

means which are not effected by mechanism or mechanical combinations.

But the term 'process' is often used in a more vague sense, in which it cannot be the subject of a patent. Thus we say that a board is undergoing the process of being planed, grain of being ground, iron of being hammered or rolled. Here the term is used subjectively or passively as applied to the material operated on, and, not the method or mode of producing that operation, which is by mechanical means, or the use of a machine, as distinguished from a process.

In this use of the term it represents the function of a machine, or the effect produced by it on the material subjected to the action of the machine."

The Supreme Court of the United States has apparently recognized that the grinding of grain constitutes a processing of grain. It is my judgment that the threshing of grain must be held to be in the same category, since it is a treatment to which the grain is subjected after being produced and harvested.

It is my opinion that sales of equipment and other articles of tangible personal property to dry cleaning establishments or to laundries, all of which property is to be used in the operation of dry cleaning or laundering, and sales of grain threshing machines to be used in threshing grain, are exempt from the imposition of the sales tax contained in Sections 5546-1, et seq., General Code.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4150.

PAYROLL CLERK'S SALARY MUST BE PAID FROM COUNTY GENERAL FUND—SURVEYOR'S OFFICE.

SYLLABUS:

The salary of a payroll clerk in the office of a county surveyor must be paid from the general fund of the county and there is no authority in law for the payment of any portion of such salary from the county road and bridge fund.

COLUMBUS, OHIO, April 16, 1935.

HON. EMORY F. SMITH, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a communication over the signature of your assistant, James B. Miller, which communication reads as follows:

"We wish you would give us your opinion as to whether or not a payroll clerk hired by the county surveyor can be paid either all or part of his salary from the county road and bridge fund. The payroll clerk in the office of our local surveyor keeps the time of and pays all employees of the county who are paid from the road and bridge fund, as well as the county employees who work out of the surveyor's office, who are paid from the general fund. His work in doing this requires about half of his time. Inasmuch as he does devote considerable of his time for this work the surveyor feels that he should pay him at least a part of his salary from the county road and bridge fund."

Substantially the same question which you present was before my immediate predecessor in office for consideration in an opinion appearing in Opinions of the Attorney General for 1932, Volume I, Page 352, and a copy of such opinion is enclosed herewith. The syllabus of that opinion reads as follows:

“The expense of the county surveyor and his office, in connection with the cost of the construction of a road improvement, are to be paid from county general funds and such cost cannot be proportioned and paid from the proceeds of a special road tax levy authorized by section 5625-15 et seq., of the General Code.”

The fund, out of which the expenses of the office of the county surveyor in connection with road construction were proposed to be paid, in such opinion, was a special fund of the county by virtue of the provisions of section 5625-9d, General Code.

In the present instance, it is desired that part of the salary of the payroll clerk in the county surveyor's office be paid from the county road and bridge fund, which fund is undoubtedly composed of moneys raised from a special tax levy, and is thus also a special fund by virtue of section 5625-9d, General Code.

In the opinion above referred to, the then Attorney General quoted several sections of the General Code, including section 2981, which reads:

“Such officers (including county surveyor) may appoint and employ necessary deputies, assistants, clerks, bookkeepers or other employes for their respective offices, fix their compensation, and discharge them, and shall file with the county auditor certificates of such action. Such compensation shall not exceed in the aggregate for each office the amount fixed by the commissioners for such office. When so fixed, the compensation of each duly appointed or employed deputy, assistant, bookkeeper, clerk and other employe shall be paid semi-monthly from the county treasury upon the warrant of the county auditor.
* * * ” (Words in parenthesis mine)

It was then stated at page 353:

“From an examination of the above statutes, it is apparent that the entire cost of the office of county engineer (including the cost of a payroll clerk) is to be paid from the general county fund and no authority exists for such payment, in whole or in part, from any special fund, established from the proceeds arising from a special levy. *Cincinnati vs. Longworth*, 34 O. S., 101, Opinions of the Attorney General for 1919, page 955 and Opinions of the Attorney General for 1918, page 103.” (Words in parenthesis mine)

Section 2981, General Code, states unqualifiedly that the salary of clerks shall be paid from the “county treasury”. Undoubtedly by the words “county treasury” the legislature means “the general fund” when no other fund is mentioned.

The opinion heretofore mentioned points out that there was at that time no authority to transfer moneys from a special fund to the general fund for the reimbursement of expenses of the office of county surveyor incurred in connection with a road improvement.

Since the rendition of the foregoing opinion, the legislature has enacted sections 5625-13a to 5625-13g, General Code (115 O. L. 251, 252). Section 5625-13a reads as follows:

"In addition to the transfers authorized in section 5625-13, the taxing authority of any political subdivision may transfer any public funds under its supervision, except the proceeds or balances of loans, bond issues, or special levies for the payment thereof, from one fund to another in the manner hereinafter provided."

From the foregoing section, it would seem that the taxing authority of the county (the county commissioners under section 5625-1c, General Code) might have authority to proceed to reimburse the general fund for the proportion of the salary of the payroll clerk earned during the time spent in connection with the work of making out payrolls for employes paid from the county road and bridge fund by transferring moneys from the special fund, the county road and bridge fund, to the general fund, providing such county commissioners followed the procedure set out in sections 5625-13b, et seq., General Code.

However, it is self-evident that proportioning the exact time that the payroll clerk spent in connection with work of making up payrolls of men paid from the county road and bridge fund would be very difficult, and it would probably prove to be impracticable to attempt such procedure.

In connection with section 5625-13a, General Code, it may be stated that such section has been amended by House Bill No. 32 of the 91st General Assembly, regular session; however, such amendment does not have any bearing on the particular matter you present.

I am therefore of the opinion, in specific answer to your question, that the salary of a payroll clerk in the office of a county surveyor must be paid from the general fund of the county and there is no authority in law for the payment of any portion of such salary from the county road and bridge fund.

Respectfully,
JOHN W. BRICKER,
Attorney General.

4151.

APPROVAL, BONDS OF OXFORD RURAL SCHOOL DISTRICT, GUERNSEY COUNTY, OHIO, \$700.00.

COLUMBUS, OHIO, April 16, 1935.

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

4152.

APPROVAL, BONDS OF GREEN RURAL SCHOOL DISTRICT, ADAMS COUNTY, OHIO, \$2138.65.

COLUMBUS, OHIO, April 16, 1935.

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