

the reservations contained in the sections governing the expenditure of such funds, provided such driveways are intended for use in substantially the same manner as a public street and are open to vehicular traffic.'

The question has now arisen as to whether the gasoline or auto license tax may be used for the repair of roads in the cemeteries. As the same reasoning would apply in the case of cemeteries, that is, such roads are intended for use in substantially the same manner as a public street, and are open to vehicular traffic, may the municipality's portion of the motor vehicle license tax and the gasoline tax be lawfully used for the repair of driveways in municipal cemeteries?"

In my opinion No. 2090, to which you refer, the provisions of the various tax laws were specifically given consideration, and therefore, it is believed unnecessary to make a detailed discussion of the provisions thereof herein. The following is quoted from the body of the opinion:

"The fundamental purpose for the imposition of these taxes was to create funds to provide for the cost of constructing and maintaining proper public facilities for vehicular traffic. This need may be accomplished as fully in many instances by parkways as by the improvement of what are technically regarded as public streets.

It is a fact which cannot be overlooked that many of our park driveways are of more importance from the standpoint of traffic than is the ordinary street. To hold that a dead-end street, serving substantially no convenience except that of owners of property abutting directly thereon, may be improved by the use of these tax funds, while denying the right to use these funds in the improvement of an important driveway in a public park, would in my opinion be absurd."

By analogy, it is believed that the opinion to which you refer, is dispositive of the inquiry which you present. In other words, if a driveway in a public park may be improved by using the funds under consideration, it certainly follows that driveways in cemeteries which are used by the public may likewise be repaired by the use of said funds. In fact, it would seem impossible to make any logical distinction between the two classes of driveways, except of course, it could well be argued that a driveway used by the public in a cemetery would be more important than the driveways within a park.

Without further discussion, it is my opinion that the municipality's portion of the motor vehicle license tax and the gasoline tax may be lawfully used for the repair of driveways in municipal cemeteries.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2563.

APPROVAL, BONDS OF MORROW COUNTY, OHIO—\$3,381.00.

COLUMBUS, OHIO, November 21, 1930.

Industrial Commission of Ohio, Columbus, Ohio.