

879.

## ARTICLES OF INCORPORATION — APPROVAL — THE MAYFLOWER MUTUAL INSURANCE COMPANY.

COLUMBUS, OHIO, July 16, 1937.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I have examined the articles of incorporation of The Mayflower Mutual Insurance Company which you have submitted for my approval.

Finding the same not to be inconsistent with the Constitution or laws of the United States or of the State of Ohio, I have endorsed my approval thereon and return the same to you herewith.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

880.

## TOWNSHIP TRUSTEES—USE OF FUNDS RECEIVED FROM GASOLINE TAX—SIDEWALKS MAY NOT BE CONSTRUCTED FROM SUCH FUNDS.

## SYLLABUS:

*A board of township trustees may not lawfully use the township's portion of the proceeds of the gasoline excise tax fund provided by Section 5541-8 of the General Code, to construct sidewalks within the road easement but outside of the portion of the road traveled by motor vehicles.*

COLUMBUS, OHIO, July 19, 1937.

HON. R. E. SNEDDEN, *Prosecuting Attorney, Medina County, Medina, Ohio.*

DEAR SIR: This will acknowledge receipt of your letter of recent date, which reads as follows:

“Your opinion is requested regarding G. C. 5541-8.

QUESTION: ‘Whether or not a Board of Township Trustees would be permitted to use gas tax funds as provided in the foregoing Section 5541-8 to construct sidewalks within

the road easement, but outside of the portion of the road traveled by motor vehicles.'

For your information, the Bureau of Inspection and Supervision of Public Offices in their Opinion B81-258, dated June 11, 1936, states that such an expenditure is not included in G. C. 5541-8.

I wonder if their opinion is predicated upon a former opinion of your office."

That portion of Section 5541-8, General Code, relative to the expenditure of gasoline excise tax funds by township trustees, reads as follows:

"Seventeen and one-half per cent of said highway construction fund shall be appropriated for and divided in equal proportions among the several townships within the state, and shall be paid on vouchers and warrants drawn by the auditor of state to the county treasurer of each county for the total amount payable to the townships within each of the several counties. Upon receipt of said vouchers and warrants each county treasurer shall pay to each township within the county its equal proportional share of said funds which shall be expended by each township for the sole purpose of constructing, maintaining, widening and reconstructing the public roads and highways within such township. \* \* \*"

It should be noted that said section specifically provides that the funds paid to each township within the county "*shall be expended by each township for the sole purpose of constructing, maintaining, widening and reconstructing the public roads and highways within such townships.*" (Italics the writer's.)

Section 5 of Article XII, of the Ohio Constitution, provides:

"No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state distinctly the object of the same, to which only, it shall be applied."

This section of the Constitution requires a strict application of tax levies to the purpose for which they are levied.

In Opinions of the Attorney General for 1931, Vol. I, page 134. it was held in the syllabus:

“The municipality’s portion of the proceeds of the gasoline and motor vehicle license taxes may not properly be used for the purpose of constructing and repairing sidewalks.”

In this Opinion, No. 2889, the then Attorney General said:

“The fundamental purpose of said taxes, as expressed by the legislature, was to benefit the users of motor vehicles and to defray certain normal public expenses occasioned by the operation of such vehicles. Ordinarily, it is difficult to see how a sidewalk could be said to be of any benefit to motorists, as such walks are clearly for the use of pedestrians. Of course, it could be argued that inasmuch as good sidewalks might prevent pedestrians from using the paved portion of the street proper, thereby aiding in the expeditious moving of motor traffic and also lessening the danger from accidents, they could be constructed from the funds considered. \* \* In view of the provisions of Section 5 of Article 12 of the Ohio Constitution, which requires a strict application of tax levies to the purpose for which they are levied, it would seem improper to use such funds for paying for sidewalks.”

I am inclined to agree with this opinion of my predecessor relative to the expenditure of these gasoline excise tax funds by municipalities and believe that the same rule is applicable to the solution of the question which you have raised in your communication. I am unable to see where the expenditure of these funds by township trustees for the construction of sidewalks would come within the provisions specifically set forth for the expenditure of these funds by township trustees as is provided in Section 5541-8, *supra*.

In specific answer to your question it is therefore my opinion that, a board of township trustees may not lawfully use the township’s portion of the proceeds of the gasoline excise tax fund provided by Section 5541-8 of the General Code, to construct sidewalks within the road easement but outside of the portion of the road traveled by motor vehicles.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*