

mentioned, the conclusion is inescapable that your commission may not expend any funds appropriated to it for the purpose of paying for labor and materials or for commodities purchased unless the same is purchased pursuant to competitive bids, unless, of course, the controlling board shall have authorized the furnishing of such labor and material or the purchase of commodities without competitive bids.

In specific answer to your inquiry, you are advised that the Ohio Revolutionary Memorial Commission as created by Amended Senate Bill No. 91, 113 O. L. 547, by reason of the express provisions of House Bills Nos. 510 and 513 of said General Assembly, is required to obtain competitive bids before expending funds for labor, material or commodities, unless the controlling board authorizes the furnishing of such labor, material or commodities without competitive bids.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1713.

MOTOR VEHICLE LICENSE—APPLICATIONS MADE FROM RESIDENTS OF OHIO COUNTIES DIRECT TO COMMISSIONER OF MOTOR VEHICLES—FEES SHOULD BE RETURNED TO COUNTIES—INTEREST NOT CHARGEABLE AGAINST BANKS IN COLUMBUS HOLDING SUCH MONEY FOR TRANSPORTATION—EXCEPTION.

*SYLLABUS:*

1. *When persons in the various counties of this state make application for motor vehicle licenses direct to the Commissioner of Motor Vehicles, the motor vehicle license taxes accompanying such applications should be forwarded to the counties from which they came.*
2. *When such funds are deposited by the Commissioner of Motor Vehicles in Columbus banks solely for the purpose of transmission, and do not there remain for an unreasonable length of time, such banks are not liable for interest in the absence of a contract providing for the payment of interest.*

COLUMBUS, OHIO, April 1, 1930.

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

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

“Section 6294 of the General Code of Ohio provides among other things that a person may make application for license plates direct to the Commissioner of Motor Vehicles. Pursuant to the provisions contained in this section large numbers of applicants from every county in the state mail their applications and fees direct to the Commissioner of Motor Vehicles. Whereupon the Commissioner of Motor Vehicles transmits a copy of the application together with the fee to the county auditor of the county in which said applicant resides. The various county auditors then make distribution in accordance with the laws as made and provided in such cases.

To safeguard the fees thus collected by the commissioner pending

the completion of reports to the various county auditors said fees are deposited in local banks subject to the check of the commissioner which accompanies each report.

The question is shall the local banks credit interest to the state on these funds during the time they are held subject to the order of the commissioner.

If the procedure of the commissioner is at variance with the law, will you kindly outline an administrative method which he may follow."

Section 6291-1, General Code, provides that the Commissioner of Motor Vehicles shall designate the county auditor and one or more persons in each county to act as deputy commissioners who shall accept applications for the annual registration of motor vehicles together with the motor vehicle license tax in the respective counties. Section 6294, General Code, to which you refer, reads in part as follows:

"Every owner of a motor vehicle which shall be operated or driven upon the public roads or highways of this state shall before the first day of January of each year, except as herein otherwise expressly provided, cause to be filed, by mail or otherwise, in the office of the Commissioner of Motor Vehicles or a deputy commissioner, a written application in triplicate for registration for the following year, beginning the first day of January of such year, on blanks to be furnished by the Commissioner of Motor Vehicles for the purpose, containing the following information:

\* \* \* \* \*

Each deputy commissioner other than the county auditor shall forthwith, upon receipt of any application for registration together with the license fee, transmit such fee together with a duplicate copy of the application to the county auditor of the county in which such person resides. In any case where an application for registration is made to any deputy commissioner in any county other than the county in which such applicant resides, such fee and duplicate copies of the application shall be sent at once to the county auditor of the county in which such applicant resides and the original copy of such application shall be mailed to the Commissioner of Motor Vehicles at Columbus. After being properly recorded, such application shall then be returned to the deputy commissioner with whom such application was filed. Nothing in this act shall prevent any person from making an application for a motor vehicle license direct to the Commissioner of Motor Vehicles. Each deputy commissioner shall retain in his office a copy of said application until the first day of April of the following year after the date of such application. This copy shall be for public reference."

It is obvious that any person residing in any county in this state may, if he wishes, make application for the registration of his motor vehicle direct to the Commissioner of Motor Vehicles in Columbus, instead of to one of the local deputy commissioners. In the event application is made locally, the law has prescribed how the motor vehicle license tax money shall be handled. An examination of the pertinent sections of the General Code fails to disclose, however, any express provisions for the handling of motor vehicle license tax money which is sent from the various counties direct to the Commissioner of Motor Vehicles.

Section 6309, General Code, relates to the disposition of these funds when paid locally in the various counties. It is as follows:

"Each business day, the county auditor shall make a statement to the county treasurer, showing the amount of taxes collected on the preceding day under the provisions of this act, and at the same time pay into the county treasury the amount collected on such day. The county auditor shall open an account with each municipal corporation in the county and also with the county district of registration. He shall apportion the tax collections between the State and the several districts of registration in the county, (and) pay the State's portion thereof monthly, to the Commissioner of Motor Vehicles who shall pay the same into the State treasury. He shall distribute the proceeds of tax collections due districts of registration in the manner provided in Section 6309-2 of the General Code."

Section 6309-2, General Code, 113 O. L. 280, provides the manner of distribution of this revenue. It is therein set forth that fifty per cent of these taxes shall be paid into the treasuries of the municipal corporations of the district and into the county treasury. It is further therein set forth that fifty per cent of such taxes "shall be paid by the county auditor, monthly to the Commissioner of Motor Vehicles". Since the apportionment of this money among the municipalities, counties and state shall be made by the county authorities, and since the Legislature has made no provision for the apportionment of such funds by the Commissioner of Motor Vehicles, I am of the view that the present practice of the Commissioner of Motor Vehicles of forwarding these funds to the respective counties from which they came is proper. The Commissioner of Motor Vehicles apparently has no authority to apportion these funds to the extent even of retaining fifty per cent of such funds and forwarding the other fifty per cent to the respective counties, and, therefore, you are confronted with the necessity of either forwarding the entire amount to the counties or retaining the entire amount. To say that because no provision is made for forwarding these funds to the counties, therefore, they shall be retained by the Commissioner of Motor Vehicles and turned into the State treasury, would result in extending to the owners of motor vehicles the right to deprive their own cities and counties of their statutory portion of such taxes.

Having determined that it is proper for you to forward these funds to the respective counties notwithstanding the absence of a statutory provision to that effect, it becomes necessary to arrive at a reasonable administrative method of so doing. I am of the view that remittance should be made as soon as possible and within a reasonable time. You state that it has been your practice to deposit this money in Columbus banks and then draw checks of the commissioner payable to the various counties from which the money came. I am advised that a considerable portion of these funds are received in the form of checks which must, of course, clear before a check may be drawn on the Columbus bank. This office has recognized the method of transmitting public funds by the use of the usual banking facilities of the State. In an opinion of this office appearing in Opinions of the Attorney General for the year 1926, p. 266, the then Attorney General considered the matter of the transmission of funds to the Secretary of State by the Deputy Registrar of Motor Vehicles under the law as then in force and effect. At p. 271, the following language was used:

"The statute requires the deputy registrar to immediately forward the application and the fee to the Secretary of State. From your inquiry it would appear that the Secretary of State had made an arrangement for payment of the fees into a local bank to the credit of his account by the deputy registrar instead of having the fee forwarded direct to him.

Inasmuch as the officer is an insurer of the safety of the funds, it seems to me that the Secretary of State might, in the interest of safe transmission of the funds, adopt a method whereby he could avail himself of the usual banking facilities of the State in the transmission of such funds. If such arrangement was in fact made, I am of the opinion that when and as the deputy registrar, pursuant to such arrangement, turned the fees into the local bank to the credit of the Secretary of State, there was in law a transmission of the fees to the Secretary of State and a substantial compliance by the deputy registrar with Section 6294. From and after that time, it is apparent that the deputy registrar had no further control of the moneys and the possession of the bank was the possession of the Secretary of State."

The exact method herein commented upon of depositing the funds in a bank to the credit of the party to receive them would, of course, not be feasible in the matter here under consideration for the reason that instead of deposits being made by 88 persons to the credit of one person, it would be necessary to make deposits by one person to the credit of 88 persons. I believe the practice of depositing these funds to the credit of the Commissioner of Motor Vehicles to be distributed by the commissioner to the various counties by check amounts to the Commissioner of Motor Vehicles availing himself of the usual banking facilities of the State in the transmission of these funds just as effectively as did the practice commented upon in the 1926 opinion.

It is next necessary to consider the matter of whether or not local Columbus banks whose facilities are used in the remittance of the funds here under consideration should credit interest on such funds for the time they are held pending distribution. This matter of the liability of the banks to the State under such circumstances was under consideration in the 1926 opinion of this office hereinabove referred to. This opinion discussed numerous authorities on the subject, chief among which is the case of *Franklin National Bank vs. City of Newark*, 96 O. S. 453, wherein the court said in a per curiam opinion:

"We think it clear from the provisions of this and cognate sections of the General Code that any bank receiving funds of a municipality under the circumstances disclosed by this record, knowing the same to be the funds of the municipality, becomes a trustee and must account to the municipality for the fund so deposited and all profits arising from such deposit."

The conclusion of the then Attorney General upon this specific point appears on p. 275. It is as follows:

"If banks have received said fees, otherwise than for the purposes of immediate transmission to the Secretary of State, with knowledge that they were such State funds, such banks will be liable to the State for whatever profit may have been realized by them from said funds; or, if no profits have been realized, then to the extent of the loss to the State caused by the funds being withheld from deposit in the State treasury, thereby preventing them from being deposited at interest in the State depository."

This last mentioned opinion was under consideration in another opinion of this office rendered by my immediate predecessor, appearing in Opinions of the Attorney General for 1927, Vol. II, p. 901. The question considered by my pre-

decessor was whether or not any interest was due to the State when public funds had been deposited in a bank over a period extending from December 1, 1923, to August 3, 1925. The average aggregate monthly deposits during that period were over \$70,000.00, and the average balance in the bank was a very substantial sum. Upon that statement of facts, the opinion held:

"It would seem clear that the bank in this case could not be heard to say that it did not know the character and source of the deposits made by the deputy registrar and would be liable in the first instance for any profits realized from the use of the moneys while on deposit. In view of the holding of the Supreme Court of Ohio in the case of *Bank vs. City of Newark*, 96 O. S. 453, this conclusion seems inescapable. Whether or not any profits were realized by the bank is a question of fact which, from the information at hand, I am unable to determine. Whether any profits were realized by the bank or not by reason of carrying this account it would be equally liable with the Secretary of State if in fact it is determined that the Secretary of State is liable for any interest by reason of his failure to deposit the moneys coming into his hands as Secretary of State in the State treasury in compliance with the law."

I do not believe that the conclusions set forth in the 1927 opinion are applicable to the situation which you present, providing the funds to be transmitted to the various counties do not remain in the Columbus banks for an unreasonable length of time, and providing further that these funds are deposited only for the purpose of facilitating their transmission to the local counties at the earliest possible date without there being established a substantial average balance. The conclusions hereinabove quoted from the 1926 opinion are predicated upon banks receiving funds "otherwise than for the purpose of immediate transmission".

I am advised that it has been the practice of the Commissioner of Motor Vehicles to make a report to the various counties every two weeks at which time a check is forwarded to cover motor vehicle license tax money received from residents of the respective counties. Since the statute is silent on the entire matter, it is my opinion that this practice does not amount to anything more nor less than the Commissioner of Motor Vehicles properly availing himself of the usual banking facilities of the State in the transmission of such funds, and the banks which hold such funds for a period of two weeks or less are not liable for interest thereon, in the absence of a contract providing for the payment of such interest.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

---

1714.

APPROVAL, BONDS OF TIFFIN CITY SCHOOL DISTRICT, SENECA COUNTY—\$135,000.00.

COLUMBUS, OHIO, April 1, 1930.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*