

860

MOTOR VEHICLES LICENSE TAX FUNDS—DISTRIBUTED TO COUNTY, §4501.04(C) RC—MAY NOT BE USED IN WHOLE OR IN PART TO PAY INTEREST OR PRINCIPAL OF GENERAL OBLIGATION BONDS USED FOR ROAD PURPOSES—CHAPT. 133. RC.

## SYLLABUS:

Motor vehicle license tax funds distributed to a county as directed by Section 4501.04 (C), Revised Code, may not be used to pay in whole or in part the interest and principal of general obligation bonds issued by such county pursuant to the Uniform Bond Law, Chapter 133., Revised Code.

Columbus, Ohio, July 26, 1957

Hon. Paul J. Mikus, Prosecuting Attorney  
Lorain County, Elyria, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Where under Section 5555.01 R. C. et seq the Board of County Commissioners determine to reconstruct an existing county road the entire costs and expenses of which are to be borne by the county; and the board further initiates legislation pursuant to Section 133.32 R. C. providing for the issuance of general obligation bonds within the debt limitations provided by Section 133.05 R. C. for the purpose of paying the costs and expenses of said road reconstruction and providing for the levying of a tax sufficient to retire said bonds as provided by Section 11, Article XII of the Ohio Constitution and the Uniform Bond Act; and further providing in said legislation that such tax levy might be reduced or omitted in any year to the extent that motor vehicle license tax funds distributed to the county pursuant to Section 4501.04 R. C. are available and appropriated for the purpose of paying the principal and interest on said bonds, is such use of said motor vehicle license tax funds a lawful expenditure?”

At the outset mention should be made of a recent opinion issued to your office, being Opinion No. 291, Opinions of the Attorney General for 1957, the syllabus of which reads as follows:

“A board of county commissioners may not issue and sell bonds, use the proceeds thereof to build and improve county roads, and provide for the retirement of such bonds from that portion of the highway construction fund raised through the imposition of the second gasoline tax under Section 5735.25, Revised Code, and appropriated by the legislature to the counties under the provision of Section 5735.27, Revised Code.”

Your present request obviates to some extent the questions discussed in the former opinion. You now propose to issue general obligation bonds and to provide for the levying of a tax sufficient to retire the bonds as provided for by Section 11, Article XII of the Ohio Constitution, and the Uniform Bond Act. In addition, however, provision would be made that such tax levy be reduced or omitted in any year to the extent that motor vehicle license tax funds, as opposed to the second gasoline tax funds, are available and appropriated for the purpose of paying the principal and interest on the bonds.

Under the plan now being considered the license tax money would not be used directly for the purposes set forth in Section 4501.04 (C), Revised Code, but would rather be used to retire bonds, the proceeds of the sale of such bonds having been used for the purposes set forth in the section just noted. While from a practical standpoint such practice would seem to be very advantageous to the county, it would be anticipating the use of the proceeds of the license tax money and would, it seems, be in violation of that section.

The General Assembly has, by Section 133.30, Revised Code, provided a method by which subdivisions may borrow money in anticipation of current revenues and may issue notes therefor, which notes shall not run more than six months, and has by Section 133.31, Revised Code, authorized the issuance of both bonds and notes in anticipation of the collection of special assessments. I, however, find no authority in law for the issuance of bonds to be retired in whole or in part by funds distributed to a county pursuant to Section 4501.04, Revised Code.

It does not seem to me to be necessary to point out, in entirety, the general provisions with regard to the distribution of the proceeds from the motor vehicle license tax. The pertinent part of Section 4501.04, Revised Code, which provides for the distribution of such a tax, reads as follows:

“(C) Forty-seven per cent of all taxes collected under such chapters shall be for the use of the county in which the owner resides or in which the place is located at which the established business or branch business in connection with which the motor vehicle registered is used, *for the construction, reconstruction, improvement, maintenance, and repair of roads and highways, and maintaining and repairing bridges and viaducts.* \* \* \*.”  
 (Emphasis added.)

Examination should also be made of the Uniform Tax Levy Law, Chapter 5705, Revised Code. Section 5705.09, Revised Code, being a part of this chapter, provides in part 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.”

You will note that division (F) of the above section requires that the county set up a special fund consisting of the monies derived from the licensing tax funds. In order, then, to use this money for the purpose of retiring the bonds there would have to be a transfer from the special fund to the bond retirement fund. Section 5705.14, Revised Code, which prohibits the transfer from one fund of a subdivision to any other fund, by order of the court or otherwise, with certain exceptions, reads in part as follows:

“No transfer shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as follows:

“(D) The unexpended balance in any special fund, other than an improvement fund, existing in accordance with divisions (D), (F), or (G) of section 5705.09 or section 5705.12 of the Revised Code, may be transferred to the general fund or to the sinking fund or bond retirement fund *after the termination of the activity, service, or other undertaking for which such special fund existed, but only after the payment of all obligations incurred and payable from such special fund.*” (Emphasis added.)

I cannot conclude that there can be found in this unambiguous language authority to transfer licensing tax moneys from a fund established pursuant to division (F) of Section 5705.09, Revised Code, to a fund established for the retirement of general obligation bonds issued by the county.

I would also invite your attention to Opinion No. 4015, Opinions of the Attorney General for 1932, page 138, the syllabus of which reads :

“The proceeds of the gasoline tax may not be lawfully used for the payment of bonds previously issued for the construction of roads.”

The following statement appears in the body of that opinion :

“\* \* \* It is further evident that bonds that have been issued, even though they were issued for road purposes, are simply obligations of the township, and their status would be no different than any other bonded indebtedness of the township in so far as your question is concerned. It may be noted that under the present budget law it is necessary to maintain said proceeds in a separate fund.”

The Uniform Tax Levy Law, which I have noted above, supersedes, I believe, the budget law which was mentioned in the above opinion but not detailed to any extent. I find that I am in accord with the conclusions reached in that opinion.

I am not unaware of Opinion No. 1087, Opinions of the Attorney General for 1939, page 1565, the syllabus of which reads :

“‘Gas tax funds’ appropriated and distributed to a township (Sections 5541 and 5541-8, General Code) and ‘gas tax funds’ appropriated and distributed to a county (Sections 5527, 5537, 5541 and 5541-8, General Code), as well as ‘motor vehicle license moneys’ appropriated to a county (Section 6309-2,

General Code), may lawfully be expended by township trustees or county commissioners, as the case may be, for the purpose of retiring notes lawfully issued under authority of Section 7201, General Code, to evidence deferred installments of the purchase price of road machinery or equipment.”

Section 7201, General Code, which has now become Section 5549.02, Revised Code, authorized the purchase by county commissioners and township trustees of machinery, tools, trucks and other equipment to be used in constructing, maintaining and repairing roads, with payment for such equipment to be made over a period of two years. This section further provided for the issuance of notes covering the deferred payments. I cannot conclude, however, that Opinion No. 1087, *supra*, is applicable to the question you have presented, and I am unable to extend the reasoning of that opinion to other than the exact question before the then Attorney General.

It is, therefore, my opinion and you are advised that motor vehicle license tax funds distributed to a county as directed by Section 4501.04 (C), Revised Code, may not be used to pay in whole or in part the interest and principal of general obligation bonds issued by such county pursuant to the Uniform Bond Law, Chapter 133., Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General