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ROAD AND BRIDGE BUILDING AND REPAIR—INHERITANCE TAX PROCEEDS PAYABLE TO TOWNSHIP—§ 5731.53 RC—SUCH FUNDS MAY BE USED FOR ROAD AND BRIDGE PURPOSES.

SYLLABUS:

Proceeds of inheritance taxes payable to a township under Section 5731.53, Revised Code, may be used by the trustees to the extent they deem necessary, for road and bridge building and repair.

Columbus, Ohio, October 7, 1957

Hon. John G. Peterson, Prosecuting Attorney  
Greene County, Xenia, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“The Greene County Trustees have presented us with the question of whether or not they can use monies collected under Section 5731.53, Revised Code, to improve township roads.

“In researching the question I found a 1931 Attorney General’s opinion wherein it was stated that in the event a township has no bonds or notes outstanding and no sinking fund or bond retirement fund, the township portion of inheritance tax money should, under this section, be paid to the General Revenue Fund or Road and Bridge-Building Fund, etc.

“Now the question presented is whether or not, in the event there are unretired bonds, the trustees could still, by resolution, authorize this money to be used for road purposes. An opinion from your office is respectfully requested.

Sections 5731.01 to 5731.56, Revised Code, relate to the imposition, collection and distribution of inheritance taxes. Section 5731.53, Revised Code, provides in part as follows:

“Fifty per cent of the gross amount of taxes levied and paid under sections 5731.01 to 5731.56, inclusive, of the Revised Code, shall be for the use of the municipal corporation *or township* in which the tax originates, and shall be credited as follows:

(A) To the general revenue fund in the case of a city;

(B) To the general revenue fund of a village or to the board of education of a village, for school purposes, as the village council by resolution may approve;

(C) To the *general revenue fund* or to the board of education of the school district of which the township is a part, for school purposes, *as the board of township trustees by resolution may approve*, in the case of a township. Where a municipal corporation is in default with respect to the principal or interest of any outstanding notes or bonds, one half of the taxes distributed under this section shall be credited to the sinking or bond retirement fund of such municipal corporation, and the residue shall be credited to the general revenue fund. \* \* \*

(Emphasis added.)

It will be noted that while under the provisions of division "C" of this section, a portion of the proceeds of this fund belonging to the township may be appropriated and turned over to the board of education of the school district of which the township is a part, for school purposes, there is no compulsion that such action be taken and in the absence thereof the portion coming to the township would go into the general revenue fund of the township.

It should be noted that while there is provision for the payment of a part of the share belonging to a municipal corporation, to its sinking or bond retirement fund, under some circumstances, there is no like provision relative to the share belonging to the township. Referring to the 1931 opinion of the Attorney General to which you call attention, Opinion No. 3103, Opinions of the Attorney General for 1931, page 484, it may be noted that that opinion was based upon a different state of the law then existing, and has no relevance to the present statute which I have quoted.

Nor is there any direct reference in the present law to the use of this fund or any portion thereof for road or bridge building or repair. The only question then that appears to be involved in your inquiry is whether any portion of the funds which have accrued from the inheritance tax to the general revenue fund of the township may be used for road and bridge purposes.

In this connection I call your attention to Opinion No. 3285, Opinions of the Attorney General for 1934, page 1438, wherein it was held:

"Moneys may not be transferred from the general fund of a township to the road and bridge fund of such township except

pursuant to the provisions of Sections 5625-13a, et seq., of the General Code.”

In support of that conclusion it was said in the course of the opinion :

“As you indicate, unless there is some authority to make this transfer other than that contained in Sections 5625-13a, et seq., General Code, (5705.15 R. C.) such court proceedings are required.

“Since the only other general provisions for transferring funds are contained in Section 5625-13, General Code, (5705.14 R. C.) it is necessary to determine whether or not this section authorizes such transfer as is contemplated. The only authority for transferring moneys from the general fund contained in this last mentioned section is set forth in paragraphs e and f thereof. Paragraph e relates to transferring funds from the general fund to the bond retirement fund and is, of course, not applicable. Paragraph f, however, provides that ‘Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by Sections 5625-11 or 5625-12 of the General Code or to the proper fund of a district authority.’

“In view of these provisions of paragraph f of Section 5625-13, supra, it remains to be determined whether or not Sections 5625-11 or 5625-12 of the General Code authorize the creation of a road and bridge fund. Both of these last mentioned sections refer to special funds that may be established in addition to those funds which are required to be established by Section 5625-9. Section 5625-9, General Code, in paragraph d thereof requires a special fund for each special levy and in paragraph f requires a special fund for each class of revenues derived from a source other than the general property tax *which the law requires to be used for a particular purpose*. The proceeds of the gasoline tax which are distributable to townships would clearly fall within paragraph f of Section 5625-9; and furthermore any township road levies would fall within paragraph d of such section. It follows, therefore, that the road and bridge fund to which it is desired to transfer moneys from the general fund is authorized by Section 5625-9, General Code, and not by Sections 5625-11 and 5625-12, General Code.

“It must accordingly be concluded in my opinion that moneys may not be transferred from the general fund of a township to the road and bridge fund of such township except pursuant to the provisions of Sections 5625-13a, et seq., of the General Code.  
(Emphasis added.)

The sections of the General Code there referred to have been carried into the Revised Code with very few changes. Section 5705.09, Revised Code, providing for the establishment of special funds, reads as follows:

“Each subdivision shall establish the following funds:

- (A) General fund;
- (B) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds;
- (C) Bond retirement fund, for the retirement of serial bonds, notes, or certificates of indebtedness;
- (D) A special fund for each special levy;
- (E) A special bond fund for each bond issue;
- (F) A special fund for each class of revenues derived from a source other than the general property tax, which the law requires to be used for a particular purpose;
- (G) A special fund for each public utility operated by a subdivision;
- (H) A trust fund for any amount received by a subdivision in trust.”

I call particular attention to division (F) which provides for a special fund for each class of revenue “derived from a source other than the general property tax, *which the law requires to be used for a particular purpose.*” It will be noted that Section 5731.53, which I first quoted does not require the proceeds of the inheritance tax or any portion thereof to be used for any particular purpose, whereas the gasoline taxes which were the subject of the 1934 opinion, were, by law and later by constitutional provision, to be devoted to highway purposes only.

Accordingly, it is my opinion that the township trustees have the right to use the proceeds of the inheritance tax for any township purpose, without the necessity of putting them into a special fund or going through the proceedings for transfer referred to in that opinion. One lawful purpose under the control of township trustees is the building and repair of roads and bridges. See Sections 505.26 and 5549.09, Revised Code.

If the funds in question were derived from a general tax levy for current expenses I might agree that such funds should be put into such a fund as would properly reflect its unavailability for use for road purposes. There is a limitation in the tax law which would forbid the direct use of the general levy for road purposes. This is found in Section 5705.05, Revised Code, where it is provided that the “general levy” for current expenses may be used “for carrying into effect any of the general or special powers granted by law to such subdivision \* \* \* *but excluding* the construction, recon-

struction, resurfacing or repair of roads and bridges in counties and townships”.

Inasmuch, therefore, as proceeds of inheritance taxes are not designated by law for any special purposes, and are not the proceeds of a general levy, there is no necessity for establishing a special fund as provided in Section 5705.09, Revised Code, and no occasion to resort to the statutes relative to the transfer of funds.

Therefore, I do not consider that the 1934 opinion is applicable to the case which you present.

It is my opinion that proceeds of inheritance taxes payable to a township under Section 5731.53, Revised Code, may be used by the trustees to the extent they deem necessary, for road and bridge building and repair.

Respectfully,

WILLIAM SAXBE

Attorney General