

2. The maturities of such bonds should be in accordance with the provisions of Sections 2295-7, 2295-9, 2295-10 and 2295-12, General Code, as in force and effect in September, 1925.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1370.

MUNICIPALITY—RENTING OR INSTALLING TRAFFIC SIGNALS WITH RECEIPTS FROM MOTOR VEHICLE LICENSE AND GAS TAXES UNAUTHORIZED.

SYLLABUS:

A municipal corporation may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purpose of paying the cost of installing traffic signals or the cost of rentals thereof.

COLUMBUS, OHIO, January 7, 1930.

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

DEAR SIRS :—Your recent communication reads :

“Question 1. May a municipal corporation legally use its proportion of the motor vehicle license tax and gasoline tax receipts for the purpose of paying the cost of installing traffic signals?”

“Question 2. May a municipal corporation legally use its proportion of the motor vehicle license tax and gasoline tax receipts for the purpose of paying rent for the use of traffic signals?”

The sections of the General Code which must necessarily dispose of your inquiry are 6309-2, which relates to the motor vehicle license tax, 5537 which provides for the first two cent gasoline tax, and 5541-8 which provides for the second gasoline tax. In view of the number of times that these sections have been quoted in opinions heretofore rendered, it is not believed necessary again to set them forth.

It may be stated in substance that the first section above mentioned authorizes the municipality's share of the funds to be used for the purpose of maintenance and repair, construction and repaving of public roads and streets.

Section 5537 provides that the moneys received by the municipalities

“shall be used by such municipal corporations for the sole purpose of maintaining and repairing the public streets and roads within such corporation.”

Section 5541-8 requires the funds received from the so-called second gasoline tax to be

“expended by each municipal corporation for the sole purpose of constructing, maintaining, widening and reconstructing the public streets and roads within such corporation.”

In my opinion No. 294, rendered to your Bureau under date of April 12, 1929, it was held, as disclosed by the syllabus that :

- “1. The cost of posts and wire mesh for repairing safety fences along the sides of streets and roadways and the cost of repairing loading platforms constructed in streets for the use of street car passengers may be paid from the funds arising from the motor vehicle license and gasoline tax receipts.
2. The proceeds of such taxes may not be used for the purposes of cleaning streets or removing ice and snow.
3. The cost of removing right angle curbs at street intersections and installing circular curbs may properly be paid from said tax receipts.”

In my said opinion reference was made to an opinion rendered by my immediate predecessor and found in the Opinions of the Attorney General for 1928, Volume I, page 84, in which it was held:

“Moneys allotted to municipal corporations from the ‘motor vehicle license tax’ or the ‘gasoline excise tax funds’ may not lawfully be expended for the purpose of sweeping or cleaning streets since the sweeping and cleaning of streets is not included in the term ‘maintenance and repair’ as that term is defined in Section 6309-2, G. C. and used in Sec. 5537, G. C.”

Concurring in the opinion of my predecessor, I reached the conclusion in my opinion above referred to that the cost of the removal of snow and ice from the streets of a municipality could not properly be paid from the gasoline tax. The basic idea of the gasoline tax and the motor vehicle license fee seems to be the physical improvement of the surface of the streets.

In an opinion of the Attorney General found in the Opinions of the Attorney General for the year 1921, page 1180, it was held that the process of treatment of municipal streets with oil could properly be included within the term “maintenance and repair” for the reason that it preserved the surface of the streets. While undoubtedly traffic signals contribute to the safety of the traveling public it must be said that such signals have no relation whatever to the actual preservation of the life of the pavement itself. It is a police regulation pure and simple. The convenience of the traveling public is aided by police officers who afford protection to motorists and, in view of congested traffic conditions, the need of such officers becomes more important. Prior to the adoption of traffic signals police officers performed the duties at busy intersections which traffic signals are now supposed to perform. It is believed that it would be just as logical to hold that the salary of police officers should be paid out of the gasoline tax as it would be to hold that the cost of traffic signals should be paid therefrom. While traffic signals are necessary incidents in connection with the utility of streets, it would seem that the legislature as yet has not authorized the cost of the same to be paid out of the gasoline tax. The maintenance of traffic while a necessary police function, is not the “maintenance” of the street itself, and the purpose of said tax as hereinbefore stated, is for the physical improvement of the surface of the street.

While it must be conceded that the question you present is not entirely free from doubt because of the modern needs of traffic signals in the congested areas of municipalities, in view of the foregoing it is my opinion that a municipal corporation may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purpose of paying the cost of installing traffic signals or the cost of rentals thereof.

Respectfully,
GILBERT BETTMAN,
Attorney General.