

While there may be some inconsistency between the views herein expressed, and certain general statements made in subdivision (3) of said Opinion 2491 of date October 18, 1921, it is to be said that the previous opinion did not go into a critical examination of the difference in terms in section 154-37 as between the transfer of the purchasing powers of the purchasing agent and board of administration, and the general conferring of power by the language of that section in cases other than the purchasing agent and board of administration; nor into a critical examination of the relation between section 154-37 and the specific provisions above quoted from sections 1191, 1224 and 1231.

It is proper to state that your department, by virtue of the authority conferred on it by section 154-28, G. C., may prescribe for the Department of Highways and Public Works in the making of the purchases in question, such general rules as to accounting, reporting, procedure, etc., not inconsistent with statute, as may be thought to be in the public interest.

In the light of what has been said, you are advised in specific answer to your inquiry, that notwithstanding the provisions of section 154-37, G. C., purchases of machinery, tools, equipment, supplies and material for use by the Department of Highways and Public Works on force account under authority of sections 1191, 1224 and 1231, are to be made by the Department of Highways and Public Works in conformity with the requirements of said sections and of section 6 of the General Appropriation Act, and not by the Department of Finance; and that the sale and exchange of worn-out machinery, tools and equipment as mentioned in section 1231, G. C., is also to be made by the Department of Highways and Public Works, subject to the requirements of said section and of said section 6 of the Appropriation Act.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2842.

MUNICIPAL CORPORATIONS—RESURFACING STREETS UPON ASSESSMENT PLAN—MAY USE FUNDS ACCRUING UNDER SECTION 6309-2 G. C. (AUTOMOBILE LICENSE TAX).

In resurfacing streets upon the assessment plan provided for by sections 3812 et seq. G. C., municipalities in providing for their share of the cost, may make use of the funds accruing to them under the provisions of section 6309-2, G. C.

COLUMBUS, OHIO, February 6, 1922.

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

GENTLEMEN:—You have recently submitted for the consideration of this department the following inquiry:

“In a city where it has been determined to resurface certain streets, the cost of the same to be paid one-half by the property owners by special assessment and the other half by the city, could such resurfacing be deemed a repair within the meaning of section 6309-2 G. C., and if so, could the city's portion of such resurfacing be paid from moneys from automobile taxes under said section?”

Section 6309-2 is part of the group of sections providing for an automobile license tax. The second subdivision reads as follows:

“(2) Fifty per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. Such moneys shall be paid into the treasury of the proper county as provided herein and distributed as are other taxes. In the treasuries of such municipal corporations and counties, such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways and streets and for no other purpose, and shall not be subject to transfer to any other fund. ‘Maintenance and repair’ as used in this section, includes all work done upon any public road or highway, or upon any street, in which the existing foundation thereof is used as the sub-surface of the improvement thereof, in whole or in substantial part.”

The so-called assessment plan for improvement of streets by municipalities is provided for by sections 3812 G. C. et seq. Said section 3812 provides, among other things, that:

“* * * The council of any municipal corporation may assess upon the abutting, adjacent and contiguous or other specially benefited lots or lands in the corporation, any part of the entire cost and expense connected with the *improvement* of any street * * * by grading, draining, curbing, paving, *repaving, repairing*, * * * by any of the following methods:
* * * *”

(Here follows an enumeration of various methods of assessment.)

Related sections permit of the issuing of bonds and levying of taxes by the municipality to provide funds for its share of the improvement, and also prescribe the proceedings for the making of the assessment, etc.

Your inquiry uses the word “resurface.” Very clearly, a resurfacing comes within the purview of section 6309-2 because the very purpose of the resurfacing operation is to make use of the “existing foundation” as the subsurface of the improvement in whole or in substantial part. On the other hand, section 3812 G. C. specifically recognizes both repaving and repair as subject to being carried out on the assessment plan; and there can be no doubt that a resurfacing is necessarily a repaving or a repairing.

Hence, both your questions are answered in the affirmative.

Respectfully,
JOHN G. PRICE,
Attorney-General.