

It also appears from a copy of the minutes herewith enclosed that said purchase has been approved by the Controlling Board. A regularly certified encumbrance estimate should accompany this abstract.

The abstract, warranty deed and other data submitted are herewith returned.

Respectfully,

C. C. CRABBE,

Attorney-General.

3935.

MOTOR VEHICLE FEES—COLLECTED UNDER SECTIONS 6294-1 AND 6298 G. C.—SHOULD BE PAID INTO STATE TREASURY TO CREDIT OF GENERAL REVENUE FUND.

SYLLABUS:

Fees collected under sections 6294-1 and 6298 of the General Code should be paid into the state treasury to the credit of the general revenue fund.

COLUMBUS, OHIO, January 8, 1927.

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

GENTLEMEN:—I acknowledge receipt of your letter as follows:

“Section 6294-1, General Code, provides for a transfer fee of one dollar when an automobile license is transferred from one car to another and Section 6298, General Code, provides for a fee of one dollar for obtaining duplicate license plates. Section 6309-2, G. C. prior to its amendment in 111 Ohio Laws, 465, provided that all fees collected under this chapter shall be paid into the state treasury to the credit of a fund to be known as ‘state maintenance and repair fund.’ Under these provisions the fees of one dollar for transfer and one dollar for duplicate plates have been paid into the state treasury. The amendment to Section 6309-2 in 111 Ohio Laws, 465, eliminated the provision that all fees collected under this chapter should be paid into the state treasury and merely provides that under this chapter should be paid into the state treasury and merely provides that 50% of all taxes collected under the provisions of this chapter shall be distributed.

Question: Under the law as it now stands, should above named fees be paid into the state treasury or should they be divided in the same way that the tax is divided under the law?”

Section 6294-1 of the General Code provides:

“Upon the transfer of ownership of a motor vehicle its registration shall expire, and it shall be the duty of the original owner to immediately notify the secretary of state of the name and address of the new owner and return to the secretary of state the registration certificate for cancellation. The original owner shall also remove number plates from a motor vehicle upon transfer of ownership of such vehicle. Should the original owner make application for the registration of another motor vehicle within thirty days after such cancellation, he may file a new application accompanied by a fee of one dollar, and pay the tax thereon, less the amount of the tax that would be collected on account of the vehicle transferred, on the date of such application.”

Section 6298 of the General Code, relating to lost and destroyed tags, provides:

"In the event of the loss, mutilation or destruction of any certificate of registration, provided for in this section or of any license plates, the owner of a registered motor vehicle or manufacturer or dealer, as the case may be, may obtain from the commissioner of motor vehicles, a duplicate or duplicates thereof, or new plates bearing a different number, if the commissioner deems it advisable, upon filing in the office of the commissioner an affidavit, satisfactory to the commissioner, showing the facts of such loss and paying a fee of one dollar for such certificate of registration and each license plate."

Under both sections the payment is spoken of as a fee. The purpose of the payment in one case is apparently for the clerical work necessary for such transfer of registration, and in the second case it is for clerical work and for the cost of duplicating the license tags lost or destroyed. This fee cannot be considered as an excise tax, since the tax on motor vehicles is imposed by section 6292, and that section makes no mention of the fees authorized in the statutes above quoted.

Section 6309-2 as enacted in 111 O. L. page 460, provides for the distribution of the revenues collected under this chapter, and reads in part as follows:

"The revenue collected under the provisions of this chapter shall be distributed as follows:

(1) Fifty per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district or registration as provided in this chapter. * * *

(2) Fifty per centum of all taxes collected under the provisions of this chapter shall be paid by the county auditor, monthly to the commissioner of motor vehicles who shall pay the same into the state treasury to the credit of the 'state maintenance and repair fund.' "

Prior to this amendment this section provided that all *fees* collected under this act should be paid into the state treasury to the credit of the state maintenance and repair fund; second, fifty per cent of all *taxes* should be paid to the municipal corporation or county constituting the district of registration; and, third, fifty per cent of all *taxes* should be paid into the state treasury to the credit of the maintenance and repair fund.

By the amendment referred to, the distribution of license tags and the collection of the tax was placed under the jurisdiction of a commissioner of motor vehicles appointed by the Secretary of State.

Section 6291-1 of the General Code provides:

"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 license tax, and assign distinctive numbers in the same manner as the commissioner of motor vehicles. Such deputy commissioners shall be located in such cities or villages in the county as the commissioner sees fit."

This amendment changes the plan of the collection of taxes on motor vehicles. Taxes are now collected by the county auditor and by the persons designated by the commissioner of motor vehicles, and are turned into the county auditor's office. The portion belonging to the municipalities and counties is retained by the county au-

ditor and credited to the account of the proper political subdivision. The portion of the tax belonging to the state is transmitted by the auditor once each month to the state treasurer.

It will be observed that the fees collected under sections 6294-1 and 6298 are in no case paid directly to the commissioner of motor vehicles, and do not pass through the hands of the auditor.

Section 6309-2 makes no provision for the distribution of the fees collected under the sections in question, and it is therefore my opinion that those fees should be paid into the state treasury and credited to the general revenue fund, from which the expense of issuing the duplicate licenses and registering transfers are paid.

Respectfully,
EDWARD C. TURNER,
Attorney-General.

3936.

BANKING BUSINESS—WHERE MEMBER OF A PARTNERSHIP DECEASED—DISPOSITION OF INTEREST UNDER SECTIONS 8085 ET SEQ. G. C.—PARTNERSHIP AGREEMENT UNDER SECTION 8092 G. C.—SUPERINTENDENT OF BANKS MAY NOT LIQUIDATE BANK OPERATED BY PARTNERSHIP UNLESS SECTION 710-89 G. C. APPLIES.

SYLLABUS:

1. *In the event of the death of a member of a partnership engaged in the banking business, the interest of the partner in the business must be disposed of in accordance with the statutory provisions found in sections 8085 et seq., unless the partner has made provision for the continuance of the business either by articles of partnership agreement or by his last will and testament.*

2. *Section 8092 G. C. expressly recognizes the right of a partner in any business to provide by partnership agreement or by last will and testament for the continuance of the partnership business, in which event the assets devoted to the partnership business are to be settled and disposed of in accordance with the provisions of the partnership articles or the will.*

3. *It is not the duty of the superintendent of banks to take over for liquidation a bank owned and operated by a partnership upon the death of a partner, unless there exists one or more of the reasons specified in section 710-89, General Code.*

COLUMBUS, OHIO, January 8, 1927.

HON. H. E. SCOTT, *Superintendent of Banks, Columbus, Ohio.*

DEAR SIR:—Your recent inquiry is as follows:

“Section 710-76 of the General Code of Ohio provides:

‘No authority to transact a banking business in this state shall be granted, except to a corporation duly organized and qualified for that purpose. Unincorporated banks now authorized to transact and actually transacting a banking business may continue such banking business in the city, village or township in which they are now located so long as they comply with the provisions of this act.’