

ination of transportation equipment used for the transportation of school pupils and boards of education throughout the state must conform to such rules and regulations whether they own transportation equipment or not, and if they have contracted for such transportation their contractors, whether the contract was entered into prior to the promulgation of the rule or later, must submit to having the equipment inspected and examined in accordance with the regulations.

2. When a contract for transportation of school pupils has been entered into by a board of education prior to April 15, 1938, the effective date of the rule promulgated by the State Department of Education with respect to annual inspection of school pupil transportation equipment used in its district, and the said contract does not either expressly or impliedly provide for the payment to the contractors of the necessary expense if any, of moving its transportation equipment to the proper place for such examination and inspection, the contractors can not be made to bear such expense, and the same should be borne by the board of education.

3. In view of the facts stated in your inquiry, the board of education of the New Washington School District may lawfully pay the reasonable expense incident to producing the school busses at the Crawford County Fairgrounds for examination by the State Highway Patrol in accordance with the rules and regulations promulgated by the State Department of Education with respect to the examination and inspection of school busses.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

830.

AUTOMOBILE LICENSE TAX FUNDS—COLLECTED BY AUTHORITY SECTIONS 6291 ET SEQ. G. C., PRIOR TO EFFECTIVE DATE, AMENDED SUBSTITUTE SENATE BILL 40, 93RD GENERAL ASSEMBLY—MAY NOT BE TRANSFERRED AS LOAN TO POOR RELIEF FUND, SECTION 6309, PARAGRAPH 3A, G. C.—STATUS, MOTOR VEHICLE LICENSE TAXES COLLECTED AFTER EFFECTIVE DATE OF SAID ACT—MAY BE LOANED TO SAID POOR FUND—SECTION 6309-2 PARAGRAPH 3A G. C., HOUSE BILL 675, SECTION 2, 93RD GENERAL ASSEMBLY—SPECIAL TAXING UNIT OF COUNTY, OUTSIDE MUNICIPALITIES—COUNTY COMMISSIONERS AUTHORIZED TO LEVY TAX FOR POOR RELIEF UPON TAXABLE PROPERTY.

SYLLABUS:

1. *Under the authority of Amended Substitute Senate Bill No. 40 enacted by the Ninety-third General Assembly, the automobile license*

tax funds collected by authority of Sections 6291, et seq., General Code, prior to the effective date of such act, may not be transferred by way of loan to the poor relief distributing fund prescribed in paragraph 3a of Section 6309, General Code.

2. Motor vehicle license taxes collected after the effective date of such Amended Substitute Senate Bill No. 40 may be loaned to the poor relief distributing fund under authority of paragraph 3a of Section 6309-2 of the General Code.

3. Section 2 of House Bill No. 675 of the Ninety-third General Assembly creates a special taxing unit out of that part of the county outside of municipalities located therein and authorizes the county commissioners to levy a tax for poor relief upon the taxable property within such special taxing district.

COLUMBUS, OHIO, June 29, 1939.

HON. CARL W. RICH, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR: You request my opinion as follows:

"1. Sub-paragraph 3a of Section 6309-2, General Code, as enacted in Amended Substitute Senate Bill No. 40, effective and approved May 29, 1939, provides, in substance, that the County Commissioners, or upon request of a taxing authority within the County certified to the County Commissioners, shall create a Poor Relief Distributing Fund and direct the County Auditor of such County to transfer and credit to such fund not to exceed twenty-five per centum of the monies collected from and after the effective date of this Act to and including April 15, 1941.

Those administering relief in this County are expecting to use this twenty-five per cent of the automobile license fund collected this year and prior to the effective date of this Act for relief purposes for this year. Will you kindly advise us whether, in your opinion, this tag tax collected for automobiles this year prior to the effective date of this Act may be used under this Act for relief purposes this year?

2. May the tag tax collected for this year under the former automobile license law after the effective date of this Act, to-wit: Amended Substitute Senate Bill No. 40, be applied to relief purposes for the year 1939?

3. Under the provisions of Substitute House Bill No. 675 in the last paragraph of Section 1 thereof it is provided, in substance, that if the county relief area is not co-extensive with the county, it shall constitute a separate taxing unit on the taxable property within which the County Commissioners of the County shall have authority to levy a tax for poor relief and to the electors within which the County Commissioners shall have authority

to submit the question of a special levy outside of the ten mill limitation for such purpose in the manner provided by Sections 5625-15 to Section 5625-18 of the General Code inclusive.

Please advise us whether or not in your opinion the County Commissioners, as such, having been elected by the electors of the entire county, have a right to create a taxing unit within the county and levy a tax therein for a particular purpose."

Paragraph 3a of Section 6309-2, General Code, as enacted in Amended Substitute Senate Bill No. 40 of the Ninety-third General Assembly, in so far as is material to your inquiry, reads:

"The county commissioners of any county may, by a two-thirds vote, and if the taxing authority of any subdivision, wholly or partly within the county, administering poor relief, by resolution adopted by a majority vote of such taxing authority and certified to the county commissioners, shall request it, they shall, create a poor relief distributing fund and direct the county auditor of such county to transfer and credit to such fund not to exceed twenty-five per centum of the moneys collected from and after the effective date of this act to and including April 15, 1941, and received by such county auditor under each and all of the three preceding paragraphs of this section, including moneys received for the use of municipal corporations. The resolution providing for such transfer shall specifically provide that each of the funds from which such transfer is made shall be reimbursed by the county auditor on or before May 31, 1941, by transfers thereto from the general fund of the county. * * * "

Then follows certain specific directions as to the method of incurring such obligation and the repayment thereof.

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."

Section 6291, General Code, is a statute imposing a tax and states distinctly the object for which it is levied. Such section, in so far as is material to your inquiry, reads:

"An annual license tax is hereby levied upon the operation of motor vehicles on the public roads or highways of this state, for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such

vehicles, constructing, maintaining and repairing public roads, highways and streets, and maintaining and repairing bridges and viaducts, paying the counties' proportion of the cost and expenses of co-operating with the department of highways in the improvement and construction of state highways, paying the counties' portion of the compensation, damages, cost and expenses of constructing, improving, maintaining and repairing roads, and for the purpose of enforcing and paying the expenses of administering the law to provide reimbursement for hospitals on account of the expenses for the care of indigent persons injured in motor vehicle accidents, and, until and including April 15, 1941, for the purpose of supplementing revenues available for paying the salaries and wages of traffic police officers in cities. * * *

In the case of *Calderine v. Freiberg*, 129 O.S., 453, there was presented to the court a question somewhat analogous to that contained in your first inquiry. During the year 1933 the legislature amended Section 6291, General Code, and enacted Section 6309-2b, General Code, so as to divert funds derived from automobile license fees to the county general fund during the years 1933, 1934 and 1935 in order to replace a shortage in the county general fund caused by the classification of personal property for purposes of taxation. The court held, as stated in paragraph 3 of the syllabus, that:

"The provisions of Sections 6291 (115 Ohio Laws, 486) and 6309-2b (114 Ohio Laws, 856), General Code, relating to the distribution of the annual motor vehicle license tax, are not violative of the Fourteenth Amendment of the Federal Constitution, or of Sections 2 or 19 of Article I, or Sections 2, 4 or 10 of Article XII of the Constitution of Ohio."

However, in that case the court was not called upon to rule upon the proposition as to whether a license tax levied prior to the enactment of such amendment, but collected after the amendment, would violate Section 5 of Article XII of the Constitution. On page 459, the court states:

"The problem in this case is further simplified by the fact that the tax has been collected and distributed as authorized by the statute in effect at the time of the collection and distribution. In other words, there is no claim that the amendments to the statutes were enacted during or subsequent to either of these processes. The plaintiff concedes that both processes were proper if the amended statute is constitutional."

In the case of *State, ex rel. Walton, v. Edmondson*, 89 O.S., 351, the court held that where a tax had been levied under a certain law for a

specific purpose but before distribution had been made the statute defining the purpose was repealed and a substitute statute enacted providing for distribution for a different purpose, such subsequent statute was unconstitutional as in violation of Section 5 of Article XII of the Constitution of Ohio. The court said on page 364:

“The taxes in the county treasuries, which were paid under the levies provided for in the act of 1908, can manifestly be applied only to the objects distinctly stated in the law providing for their levy.”

In view of such decisions, I am impelled to answer your first inquiry in the negative.

The statute levying a tax on motor vehicles differs from that requiring the real estate tax levy in that a tax is not levied on an annual basis but rather on a quarter annual basis. See Section 6294-2, General Code. The tax is one upon the right to use state highways for the purpose of driving a motor vehicle thereon or “upon the operation of motor vehicles on the public roads or highways of this state.” Section 6291, General Code. The tax does not become assessed until the owner uses or makes application for the use of the highways for the purpose of operating a motor vehicle thereon.

I am therefore of the opinion that under authority of *Calerdine v. Freiberg*, supra; as to motor vehicle license taxes received after the enactment of such Amended Substitute Senate Bill No. 40, such taxes are subject to the provisions of paragraph 3a of Section 6309-2, General Code, as therein enacted.

In your third inquiry you ask whether the county commissioners have the authority to create a taxing unit within the county for the purpose of assessing a tax under authority of House Bill No. 675 of the Ninety-third General Assembly. The language contained in Section 2 of such act, which gives rise to your inquiry, reads as follows:

“If the county local relief area is not coextensive with the county, it shall constitute a special taxing unit on the taxable property within which the county commissioners of the county shall have authority to levy a tax for poor relief and to the electors within which the county commissioners shall have authority to submit the question of a special levy outside of the ten mill limitation for such purpose in the manner provided by sections 5625-15 to 5625-18, both inclusive, of the General Code. The county treasurer shall be the treasurer of such county local relief area and all expenditures from the treasury of such county local relief area shall be governed by the appropriate provisions of law relative to the expenditure of moneys in the county treasury and by the provisions of this act.”

Such language is self-operating. The statute itself creates the district for the purposes of the tax levy without any action on the part of the board of county commissioners. Such language specifically gives to the board of county commissioners the authority to levy a tax for poor relief throughout the special taxing unit therein provided.

Specifically answering your inquiries, it is my opinion that:

1. Under the authority of Amended Substitute Senate Bill No. 40 enacted by the Ninety-third General Assembly, the automobile license tax funds collected by authority of Sections 6291, et seq., General Code, prior to the effective date of such act, may not be transferred by way of loan to the poor relief distributing fund prescribed in paragraph 3a of Section 6309, General Code.

2. Motor vehicle license taxes collected after the effective date of such Amended Substitute Senate Bill No. 40 may be loaned to the poor relief distributing fund under authority of paragraph 3a of Section 6309-2 of the General Code.

3. Section 2 of House Bill No. 675 of the Ninety-third General Assembly creates a special taxing unit out of that part of the county outside of municipalities located therein and authorizes the county commissioners to levy a tax for poor relief upon the taxable property within such special taxing district.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

831.

AUDITOR OF STATE — INTERPRETATION TERM "PRE-AUDITS" AS USED IN HOUSE BILL 675, SECTION 6, 93rd GENERAL ASSEMBLY—EXAMINATION, CLAIMS FOR POOR RELIEF—CHARGE AGAINST POOR RELIEF AREAS—EXPENSES AND COMPENSATION OF EXAMINERS—SUCH ACT DOES NOT TAKE FROM AUDITOR DUTIES AND COMPENSATION PROVIDED BY SECTIONS 284, 287, 288 G. C.

SYLLABUS:

1. The term "pre-audits," as used in Section 6 of House Bill No. 675 of the Ninety-third General Assembly, means examinations of claims for poor relief under authority of such act, and the determination of the amount thereof legally payable thereon by the local relief area.

2. Such Section 6 does not constitute a specific appropriation of funds for the purpose of pre-audits by the Auditor of State, but rather