

It will be observed from the terms of Section 12910, *supra*, that a member of a board of township trustees is prohibited from being interested in a contract for the purchase of property, supplies or fire insurance for the use of the township with which he is connected, and a member of a board of education is prohibited from being interested in such a contract with the board of education with which he is connected, but this would not preclude a township trustee from being interested in a contract for the purchase of property, supplies or fire insurance for the use of a board of education, for the reason that he is not by reason of being a township trustee, "connected" with such board of education. Section 12912, General Code, reads as follows:

"Whoever, being an officer of a municipal corporation or member of the council thereof or the trustee of a township, is interested in the profits of a contract, job, work or services for such corporation or township, or acts as commissioner, architect, superintendent or engineer, in work undertaken or prosecuted by such corporation or township during the term for which he was elected or appointed, or for one year thereafter, or becomes the employe of the contractor of such contract, job, work, or services while in office, shall be fined not less than fifty dollars nor more than one thousand dollars or imprisoned not less than thirty days nor more than six months, or both, and forfeit his office."

An examination of the terms of Section 12912, *supra*, clearly indicates that the inhibition against a township trustee being interested in the profits of a contract, job, work or services is confined to a contract, job, work or services for such *township* and does not prohibit the township trustee from being interested in such a contract for a board of education.

A board of education is authorized to enter into contracts for the conveyance of pupils within the district, and there is no law which prohibits it from contracting with a person for that purpose, even though he be a trustee of a township which includes all or a part of the school district for which it is acting. Moreover, the above statutes, Sections 12910 and 12912, are penal statutes, and should be strictly construed.

I am therefore of the opinion that a township trustee is not precluded by reason of his official position, from contracting with a board of education for the conveyance of pupils.

Respectfully,
GILBERT BETTMAN,
Attorney General.

101.

**TAX AND TAXATION—GASOLINE AND MOTOR VEHICLE LICENSE TAXES
—MUNICIPALITY'S AND COUNTY'S PORTION—LEGALLY USED FOR
MAINTAINING RESPECTIVE BRIDGES.**

SYLLABUS:

1. *The moneys allotted to a municipality under the provisions of Sections 5537 and 6309-2 of the General Code, may legally be expended for the purpose of maintaining and repairing bridges and viaducts upon streets within the municipality. (Opinion, Attorney General, 1924, page 335, overruled.)*

2. *County commissioners may legally expend the county's portion of the motor vehicle license and gasoline tax receipts for the purpose of maintaining and repairing bridges on public roads and highways in the county system of highways.*

COLUMBUS, OHIO, February 16, 1929.

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

GENTLEMEN:—Acknowledgment is made of your recent communication which reads:

“In Opinion No. 1554, dated June 2, 1924, the bureau was advised that a city could not legally expend its share of the motor vehicle license tax for the purpose of maintaining and repairing bridges and viaducts.

In Opinion No. 2143, dated May 21, 1928, the bureau was advised that the county commissioners could legally expend the county' proportion of the motor vehicle license and gasoline tax receipts for the purpose of maintaining and repairing bridges on public roads and highways in the county system of highways.

The bureau is unable to reconcile these opinions and will greatly appreciate your reconsideration of the question in regard to the right of a city to expend motor vehicle license and gasoline tax receipts for the purpose of maintaining and repairing bridges and viaducts on public streets and road ways.”

The syllabus of the 1924 opinion of the Attorney General, to which you refer, reads:

“1. Bridges and viaducts are not a part of a street, road or highway, within the meaning of sub-division 2 of Section 6309-2 of the General Code, providing that the portion of the motor vehicle license tax going to a municipal corporation shall be used for the maintenance and repair of public roads, highways and streets and for no other purpose.

2. No part of the portion of the motor vehicle license tax going to a municipality may be expended in the maintenance and repair of such bridges and viaducts.”

The 1928 opinion of the Attorney General, to which you refer, held, as disclosed by the syllabus:

“Those portions of the two cent gasoline tax and the motor vehicle license tax, apportioned to the counties of the state, in accordance with the provisions of Sections 5537 and 6309-2, General Code, may be expended by the county commissioners in the maintenance and repair of bridges on public roads and highways in the county system of highways.”

While the first opinion above mentioned relates to the motor vehicle license tax being used for the purpose of maintaining and repairing bridges and viaducts within municipalities and the other relates to the expenditure of the gasoline tax and motor vehicle license tax receipts for the purpose of maintaining and repairing bridges on public roads in the county system of highways, an analysis of the two will disclose that the principles therein announced are in direct conflict. Both of said opinions refer to the established rule that when streets or highways are mentioned, bridges are included within the term unless the statute involved indicates otherwise. The former opinion undertakes to point out that in the various sections of the General Code relating to streets and highways, there is an established policy by the legislature of Ohio that bridges are not to be included therein unless specific mention is made. This opinion is well considered and the conclusion is logical, looking at it from the viewpoint of the writer. However, in the latter opinion it was pointed out that Sections 5537 and 6309-2 and their related sections in nowise specifically exclude bridges from the terms of said sections.

Therefore, applying the general rule that the term highways and streets will include bridges unless the statute in specific terms otherwise provides, it would be indicated that bridges are to be included within the meaning of said sections. In other words, in order to support the conclusions of the former opinion it is necessary to go to the statutes generally to find an intent in the legislature to make such exclusion. In the opinion of the Attorney General for 1928, above referred to, the following pertinent comment is made:

"As stated in an opinion of my predecessor in office, reported in Opinions, Attorney General, 1924, page 335:

"The decisions universally held that a public bridge is a part of the highway which passes over it, *except where the language of some particular statute is such as to show plainly that the term is not intended to include bridges.*' (Italics the writer's.)

When the several sections of the General Code, pertaining to the two cent gasoline tax and the motor vehicle license tax, are examined, not only does it appear that it was not intended by the Legislature that the terms 'public roads' and 'highways' as used in Sections 5537 and 6309-2, supra, should relate only to the roads and highways proper and not include the bridges thereon, but the acts, imposing those two taxes and providing for the disposition of the revenue therefrom, seem rather clearly to show that the words 'public roads' and 'highways' were intended to include the bridges thereon.

You will observe that by the terms of Section 6291 above quoted in part, that the motor vehicle license tax is levied 'upon the operation of motor vehicles on the public roads or highways of this state, for the purpose * * * of maintaining and repairing public roads, highways and streets.' In so far as the counties' portion is concerned, the two cent gasoline tax is for the purpose of 'enabling the several counties * * * to properly maintain and repair their roads * * *, and supplementing revenue already available for such purposes and arising from direct taxation and from registration fees of motor vehicles, and for distributing equitably upon those persons using the privilege of driving such motor vehicles upon such highways * * * a fair share of the cost of maintaining and repairing the same.' Obviously the same motor vehicles that are operated on the public roads and highways are driven over the bridges on such roads and highways, and the same vehicles damaging the roads also damage the bridges. The two cent gasoline tax is to enable the several counties properly to maintain their roads. Of what avail is a properly maintained road with an impassable bridge?

The same tax is to supplement revenue arising from direct taxation. In addition to the levy for road purposes authorized by Section 5627, General Code, Section 6926, General Code, authorizes a two mill tax levy by county commissioners to provide a fund for the payment of the county's proportion of the cost of constructing, maintaining and repairing roads under the county road laws. A direct levy by county commissioners for bridge purposes is also authorized. See Sections 5627, 2421, 7557 and related sections of the General Code. There is nothing in Section 5527, supra, to indicate that the Legislature intended that the direct levies for road purposes should be supplemented by gas tax moneys to the exclusion of a direct levy for bridge purposes. Moreover, the expressed object of the Legislature to distribute 'equitably upon those persons using the privilege of driving * * * motor vehicles upon * * * (the) highways * * * a fair share of the cost of maintaining and repairing the same' will be best accomplished by using gas tax and motor vehicle license tax moneys on the bridges as well as on the roads, thus lessening the need for a direct levy for bridge purposes. For these

reasons I reach the conclusion that the term 'public roads' and the word 'highways' as used in Section 5537 and Section 6309-2, and cognate sections of the General Code, include the bridges over which such roads and highways pass."

Said opinion further points out that the State's share of the money derived from such taxes was appropriated by the 87th General Assembly to cover the cost of the maintenance and repair of roads and highways in the state system, and one of the items of said appropriation, as shown on page 47 of House Bill No. 502, reads:

"Bridge replacements (narrow and dangerous).....\$1,000,000.00."

which is some indication as to the legislative intent with reference to the general use that is to be made of such moneys.

While it must be conceded that the question is debatable, in view of the foregoing, I am compelled to the view that the conclusion reached by the Attorney General in the opinion of 1928, above referred to, is the most logical conclusion to be reached. It is the most logical view, considering highway utility, which may be adopted in arriving at the intent of the Legislature. As pointed out in said opinion, it is just as essential, and probably more so, to have bridges in safe condition as it is to have the highway in proper condition.

Based upon the foregoing, you are specifically advised that it is my opinion that:

1. The moneys allotted to a municipality under the provisions of Sections 5537 and 6309-2 of the General Code, may legally be expended for the purpose of maintaining and repairing bridges and viaducts upon streets within the municipality. (Opinion, Attorney General, 1924, page 335, overruled.)

2. County commissioners may legally expend the county's portion of the motor vehicle license and gasoline tax receipts for the purpose of maintaining and repairing bridges on public roads and highways in the county system of highways.

Respectfully,

GILBERT BETTMAN,
Attorney General.

102.

CORPORATION—OFFICERS—FILING OF CERTIFICATES WITH SECRETARY OF STATE UNDER SECTION 8623-16, GENERAL CODE—WHEN REQUIRED

SYLLABUS:

The requirement of the filing in the office of the Secretary of State of a certificate as provided for in Section 8623-16, General Code, refers only to the issuance of par value shares of a corporation for an amount of consideration less than the par value thereof and has no application to the issuance of par value shares at par or at a price greater than par.

COLUMBUS, OHIO, February 16, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date with which is enclosed a certificate to be filed under the provisions of Section 8623-16, General Code. It appears that this certificate has been submitted to you following the issuance of par value shares of The H. Brothers Company for an amount of consideration more than the par value thereof.