

Fifth. And to continue and carry on a system of national and international relief in time of peace and apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other great national calamities, and to devise and carry on measures for preventing the same."

Section 7701, which will not be quoted because of its length, provides for a central committee as a governing body for said society. At present six are appointed by the incorporators, six by the state and territorial societies and six by the president, one of whom shall be designated by him as chairman.

Under the provisions of section 7702 as enacted February 27, 1917, the secretary of war is required to audit the financial report of said society.

A careful consideration of the statutes herein referred to compels the conclusion that the American National Red Cross is a body politic and corporate, functioning as an agent of the government of the United States in times of peace as well as in times of war. It is believed that the view herein taken is supported by the opinion of the supreme court in the case of Overholser vs. National Home for Disabled Soldiers, 68 O. S. 236.

You are therefore advised that motor vehicles owned and operated by any chapter of the American National Red Cross should be registered without charge.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1293.

ROADS AND HIGHWAYS—HOW STATE HIGHWAY COMMISSIONER IS TO CHARGE CERTAIN ITEMS FOR PAYMENT AS APPROPRIATED IN HOUSE BILL NO. 558 AND HOUSE BILL NO. 279.

State highway commissioner advised as to funds which are to be charged with certain items for the payment of which appropriations have been made by the General Assembly.

COLUMBUS, OHIO, May 28, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading as follows:

"About the first of April the state auditor, in accordance with the provisions of House Bill No. 558, issued the following warrants:

H. E. Culbertson.....	\$50,000 00
Galbreath & Shoemaker.....	375 98
Thos. J. McKim.....	3,000 00
D. E. Sullivan & Son.....	1,607 87
	<hr/>
	\$54,983 85

and on April 20, 1920, in accordance with the provisions of House Bill No. 279 issued a number of warrants payable to contractors for excess freight amounting to \$82,733.72, making a total of \$137,717.57 which he charged out of the inter-county highway fund.

House Bill No. 558 directs the payment of \$375.98 from any future apportionment of highway improvement funds of Pike county; the \$3,000 and \$1,607.87 from the state highway improvement fund, but does not say how the \$50,000 is to be paid.

House Bill No. 279 directs the payments of all freight claims from the state highway improvement funds.

The state highway improvement fund is the tax levy, twenty-five per cent of which is main market money, and the remaining seventy-five per cent, less personal service and office maintenance, is the inter-county highway fund.

It will be difficult to charge these items to the inter-county highway fund since the inter-county highway fund is distributed equally to the eighty-eight counties and the fund is not carried as a whole. It seems to me that the only way these disbursements could be charged to the inter-county highway fund would be to charge the items against the inter-county highway fund of the county in which the indebtedness occurred. In most cases the available inter-county highway funds in each county are now set aside for contracts and in some cases contracts have been consummated.

Please advise me what funds you think best to charge these items against.

The "state highway improvement fund" referred to in your letter is that defined by section 1230 G. C. (108 O. L. 497) reading as follows:

"There shall be levied annually a tax of five-tenths of one mill on all the taxable property within the state to be collected as other taxes due the state, and the proceeds of which shall constitute the state highway improvement fund."

By the terms of section 1221 (108 O. L. 492), the amount of such state highway improvement fund remaining after minor appropriations which may be made therefrom by the general assembly is divided as you indicate, namely, seventy-five per cent for inter-county highway improvement and twenty-five per cent for main market road improvement. The same statute further provides in effect that the percentage for inter-county highway improvement is to be expended equally among the eighty-eight counties of the state, while that for main market road improvement is to be expended so as to distribute equitably the benefits from such expenditure to different sections and counties of the state.

Referring now to the several items which you mention:

The Galbreath & Shoemaker item of \$375.98 for completion of certain road improvement in Pike county is to be charged to that county's share of inter-county highway moneys, for the reason that the General Assembly has specifically provided in House Bill No. 558 in connection with the appropriation:

"The state auditor is hereby directed to deduct said sum from any future apportionment of highway improvement funds to said county."

The items, Thomas J. McKim, \$3,000; D. E. Sullivan & Son, \$1,607.87; and payment to contractors for excess freight \$82,733.72, may be treated together, for the reason that as to the first two of these items the General Assembly has said (H. B. 558):

" * * * provided, however, that the money for the settlement of this claim should be taken from the state highway improvement fund;"

and as to the third item the General Assembly has provided (H. B. 279; 108 O. L. 548):

"Section 2. For the payment of such obligations there is hereby appropriated from the state highway improvement fund the sum of one hundred and eighty thousand dollars."

Hence, the state highway improvement fund as a whole should be charged with said three items, with the result that seventy-five per cent will be a charge against inter-county highway moneys and twenty-five per cent against main market road moneys.

This leaves for consideration the Culbertson item of \$50,000. The appropriation for that item reads (H. B. 558):

"H. E. Culbertson Company, Cleveland, Ohio, in full settlement of claim for losses sustained in building twenty-four miles of highway in Muskingum and Licking counties."

No specific mention is made of the fund out of which the appropriation is to be paid. Section 1 of said House Bill, however, contains these provisions:

"Appropriations herein enumerated for the payment of which specific funds in the state treasury are provided by law are hereby made from such specific funds. Any sum necessary to satisfy all other appropriations herein made is hereby appropriated out of any monies in the state treasury to the credit of the general revenue fund."

Within the provisions of which of these sentences does the Culbertson appropriation come,—the first or the second? No doubt upon consideration of the matter from a purely practical standpoint, and from the standpoint of the history of the Culbertson claim, much might be said to the effect that the appropriation comes within the terms of the first sentence. However, the legislature in appropriating for the Culbertson claim, treated it, not as an expenditure for constructing a highway, but rather as a loss suffered by the contractor. Again, the legislature has not, with respect to the Culbertson item, as it did in the case of the other items, make a special designation of the fund out of which payment is to be made. Hence, we are not at liberty to conclude that the Culbertson item is one "for the payment of which specific funds in the state treasury are provided by law"; and the conclusion follows that the item is one which must be paid out of moneys "in the state treasury to the credit of the general revenue fund."

Your suggestion as to charging the several items to the share in inter-county highway moneys of the respective counties wherein the work was performed is not believed to be tenable, except in the case of the Galbreath & Shoemaker item. It is to be remembered that the appropriations do not represent claims in judgment or for which the claimant might obtain judgment, but rather a recognition by the General Assembly of claims morally well founded and which for that reason the *state* ought to pay. For aught that appears, the several counties in which the work was done have neither recognized the legal nor moral validity of the claims nor done anything to give rise to the claims.

A copy of this opinion is being transmitted to Hon. A. V. Donahey, auditor of state, for his information.

Respectfully,
JOHN G. PRICE,
Attorney-General.