxes here in question to that point."

It is interesting to note that after the rendition of the above opinion, the legislature amended section 5541-8, General Code, to provide that a certain percent, of the proceeds of the second two cent gasoline tax, payable to municipalities, could be used for "the sole purpose of maintaining, constructing, widening, reconstructing, cleaning and clearing the public streets and roads within such corporation, *and for the purchase and maintenance of traffic lights.*" This provision, however, was not extended to the expenditure of the proceeds of such tax by the county.

In view of the foregoing, I am of the opinion that:

(1) Upon the consent and approval of the Director of Highways, a board of county commissioners may purchase, erect and maintain automatic traffic signals at the intersection of public highways, outside of municipalities, on the state highway system.

(2) The cost of purchasing and maintaining automatic traffic signals at the intersection of public highways, outside of municipalities, on the state highway system, may not be paid by a board of county commissioners from moneys arising from the county's share of the proceeds of the gasoline taxes.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*

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3665.

APPROVAL, BONDS OF TULLY TOWNSHIP, MARION COUNTY, OHIO  
—\$1,682.29.

COLUMBUS, OHIO, October 17, 1931.

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