

the remainder retained in the county treasury. In the treasuries of such counties, such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways, 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 in which the existing foundations thereof are used as a sub-surface of the improvement thereof, in whole or in substantial part; and in the treasuries of such municipal corporations, such moneys shall constitute a fund which shall be used for the maintenance, repair, construction and repaving of public streets, and for no other purpose and shall not be subject to transfer to any other fund, provided however that as to such municipal corporations, not more than fifty per cent of the total funds available during any year from such source including the unexpended balance of such funds from any previous year, shall be used in such construction and repaving which shall be done by contract let after the taking of competitive bids as provided by law, or in the manner provided in the charter of any such municipal corporation."

The language of Section 5541-8, General Code, as amended in 113 O. L. 71, upon which you base your inquiry, is practically identical with the provisions of Sections 5537 and 6309-2 of the General Code, quoted *supra*.

In view of the similarity of the language of the statutes therein construed in my former opinion, to the language of part of Section 5541-8, General Code, applicable to townships, I believe that this former opinion is dispositive of your question.

In specific answer to your inquiry, I am of the opinion that a township may use funds from its portion of the gasoline tax to pay the cost of such sewers and drains in connection with the construction of township roads, as are necessary for the drainage of such roads, as provided by Section 5541-8, General Code, *supra*.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2015.

APPROVAL, ABSTRACT OF TITLE TO LAND OF CHARLES A. HAMMOND IN BENTON TOWNSHIP, HOCKING COUNTY, OHIO.

COLUMBUS, OHIO, June 23, 1930.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title, warranty deed, encumbrance estimate No. 133 and Controlling Board certificate of release relating to a certain tract of land in Benton Township, Hocking County, Ohio, which is owned of record by one Charles A. Hammond and which is more particularly described as follows:

"Being the south half of the northwest quarter and the north half of the southwest quarter of section 5, township 11, range 18, Benton township, Hocking County, Ohio. Excepting therefrom 4 acres more or less above the rocks in the southwest corner of the north half of the southwest quarter of the above described tract."

Upon examination of the abstract of title submitted, which is certified by the abstractor under date of May 5, 1930, I find that said Charles A. Hammond has a good and indefeasible title to the above described property, free and clear of all encumbrances except as follows:

1. On October 13, 1910, one James Smelts, being then the owner of the above described property, executed and delivered to The Central Contract & Finance Company a lease on the above described premises for oil and gas purposes, for a term of ten years from the date of said lease and so long thereafter as gas or oil might be produced thereon. The stated term of said lease has expired by limitation of time and said lease is not effective unless gas or oil is produced upon the premises under said lease, in which case under the terms of said lease the same would continue in effect until surrendered, provided said lessee complied with the provisions of said lease by payment of the rentals and royalties therein provided for. There is nothing in the transcript to show that this lease has been surrendered. From the fact that a later oil and gas lease on these premises was surrendered by the lessee therein named, I infer that no oil and gas was ever produced under the lease here in question and that the same is not now in effect. However, as above noted, there is nothing in the abstract showing the facts in regard to this matter.

2. The taxes for the last half of the year 1929, due and payable in June, 1930, in the amount of \$14.09, are unpaid and a lien upon said property. Likewise, the taxes for the year 1930, the amount of which is as yet undetermined, are a lien on said property.

Upon examination of the warranty deed submitted by said Charles A. Hammond, who is a widower, I find that the same has been properly executed and acknowledged, and that as to its form said deed is sufficient to convey to the State of Ohio a good fee simple title to the above described property, free and clear of all encumbrances excepting the taxes due and payable on and after June 20, 1930.

An examination of encumbrance estimate No. 133 shows that the same has been properly certified and executed and that there are sufficient balances in the proper appropriation account to pay the purchase price of this property, which purchase price is the sum of \$1,350.00. It likewise appears that the necessary money to pay the purchase price of the above described property has been released by the Board of Control acting under authority of Section 11 of House Bill 510, passed by the 88th General Assembly.

I am herewith returning said abstract of title, warranty deed, encumbrance estimate No. 133, Controlling Board certificate and other files relating to the purchase of the above described property.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2016.

APPROVAL, TEN LEASES TO PARCELS OF LAND ADJACENT TO
WATERS OF INDIAN LAKE.

COLUMBUS, OHIO, June 23, 1930.

HON. PERRY L. GREEN, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—You will find enclosed herewith certain reservoir land leases, ten in number, which, together with a number of other reservoir land leases, you have submitted for my examination and approval.