

wise affects the provisions of section 5348-3, General Code, which likewise provide for the lien of such taxes, and further provide a remedy for their collection, it follows, further, by way of specific answer to the questions presented in your communication, that sections 11656 and 11656-2 of the General Code, as amended and enacted, respectively, by the recent act of the 91st General Assembly, above referred to, do not have the effect of changing or otherwise affecting existing provisions of law which fix the lien of inheritance taxes at the time of the succession on the death of the decedent and which continue the lien until the tax is paid. It is to be further concluded, by way of more specific answer to your second question, that the filing of judgment certificates in the common pleas courts under the authority of sections 11656 and 11656-2 of the General Code and in the manner therein provided, will not have the effect of giving the lien of judgments thus certificated priority over the lien of inheritance taxes on successions to property affected by the several liens, notwithstanding the fact that judgments may be certificated under these sections and become a lien upon the property prior to the time that a transcript of the order of the probate court determining the inheritance taxes on the succession to such property is filed in the common pleas court, for the purpose of collecting such taxes by execution to be issued on such transcript.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4806.

COUNTY COMMISSIONERS—UNAUTHORIZED TO USE PROCEEDS OF GASOLINE EXCISE TAXES FOR PURCHASE OF PASSENGER AUTOMOBILE.

SYLLABUS:

The county commissioners may not use the proceeds of gasoline excise taxes levied for road construction and repair purposes, for the purchase of passenger automobiles even though it is contemplated that after acquisition such passenger automobiles will be used solely in connection with such road work.

COLUMBUS, OHIO, October 17, 1935.

HON. D. H. JACKMAN, *Prosecuting Attorney, London, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Our county commissioners have inquired of me as to whether or not it is permissible to use the county share of the gasoline tax fund in the purchase of a passenger automobile for the use of the county highway department in road maintenance work.

Someone has suggested that there is an opinion governing this question, although I am unable to find it annotated in the particular code I am using at present.

Your assistance in this matter would be greatly appreciated.”

I do not find that this office has officially passed upon your question. There has been an opinion of this office holding that county commissioners may use the gasoline tax moneys of the county to purchase *road machinery and equipment*.

In *Opinions of the Attorney General for 1930*, Vol. I, page 289, it was held as disclosed by the syllabus:

“1. Moneys distributed to counties under the provisions of Section 6309-2, General Code, which relates to the motor vehicle license tax and moneys distributed to the counties under Section 5537, General Code, which relates to the first gasoline excise tax, may be used to purchase road machinery and equipment which is to be used exclusively for maintenance and repair of the county system of roads and highways.

2. The funds distributed to counties under the provisions of Section 5541-8, General Code, may be used for the purpose of purchasing road machinery and equipment which is to be used exclusively for the purpose of constructing, widening and reconstructing the county system of roads and highways in such county.”

Since the rendition of the 1930 opinion, Section 5541-8, General Code, has been amended to provide that the county's share of the second gas tax may be used for “maintaining” the county roads, as well as constructing, widening and reconstructing them. Hence, all the county gasoline tax moneys arising out of the two gasoline taxes (G. C. 5527, 5537 and G. C. 5541, 5541-8) may be used for purchasing road machinery and equipment, providing such machinery and equipment is used exclusively in the maintenance of roads.

In *Opinions of the Attorney General for 1931*, Vol. II, page 921, at 922, it was held that the clause in the last paragraph of Section 5541-8, General Code, namely, “provided that no portion of such funds shall be used for the purchase of road machinery or equipment”, applied only to the gasoline funds distributed to the townships.

The 1930 opinion was based largely on the case of *State, ex rel. Crabbe*,

Attorney General, vs. City of Columbus, 21 App., 119, wherein the court held that a city could purchase a sand dryer with gasoline tax funds, although the gasoline tax law did not expressly so provide. The court held that the authority to use the gasoline tax funds for "maintaining" roads carried with it wide latitude to use the funds for equipment used exclusively in connection with maintaining roads. This court decision was held to apply equally as well to counties.

While such 1930 opinion did not enumerate what was included within "road machinery and equipment", an opinion of the Attorney General, reported in *Opinions of the Attorney General for 1931*, Vol. II, page 871, following the principle of the case in 21 Appellate, held that an automobile truck was properly included within the term "road machinery and equipment". After quoting from this Crabbe case, the then Attorney General said at page 873:

"I assume, of course, that the truck, the purchase of which is the subject of your inquiry, is to be used exclusively for the purpose for which motor vehicle license taxes and gasoline excise taxes may be used, that is, for the maintenance, repair, construction, reconstruction, widening and repaving of streets and highways, as the case may be. If the use of the truck is confined solely to these purposes, it seems clear, from the authorities, that funds derived from the proceeds of the taxes spoken of may lawfully be used for its purchase."

I concur in the foregoing opinion, because I think that a truck may very properly be held to be included within the phrase "road machinery and equipment" when its use is confined to such purpose, and hence within the purpose of tax levies for road construction and repair.

It is observed that the conclusion of the 1931 opinion is predicated upon the fact that "the use of the truck is confined solely to these (road construction and repair) purposes". While a truck may be actually used in such work, as in hauling materials, etc., which go into the construction or repair, a passenger automobile would not appear by its very nature to be appropriate to such use. At best I think it may be said that a passenger automobile may be used only in connection with such road work, but not actually used in road repair or construction.

While, as above indicated, I concur in the 1931 opinion, *supra*, relating to trucks, it is recognized that such opinion is based upon a liberal construction of the specified purpose of the gasoline excise taxes. I am unable, however, to still further extend this legislative purpose to include passenger automobiles used in connection with road work.

To say that a passenger automobile, even though proposed to be used solely in connection with such work, may be properly included within the

meaning of the phrase "road machinery and equipment", and hence within the purpose of a tax levy for road construction and repair, would in my judgment be an unauthorized extension of the purpose of such levy beyond that contemplated by the legislature.

It is my opinion that the county commissioners may not use the proceeds of gasoline excise taxes levied for road construction and repair purposes, for the purchase of passenger automobiles even though it is contemplated that after acquisition such passenger automobiles will be used solely in connection with such road work.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4807.

APPROVAL, BONDS OF CUYAHOGA COUNTY, OHIO,
\$10,000.00.

COLUMBUS, OHIO, October 18, 1935.

State Employes Retirement Board, Columbus, Ohio.

4808.

APPROVAL, BONDS OF CITY OF CLEVELAND, CUYAHOGA
COUNTY, OHIO, \$3,000.00.

COLUMBUS, OHIO, October 18, 1935.

State Employes Retirement Board, Columbus, Ohio.

4809.

MOTOR VEHICLE—WEIGHT OF TANDEM AXLE ALLOW-
ABLE IN ADDITION TO GROSS WEIGHT AND LOAD LIM-
ITATIONS.

SYLLABUS:

When a vehicle used singly or in a combination of motor vehicles, is