

7004

1. MUNICIPALITIES — PROCEEDS OF FUNDS DISTRIBUTED UNDER PROVISIONS OF SECTIONS 6309-2, 5537, 5541-8 G. C. MAY BE USED FOR MAINTENANCE OF STORM SEWERS IN CONNECTION WITH STREET IMPROVEMENT OR WHICH ARE USED FOR STREET DRAINAGE — SALARIES OF EMPLOYEES ENGAGED EXCLUSIVELY IN SUCH MAINTENANCE INCLUDED.
2. SUCH FUNDS MAY NOT BE EXPENDED FOR CONSTRUCTION OR MAINTENANCE OF STORM SEWERS WHICH SERVE NO PURPOSE IN CONNECTION WITH STREET DRAINAGE.
3. MUNICIPALITIES MAY USE SUCH FUNDS TO INSTALL TRAFFIC SIGNS — BENEFIT AND PROTECTION OF TRAVELING PUBLIC — MAY BE INSIDE OR OUTSIDE OF TRAVELED PORTION OF STREETS.

SYLLABUS:

1. The proceeds of the funds distributed to municipalities under the provisions of Sections 6309-2, 5537 and 5541-8 of the General Code may be used for the maintenance of storm sewers in connection with a street improvement or which are utilized to drain a street, including the salaries of employees engaged exclusively in such maintenance.

2. Such funds may not be expended for the construction or maintenance of storm sewers which serve no purpose in connection with the drainage of streets.

3. Such funds may be used by municipalities for the purpose of the installation of traffic signs for the benefit and protection of the traveling public, whether inside or outside of the traveled portion of the streets.

Columbus, Ohio, June 23, 1944

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Acknowledgment is made of your communication wherein you request my opinion upon the following:

"Question 1. May the proceeds of the funds distributed to cities under the provisions of Sections 6309-2, 5537 and 5541-8 of the General Code, be used for the maintenance of storm sewers, including the salaries of the sewer maintenance crew?"

Question 2. May the funds mentioned in question number one be used for installing traffic signs in or outside the traveled portion of the streets, as distinguished from the limitation for installing traffic signals and traffic lights provided for by Section 5541-8, General Code?"

In an opinion of this office, found in Opinions of the Attorney General for 1942, Page 720, it was held as disclosed by the syllabus:

"Funds derived from taxes levied upon the operation of motor vehicles and the excise taxes levied on the sale of gasoline under Sections 5527 and 5541 General Code, when distributed to municipalities pursuant to Sections 6309-2, 5537 and 5541-8 General Code, may lawfully be expended for the purpose of constructing curbs and gutters on streets."

This opinion sets forth the pertinent provisions of the sections distributing the motor vehicle, gasoline and license taxes to municipalities and it is believed unnecessary to quote said provisions herein. It may be stated, however, that in view of the conclusion of said opinion, the first branch of your inquiry presents the question as to whether a storm sewer in legal contemplation is in the same category as the construction of curb and gutters in connection with a street construction.

It is a matter of common knowledge that the provision for adequate

drainage in connection with the construction of a street or highway is one of the most essential elements in connection with such improvements. In the opinion hereinbefore mentioned, the following was quoted from the opinion by Judge Hough in the case of Roebing vs. Cincinnati 102 O. S., 461, as follows

“A drain is an incident to street building. No engineer would think of constructing a street without providing for the drainage of that street. It is an essential element of good workmanship and substantial construction, and it is highly important that drains be provided to prevent the accumulation of water upon the surface of the street and adjacent territory, for the purpose of preventing early decay and deterioration of the street. By reason of its construction a street may receive surface water, and frequently does, from territory outside of its own compass, from the terraces of abutting property and from the roofs of houses thereon.”

It is well known that storm sewers carry the water from the surface of the highway and adjoining lands, and while buried underground for all practical purposes performs the same functions as curbs and gutters. It is obvious that whether it is a curb and gutter or a storm sewer, it will carry the water from the street and also adjacent property. Therefore, it must be concluded that the funds you mention may be used for the construction of storm sewers in connection with street improvements. Of course, it is possible to construct a storm sewer which has no relation whatsoever to the drainage of a street and in such a situation, of course, it would be wholly improper to expend monies for the construction or maintenance of such a sewer. However, in the communication which you submit from your examiner, it is stated, “* * * The storm sewers are used, principally, to drain water from buildings and the surface of streets and roads * * *”

Your first inquiry further presents the question as to whether or not the salaries of the sewer maintenance crew may be paid from the funds under consideration. In an opinion found in Opinions of the Attorney General for 1930, Page 211, the syllabus reads:

“The salary and expenses of a group of engineers employed by a city for the sole purpose of preparing plans, specifications, and supervising the construction of street paving generally, may properly be paid from the proceeds of the motor vehicle and gasoline taxes.”

The conclusion in the opinion last above mentioned was reaffirmed in an opinion found in Opinions of the Attorney General for 1931, Page 55. In the body of said opinion the following is stated:

“* * * No question has ever been made as to the legality of paying the wages or salaries of workmen employed exclusively upon work looking to the maintenance, repair, widening, constructing and repaving of public streets, from the proceeds of these taxes, * * *”

These opinions by analogy suggest an affirmative answer to the second branch of your first question.

Coming to the second question propounded, attention is directed to an opinion found in Opinions of the Attorney General for 1930, Page 1286, the syllabus of which reads:

“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 spaces and traffic division lines.”

The opinion last mentioned discussed a former opinion which held that under the then existing statutes the funds under consideration could not be used to install traffic lights. However, said opinion clearly distinguished the functions and status of traffic lights from so-called traffic signs. No doubt by reason of this conclusion, the Legislature amended Section 5541-8 of the General Code so as to permit the use of funds distributed thereunder for the purchase of traffic lights. However, the legislative history in nowise changes the conclusion reached in the former opinion to the effect that the funds distributed to municipalities under motor vehicle license and gasoline tax laws may be used for the installation of traffic signs used in connection with the highway. Said opinion does not indicate any limitation as to the amount that may be expended nor is there any such limitation to be found in the statute.

Based upon the foregoing citations and discussions, it is my opinion that:

1. The proceeds of the funds distributed to municipalities under the provisions of Sections 6309-2, 5537 and 5541-8 of the General Code may be used for the maintenance of storm sewers in connection with a

street improvement or which are utilized to drain a street, including the salaries of employees engaged exclusively in such maintenance.

2. Such funds may not be expended for the construction or maintenance of storm sewers which serve no purpose in connection with the drainage of streets.

3. Such funds may be used by municipalities for the purpose of the installation of traffic signs for the benefit and protection of the traveling public, whether inside or outside of the traveled portion of the streets.

Respectfully,

THOMAS J. HERBERT

Attorney General