

appointed by the Comptroller of the Currency, in accordance with the provisions of Section 5234 of the Revised Statutes, are exempt from taxation under state laws; and we have no hesitation in saying that in our opinion they are. Such property and assets, in legal contemplation, still belong to the bank, though in the hands of a receiver, to be administered under the law. The Bank did not cease to exist on the appointment of the Receiver. Its corporate capacity continues until its affairs are finally wound up and its assets distributed. *Bk. of Bethel vs. Pahquioque Bk.*, 14 Wall. 398 (81 U. S., XX., 844); *Kennedy vs. Gibson*, 8 Wall., 506 (75 U. S., XIX., 479); *Bk. of Kennedy*, 17 Wall., 21 (84 U. S. XXI., 555). If the shares have any value they are taxable in the hands of the holder or owners under Section 5219 of the Revised Statutes, but the property held by the Receiver is exempt to the same extent it was before his appointment."

The above discussion has proceeded upon a consideration of the want of power on the part of the state to tax the personal property of a national bank as against the bank itself or as against a receiver appointed to take over its property and assets. In this connection it may be noted, however, that acting under the authority conferred upon it by Section 5219 of the Revised Statutes of the United States, the State of Ohio, through its Legislature, has provided only for taxing the real property of national banks in the name of the bank, and the shares of its stock in the hands of the owners thereof. See Sections 5408 and 5409, General Code. The personal property of a national bank, whether tangible or intangible, is included within the resources of the bank upon the statement of which the county auditor determines the assessable value of the shares of stock of such bank, which, as above noted, are taxable in the names of the stockholders. Section 5411 and 5412, General Code.

It follows from the considerations above noted that the questions presented in your communication should be answered in the negative.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1255.

MUNICIPALITY—AUTHORITY TO USE GASOLINE TAX MONEY TO  
FILL IN CANAL BED AS INCIDENT TO STREET CONSTRUCTION.

SYLLABUS:

*In the event a city has dedicated as a public street or boulevard, a portion of a canal lying within its borders, and intends to improve the same as a street, the city's portion of the gasoline tax may be used for the purpose of filling in the bed of said canal as an incident in connection with said street construction.*

COLUMBUS, OHIO, December 4, 1929.

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

GENTLEMEN:—Acknowledgment is made of your communication requesting my opinion, which reads as follows:

"Some years ago, the City of Toledo acquired a part of the Miami and Erie Canal lying between the City of Toledo and the Village of Maumee. The canal has been drained between these points, and the City of Toledo pro-

poses to construct a boulevard on the old canal bed. Before any actual boulevard construction program can be arranged, the canal must be filled to bring it to a level with the banks.

Question: May the city's portion of the gasoline tax receipts be used for the purpose of filling the canal bed?"

In connection with your inquiry, it will be observed that Section 5537, General Code, which relates to the first gasoline tax, and Section 6309-2, General Code, which relates to the automobile license tax, were amended by the 88th General Assembly. Prior to said amendments, moneys derived from both of the sources above mentioned, could be expended by municipalities for the purpose of maintenance and repair. Under said amendments the language relating to the uses for which said receipts could be expended was changed, thereby enlarging the powers of municipalities to make such expenditures. The language now expressly authorizes the expenditure of such funds for the repairing, constructing and repaving of public streets or roads in municipalities. However, it is provided that not more than fifty per cent of such funds shall be used for construction and repaving.

Section 5548-1, General Code, as amended by the same Legislature, and which relates to the second gasoline tax, expressly provides that the proceeds thereof may be used by municipalities for the purpose of constructing, widening, reconstructing and maintaining their public highways, roads and streets and to supplement revenue already available for such purpose.

From the foregoing it will readily be seen that both of the gasoline taxes to which you refer, may be used for the purpose of constructing streets. There certainly can be no argument but that before a street is constructed, in many instances, a necessary fill should be made in order to bring the surface of the road, when completed, to the proper elevation to accommodate the traffic and to provide a sufficient drainage system. In other words, filling is just as essential as grading out under modern engineering practices in connection with road construction.

In the situation you present it can readily be imagined that a road would be very desirable located at an elevation similar to that of the banks of the canal, whereas it would be undesirable if it were constructed in the bed of the canal.

If the canal which you mention has properly been dedicated as a boulevard and it is the intention of the municipality to improve the same as a public street, it is my opinion that, if in the judgment of the engineers in charge it is essential to fill in the canal bed as an incident to a street construction project, the receipts from the gasoline tax may be properly used for said purpose.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1256.

ELECTION BOARD MEMBERS—COMPENSATED ACCORDING TO PROVISIONS OF NEW ELECTION LAW AFTER JANUARY 1, 1930.

**SYLLABUS:**

*Members of boards of deputy supervisors and inspectors of elections who continue in office after January 1, 1930, under Section 4785-8, General Code, as members of the newly*