

OPINION NO. 68-003

Syllabus:

A municipality may not spend that portion of gasoline and motor vehicle tax monies segregated as prescribed by Section 5735.28, Revised Code, to purchase, erect, or maintain traffic lights and signals on state highways.

To: Roger Cloud, Auditor of State, Columbus, Ohio
By: William B. Saxbe, Attorney General, January 8, 1968

You request my opinion concerning the following question:

"May both charter and noncharter municipalities spend that portion of gasoline and motor vehicle tax monies segregated as prescribed by Section 5735.28, Revised Code, for the purchase, erection and maintenance of traffic lights and signals on state highways?"

Section 5735.28, Revised Code, provides as follows:

"Wherever a municipal corporation is on the line of the state highway system as designated by the director of highways as an extension or continuance of the state highway system, seven and one half percent of the amount paid to any municipal corporation pursuant to sections 4501.04, 5735.23, and 5735.27 of the Revised Code, shall be used by it only to construct, reconstruct, repave, widen, maintain, and repair such highways and to erect and maintain street and traffic signs and markers on such highways."

Wherever the legislature has authorized the expenditure of funds for "traffic lights and signals," it has expressly said so. Hence, in several related sections of the Revised Code, the legislature has provided that certain funds may be spent for a number of enumerated purposes, among which are "street and traffic signs and markers" as well as "traffic lights and signals." See Sections 4501.04, 5735.23, 5735.25, 5735.27 and 5735.29, Revised Code.

These phrases have been used in their popular sense to denote two different categories, the former referring to devices which convey a specific message by words or symbols, and the latter being restricted to lights used to control the movement of traffic. Somewhat more definitive are the phrases the legislature has used in the traffic laws to distinguish traffic lights and signals from other types of traffic control devices, Section 4511.01 (OO) and (PP), Revised Code.

Section 5735.28, Revised Code, includes no express authority "to purchase, erect, and maintain traffic lights and signals." The legislative intent clearly restricts the spending of that money allocated pursuant to this section only for those purposes enumerated therein.

It is my opinion, therefore, that a municipality may not spend that portion of gasoline and motor vehicle tax monies segregated as prescribed by Section 5735.28, Revised Code, to purchase, erect, or maintain traffic lights and signals on state highways.