

1453.

MOTOR VEHICLE LICENSE TAX—HOW MUNICIPALITY'S SHARE MAY
BE USED—SECTION 6309-2 G. C. CONSTRUED.

SYLLABUS:

1. *A part of the general expenses of the engineering department of a city, whose functions include maintenance and repair of streets, as that phrase is defined in section 6309-2 of the General Code, may not be legally paid from the municipality's share of the motor vehicle license tax.*

2. *Expenses of providing engineering for the special purpose of such maintenance and repair may legally be paid out of such maintenance and repair fund.*

COLUMBUS, OHIO, May 10, 1924.

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

Gentlemen:—

Receipt is acknowledged of your recent communication, in which you submit the following inquiry:

“May a part of the general expenses of the engineering department of a city, whose functions include maintenance and repair of streets having an existing foundation, be legally paid from the municipality's share of the motor vehicle license tax?”

Paragraph 2 of Section 6309-2 of the General Code reads:

“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.”

In an opinion of my predecessor (1920, Vol. 1, p. 801), it was held that political subdivisions constituting districts or registration may not use funds coming into their hands by reason of the motor vehicle license tax, for the purpose of purchasing road repair equipment, such as trucks, rollers, etc.

On page 803 of the above opinion it was said:

“A careful analysis of this statute (6309-2) discloses a definite purpose in the mind of the legislature in the provisions therein made to distinguish the ‘maintenance and repair fund’ from all other funds of a county or municipal corporation. The section defines what is meant by the term ‘maintenance and repair’, and it is clear that funds derived from the motor vehicle license tax in the hands of the district of registration must be ex-

pended upon a highway the foundation of which is in existence, and cannot be used in a new construction.”

It will be noted that said section 6309-2 of the General Code limits the use of the funds provided for therein, and going to the municipality, to the “maintenance and repair” of streets. All items of expense of engineering and supervision, and other items of expense specially created on account of such “maintenance and repair” are properly payable out of such “maintenance and repair fund.”

Generally, under the various statutes, and in the absence of statute, the cost and expenses of preliminary and other surveys, and items of engineering and inspection are proper items going into the cost and expense of maintenance and repair of streets.

Dewitt vs. Rutherford, 57 N. J. L. 619;

Adkins vs. Toledo, 5 C. C. (n. s.) 433.

As specifically pertaining to your question, your attention is directed to the case of Longworth vs. Cincinnati, 34 Ohio St. 101, the second and third paragraphs of the syllabus of which read:

“Where the surveying and engineering of such improvement were performed by the chief engineer of the city and his assistants, who were officers appointed for a definite period, at a fixed salary, which the law required to be paid out of the general fund of the city, the reasonable cost to the city, of such surveying and engineering, cannot be ascertained and assessed upon the abutting property, as a necessary expenditure for the improvement.

“If a superintendent of such an improvement is necessary, and one is employed by the city for that particular improvement, the amount paid by the city, for his services may properly be included in the assessment.”

On page 111 of the opinion, it is said:

“Second. Did the courts below err in holding that the charge for engineering was improperly included in the assessment, as assigned for error in the cross-petition? Notwithstanding section 544 does provide, that the costs of the improvement of a street, includes ‘the expense of the preliminary and other surveys,’ yet we think that this has reference only to cases in which the engineer doing the work was employed for that special purpose, and does not apply to work done by engineers appointed for a definite period of time, at fixed salaries, under the provisions of section 4 of the act of March 17, 1876 (73 Ohio Laws, 44). The finding of fact shows that the work was done by the chief engineer of the board of public works and his assistants, all of whom were in the employ of the city, at fixed salaries, and paid out of the general fund of the city; and also shows the manner of arriving at the amount that was charged and assessed for this improvement.

“It is sufficient to say, that when the salaries of these engineers were paid from the general funds of the city, as required by law, that was the end of it, unless there was some law expressly authorizing the charge and assessment that was made in this case, for the purpose of reimbursing the city for the amount so paid; and, inasmuch as there is no such law, the courts did not err in holding that the charge was improperly included in the assessment.

"Third. Did the court err in holding that the charge for 'superintending' was properly included in the assessment?

"The difference between the superintendent and the engineer in this case is, that the former was not a salaried officer, while the latter was. This appears from the finding of fact on this point. The fourth section of the act of March 17, 1876, does not require superintendents to be appointed for a fixed period, and where they are not so appointed, there is no provision for the payment of their services when employed under special contract, as in this case. We suppose that, under section 544 of the code, the proper city officers could, in their discretion, if they deemed it necessary, employ a superintendent for this particular work, and thereby incur the expense agreed to be paid for his services; and we see no reason why this expense would not constitute a proper and necessary expenditure in the construction of the improvement. If so, then a charge for such services would constitute a necessary item of expenditure in the construction of the work, and was properly included in the assessment."

The rule laid down in the above case is cited with approval in the case of Spangler vs. Cleveland, 35 Ohio St. 469.

By analogy it would seem that general expenses of an engineering department of a city may not be paid out of the "maintenance and repair fund" provided in said Section 6309-2 of the General Code.

However, from these cases it may be said that engineers, and other engineering employes, doing the engineering work in connection with the maintenance and repair of streets, as that phrase is defined in said Section 6309-2 of the General Code, who are appointed for a definite period of time, at fixed salaries, may not properly be paid out of such maintenance and repair fund. Engineering employes, doing the engineering work in connection with such maintenance and repair, employed for the special purpose, may properly be paid out of said fund.

Respectfully,

C. C. CRABBE,

Attorney General.

1454.

APPROVAL, BONDS OF VILLAGE OF MT. HEALTHY, HAMILTON COUNTY, \$7,931.39, STREET IMPROVEMENTS.

COLUMBUS, OHIO, May 10, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1455.

APPROVAL, BONDS OF CITY OF ATHENS, ATHENS COUNTY, \$6,000.00, TO EXTEND, ENLARGE AND REPAIR WATERWORKS.

COLUMBUS, OHIO, May 10, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.