

Zanesville, and find the papers submitted and the proceedings of said The Equitable Savings Company, as disclosed thereby, to be regular and in conformity with the provisions of Section 9660-2 of the General Code of Ohio.

All papers, including two copies of the charter issued to the said First Federal Savings and Loan Association, are returned herewith to be filed by you as a part of the permanent records of your department, except one copy of the charter which the law provides shall be filed by you with the Secretary of State. The law further provides that such filing with the Secretary of State shall be within ten days after the requirements of said Section 9660-2 have been complied with by The Equitable Savings Company, and that your approval shall be endorsed on the copy so filed. You will find on the copies of the charter, form of approval for your signature.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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MOTOR VEHICLE EXCISE TAX—MAY NOT BE TRANSFERRED TO ITS GENERAL FUND.

*SYLLABUS:*

*In view of the prohibition contained in Section 5625-13a, General Code, as amended by House Bill No. 32, enacted in the regular session of the 91st General Assembly (116 O. L. 46), no transfer may be made of the motor vehicle excise tax funds distributed to counties by virtue of sub-sections 2 and 3 of Section 6309-2, General Code, to the general fund of a county.*

COLUMBUS, OHIO, May 14, 1936.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR: I am in receipt of your communication which reads as follows:

“We respectfully request your opinion on the interpretation of Section 6309-2 as amended by House Bill No. 356, during the 91st General Assembly of Ohio.

Sub-section one of Section 6309-2 specifically prohibits transfer to any other fund of the 25% of the taxes collected under this section. Sub-sections two and three, contain no such specific restriction.

Under the law at the present time this county will stand a loss in revenue of approximately \$65,000.00, which amount is essential to the operation of the county government. The amount comes as a reduction in the General Fund.

The County Auditor is requesting an opinion as to whether a transfer can be made of the funds provided for in sub-sections two and three of Section 6309-2 to compensate for this loss of revenue in the General Fund."

I call your attention to my Opinion No. 5348, rendered April 13, 1936, which held as disclosed by the syllabus:

"Sections 6291 and 6309-2, General Code, as they existed prior to their purported amendment and repeal in House Bill No. 40, enacted in the regular session of the 91st General Assembly (116 O. L. 561), are still in force and effect."

Section 6291, General Code, providing for the motor vehicle excise tax levy, as it existed prior to its purported amendment in House Bill No. 40, enacted in the regular session of the 91st General Assembly (116 O. L., 561), and as it now exists (116 O. L., 339, 342), provides:

"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, maintaining and repairing public roads, highways and streets, 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. Such tax shall be at the rates specified in this chapter and shall be paid to and collected by the registrar or deputy registrar at the time of making application for registration as herein provided.

The general assembly shall make appropriations from the undistributed revenues collected under this section for the payment of the state's expense of collection of license fees and the administration and enforcement of the state laws pertaining to

the registration and operation of motor vehicles and for the payment of claims authorized by Section 6308-12 of the General Code.”

Section 6309-2, General Code, as it existed prior to its purported amendment in House Bill No. 40, and as it now exists (116 O. L., 339, 344, 345), provides in so far as is material to your inquiry:

“The remainder of the revenue collected under the provisions of this chapter shall, after payment of the expenses of the bureau of motor vehicles (including the payment of claims authorized by Section 6308-12 of the General Code), be distributed as follows:

(1) Twenty-five per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. The portion of such money due the municipal corporation shall be paid into the treasuries of such municipal corporations forthwith upon receipt by the county auditor, and the remainder retained in the county treasury. In the treasuries of such counties, such moneys shall constitute a fund *which shall be used for the maintenance and repair of public roads and highways, and for no other purpose, and shall not be subject to transfer to any other fund.* \* \* \*

(2) Five per centum of all taxes collected under the provisions of this chapter, together with interest earned by fees deposited by the treasurer of state as provided in Section 6309 of the General Code, shall constitute a fund for the use of the several counties for the highway and road purposes specified in paragraph (3) of this section. Said fund shall be divided equally among all the counties in the state. Said fund shall be paid out on vouchers prepared by the registrar and warrants drawn by the auditor of state in equal proportions to the county auditor of each county within the state to be used for the purposes herein designated.

(3) Forty-seven per centum of all taxes collected under the provisions of this chapter 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, as the case may require, for the construction, reconstruction, improvement, maintenance and repair of roads and highways.

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(Italics the writer's.)

As pointed out in your communication, Sub-section 1 of Section 6309-2, quoted supra, specifically prohibits the transfer to any other fund of the 25 percentum of the collected motor vehicle excise tax, whereas Sub-sections 2 and 3 of Section 6309-2 do not provide any such specific restriction. However, Sub-sections 2 and 3 of Section 6309-2 state the use of such funds by the counties to be, "for the construction, reconstruction, improvement, maintenance and repair of roads and highways." The only provision for such revenue going into the general fund of the county was to be found in the provisions of Section 6309-2b, which provided such procedure only with reference to the distribution of the motor vehicle excise tax revenues in the years 1933, 1934 and 1935. The only provision for "transfer" of such funds was to be found in Section 5625-13a (prior to its latest amendment), et seq., General Code. These sections provided for the transfer of funds from one fund to other funds, excepting "the proceeds or balances of loans, bond issues, or special levies for the payment thereof" by certain procedure including approval by the Tax Commission of Ohio and the Court of Common Pleas of the particular county petitioning such transfers.

Section 6309-2b, General Code, provided that out of the moneys received into the treasury of a county under paragraphs 2 and 3 of Section 6309-2, General Code, there should be paid into each of the several "funds" of the county, subject to certain limitations, an amount of money equal to the amount which would have been produced by the rate of taxation levied for the purpose of each such fund in the year 1930 upon the kinds and classes of personal property, as listed and assessed for taxation in said year, that is, on motor vehicles, household goods and furnishings, pianos and musical instruments, moneys, credits, investments in stocks, bonds, joint stock companies and shares of bank stock or capital employed in banking. However, as pointed out above, Section 6309-2b referred only to the distribution and use of the motor vehicle excise tax revenues for the years 1933, 1934 and 1935.

With reference to the "transfer" of such motor vehicle excise tax revenues by the counties, your attention is directed to Section 5625-13a, as amended by House Bill No. 32, enacted in the regular session of the 91st General Assembly (116 O. L., 46), which provides:

*"In addition to the transfers authorized in Section 5625-13, the taxing authority of any political subdivision may, in the manner hereinafter provided, transfer from one fund to another any public funds under its supervision except the proceeds or balances of loans, bond issues, or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or*

*purposes, and except the proceeds or balances of any license fees imposed by law for a specified purpose or purposes."*

The motor vehicle license tax is undoubtedly an excise tax. As stated in the case of *Calerdine v. Freiberg, County Treasurer, et al.*, 129 O. S., 453, at page 457:

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At the threshold of this discussion it is important to observe that there is no dispute as to the precise nature of this tax. Both the Court of Common Pleas and the Court of Appeals held it to be an excise rather than a property tax. Counsel have so considered it in their briefs and oral arguments. Clearly this is correct. *Saviers v. Smith, Secy. of State*, 101 Ohio St., 132, 128 N. E., 269; *Fisher Bros. Co. v. Brown, Secy. of State*, 111 Ohio St., 602, 146 N. E., 100; *Foltz Grocery & Baking Co. v. Brown, Secy. of State*, 111 Ohio St., 646, 146 N. E., 97. \* \* \*

In passing, it should also be noted that Section 6291, General Code, quoted *supra*, providing for the motor vehicle excise tax levy, provides only certain restricted purposes for such taxes and Section 5 of Article XII of the Constitution of Ohio provides that "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." See also *Rogers v. State, ex rel.*, 129 O. S., 108.

Consequently, in view of the prohibition contained in Section 5625-13a, General Code, as amended by House Bill No. 32, enacted in the regular session of the 91st General Assembly (116 O. L., 46), it is my opinion, in specific answer to your inquiry, that no transfer may be made of the motor vehicle excise tax funds distributed to counties by virtue of Sub-sections 2 and 3 of Section 6309-2, General Code, to the general fund of a county.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*