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MUNICIPAL CORPORATION—FUNDS RECEIVED FROM PROCEEDS, MOTOR VEHICLE LICENSE FEES—DISTRIBUTED UNDER SECTION 6309-2 G. C.—MAY LAWFULLY BE EXPENDED TO PAY COST OF HOUSING AND STORAGE OF EQUIPMENT USED TO MAINTAIN, REPAIR, CONSTRUCT AND REPAVE PUBLIC STREETS AND TO MAINTAIN AND REPAIR BRIDGES AND VIADUCTS IN MUNICIPALITY.

SYLLABUS:

The funds received by a municipal corporation from the proceeds of motor vehicle license fees, distributed under Section 6309-2, General Code, may lawfully be expended for the purpose of paying the cost of housing and storage of equipment used in maintaining, repairing, constructing and repaving public streets and in maintaining and repairing bridges and viaducts in the municipality.

Columbus, Ohio, April 22, 1949

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The current examination of the records of the City of Cincinnati, disclosed the expenditure of funds derived from the proceeds of Motor Vehicle License fees distributed under the provisions of Section 6309-2, General Code, for the purpose of furnishing heat, electric light and power, gas, and telephone service for the Highway Maintenance Garage. Said building is approximately 100' x 400' in size, and is used to house and store all motor driven vehicles and equipment under the supervision of the Division of Highway Maintenance.

“The following is a list of expenditures paid from the Motor Vehicle License, Street Maintenance and Repair Fund, during the year 1947:

Heating:

January	\$1,749.00	
February	1,742.61	
March	2,002.81	
May	1,712.75	
June	1,271.39	
July	922.36	
August	973.03	
September	865.68	
October	1,087.84	
November	1,300.44	
December	1,300.44	
Total heating expense.....	<u> </u>	\$14,928.35
Electric Lighting Service.....	\$1,416.85	
Electric Power Service.....	5,318.84	
Telephone Service	878.72	
Gas	915.71	
Boilers—Furnace and stoker parts.....	192.86	
Inspection	1.00	
Ohio Inspection Bureau.....	5.10	
Office Supplies	7.64	
Soda Ash for Boilers.....	12.62	
	<u> </u>	\$ 8,749.34
Total.....		<u>\$23,677.69</u>

“The steam used in heating the Highway Maintenance Garage is furnished by the City Incinerator in the Waste Collection Department. The cost of such heating facilities is prorated between the several city departments and funds as follows:

Highway Maintenance Garage Paid from Motor Vehicle	
License Street Maintenance and Repair Funds.....	25%
Work House	30%
Municipal Garage	30%
Inspection Lane	5%
	<u> </u>
Total cost borne by other Depts. and Funds.....	90%
Total cost borne by Incinerator Plant.....	10%
	<u> </u>
Total.....	100%

“In view of the provisions of Section 6309-2, General Code, restricting the use of funds derived from Motor Vehicle License fees, and various Attorneys’ General Opinions previously rendered on that subject, we respectfully request that you consider the foregoing and give us your formal opinion in answer to the following question:

“Can the funds received by a municipal corporation from the proceeds of Motor Vehicle License fees, distributed under Section 6309-2, General Code, be lawfully expended for the purpose of paying the ordinary operating expenses in connection with the Highway Maintenance Garage used to house and store street equipment and motor vehicles used in the Highway Maintenance Department of a municipality?”

Section 6309-2, General Code, to which you refer in your letter of inquiry, reads in part :

“The remainder of the revenue collected under the provisions of this chapter shall, after payment of the expenses of the bureau of motor vehicles (including the payment of claims authorized by section 6308-12 of the General Code), be distributed as follows :

“(1) Twenty-five percentum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation * * *. The portion of such money due the municipal corporation shall be paid into the treasuries of such municipal corporations * * *. * * * in the treasuries of such municipal corporations such moneys shall constitute a fund which shall be used for the maintenance, repair, construction and repaving of public streets, and maintaining and repairing bridges and viaducts, and for no other purpose, * * *.”

It will be noted that said Section 6309-2 limits the use of the funds provided for therein, and going to the municipality, to the maintenance, repair, construction and repaving of public streets and maintaining and repairing bridges and viaducts.

Numerous opinions have been written by my predecessors relative to expenditures properly chargeable against the Motor Vehicle Funds. However, I find none of them directly in point in regard to the instant question.

In order to maintain, repair, construct and repave streets and/or maintain and repair bridges and viaducts, it is necessary to have equipment. In an opinion found in 1935 Opinions of the Attorney General, page 71, No. 3868, the first branch of the syllabus reads :

“A city may legally purchase, out of the proceeds of funds arising from the provisions of Sections 5537 and 6309-2, General Code, a service truck, providing such truck is used only in connection with the maintaining, repairing, constructing and repaving of the city streets, and is not used in connection with the cleaning and clearing of the city streets.”

In view of the above opinion wherein it is held that a city is permitted to purchase equipment from the proceeds of funds arising from the provisions of Sections 5537 and 6309-2, General Code, it necessarily follows that such equipment should be housed when same is not in use. The expense incurred from such storage is incidental to the maintenance, repairing, constructing and repaving streets and/or maintaining and repairing bridges and viaducts.

What is meant by the word "incidental"? The word "incidental" was referred to by the court in the case of *In Re Elimination of Highway-Railroad Crossing*, 64 N. Y. S. (2nd), 764, at page 771, citing *Corpus Juris Secundum*:

"* * * At first blush, the word 'incidental' connotes subordination to a primary purpose, and ordinarily the use of the word is regarded as referring to minor matter; the word also has the significance of matters collateral and accessory, directly pertinent to, or in some relation to. * * *"

It is, therefore, my opinion that the funds received by a municipal corporation from the proceeds of motor vehicle license fees, distributed under Section 6309-2, General Code, may lawfully be expended for the purpose of paying the cost of housing and storage of equipment used in maintaining, repairing, constructing and repaving public streets and in maintaining and repairing bridges and viaducts in the municipality.

Respectfully,

HERBERT S. DUFFY,
Attorney General.