

OPINION NO. 67-107

Syllabus:

1. Bridge funds levied pursuant to Section 5705.19 (G), Revised Code, may not lawfully be used for the purpose of a regional master plan for sanitary sewer, water and storm drainage.

2. County funds derived from motor vehicle fuel taxes and motor vehicle license taxes may be lawfully expended to finance, in part, the development of a master plan for sanitary sewers, water and storm drainage for Greene, Miami, and Montgomery Counties, in cooperation with the Miami Valley Regional Planning Commission, but only to the extent that such expenditures are pursuant to an agreement entered into under Section 307.152, Revised Code, which agreement must limit such expenditures to planning related directly to the construction, reconstruction, improvement and repair of roads and bridges.

To: Marshall E. Peterson, Greene County Pros. Atty., Xenia, Ohio
By: William B. Saxbe, Attorney General, November 14, 1967

Your letter requests my opinion as to whether Greene County funds derived from motor vehicle fuel taxes, motor vehicle license taxes, and bridge levies may be lawfully expended to finance, in part, the development of a master plan for sanitary sewer, water and storm drainage for Greene, Miami and Montgomery Counties by the Miami Valley Regional Planning Commission.

Your letter refers to three tax sources and consideration must be given to the statutory provisions relative to each. There is also a constitutional provision which affects such statutory provisions.

Section 5a of Article XII of the Constitution of Ohio reads:

"No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways, and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways."

This section became effective January 1, 1948.

Sections 5735.05, 5735.25, 5735.29 and 5728.16, Revised Code, provide for the levy of the motor vehicle fuel taxes. Only a portion of the funds derived from such taxes are distributed to the various counties. The purposes for which such funds distributed to the counties may be used are provided by statutory law.

Section 5735.23, Revised Code, provides for the distribution of that portion of the tax imposed by Section 5735.05, Revised Code, which is credited by the Treasurer of State to the gasoline excise tax fund. Section 5735.23, Revised Code,

reads in pertinent part:

"Twenty-five per cent of such gasoline excise tax fund shall be paid in equal proportions on vouchers and warrants drawn by the auditor of state to the county treasurer of each county within the state, and shall be used only for the purpose of planning, maintaining and repairing the county system of public roads and highways within such county, the planning, construction and repair of walks or paths along county roads in congested areas, the planning, construction and maintenance of suitable buildings for the housing of county road machinery, the payment of costs apportioned to the county under such section 4907.47 of the Revised Code, and the purchase, installation, and maintenance of traffic signal lights."

(Underlined words added by amendment effective November 9, 1965)

Section 5735.27, Revised Code, provides for the distribution of that portion of the tax imposed by Section 5735.25, Revised Code, which is credited by the Treasurer of State to the highway construction fund. Section 5735.27, Revised Code, reads in pertinent part:

"When appropriated by the general assembly the highway construction fund shall be appropriated and expended in the following manner:

* * * * *

"(B) Seven and one-half per cent of said highway construction fund shall be paid in equal portions on vouchers and warrants drawn by the auditor of state to the county treasurer of each county for the sole purpose of planning, maintaining, constructing, widening, and reconstructing the county system of public roads and highways and paying costs apportioned to the county under section 4907.47 of the Revised Code."

(Underlined word added by amendment effective October 30, 1965)

At the present writing, the various counties do not receive distributions of the taxes levied pursuant to Sections 5735.29 and 5728.16, Revised Code.

Section 4503.02, Revised Code, provides for the levy of motor vehicle license taxes. Section 4501.04, Revised Code, provides for the distribution of the moneys paid into the state treasury from such taxes and provides for a portion of such moneys to be distributed to and for the use of the various counties. Section 4501.04, Revised Code, pertaining to the portion distributable to the counties, reads in per-

minent part:

"(A) Thirty-four per cent of all such moneys are for the use of the municipal corporation or county which constitutes the district of registration. * * *

"The county portion of such funds shall be retained in the county treasury and shall be used for the planning, maintenance, repair, construction, and repaving of public streets, and maintaining and repairing bridges and viaducts, and for no other purpose.

"(B) Five per cent of all such moneys, together with interest earned by fees deposited by the treasurer of state as provided in section 4501.03 of the Revised Code, shall constitute a fund for the use of the several counties for the highway, road, and other purposes specified in division (C) of this section. * * *

"(C) Forty-seven per cent of all such moneys 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 planning, construction, reconstruction, improvement, maintenance, and repair of roads and highways, and maintaining and repairing bridges and viaducts.

"(D) In addition to the distribution of revenue provided for in divisions (A), (B), and (C) of this section, nine per cent of all such moneys shall be for the use of the several counties for the highway, road, and other purposes specified in division (C) of this section * * *"

(Underlined words added by amendment effective October 30, 1965)

It is significant that the statutory provisions above quoted were amended to include the word "planning." In the same enactment, Amended House Bill No. 443 (131 v 1821), similar language was inserted in the purpose clauses of the levying sections of the taxes in question and Section 307.152, Revised Code, was enacted to read:

"A board of county commissioners may enter into an agreement with a county, municipal, or regional planning commission, or county engineer for the preparation in whole or in part of comprehensive transportation and land use studies and major thoroughfare reports, upon such terms as are mutually agreed upon.

"Any agreement with a county, municipal, or regional planning commission may provide that contributions of county funds shall be credited to a separate fund of the planning commission from which expenditures for fulfilling the agreement are made. Any moneys

contributed to a county, municipal, or regional planning commission for preparation of such plans may be credited to the county's portion of the cost of the preparation of such plans. The agreement may provide that county funds appropriated for the county's portion of such plans or in excess of the county's portion of the cost of such plans shall be refunded to the county fund out of which the contribution was originally appropriated, when the county, municipal, or regional planning commission receives federal or other funds in payment for such projects. The agreement may provide that only allowable reimbursable expenses shall be included in calculating the county's portion of the costs. The terms of the agreement may include other provisions mutually agreed upon.

"The board of county commissioners may pay the costs of the agreement for the planning necessary to satisfy the continuing comprehensive transportation planning process from revenues derived from the motor vehicle license tax, the motor vehicle fuel tax levied in section 5735.05 of the Revised Code, the motor vehicle fuel tax levied in section 5735.25 of the Revised Code, the county general fund, or any other county fund which may be expended for planning purposes and may also pay costs for other planning from the county general fund or any other county fund which may be expended for planning purposes."

Comprehensive transportation planning, as authorized by Section 307.152, Revised Code, might include the study and planning of sewer, water and storm drainage directly relating to the construction, reconstruction, improvement and repair of roads and bridges within the master planning for the general sanitary sewer, water and storm drainage of the region.

Your letter also refers to bridge funds derived from tax levies. I assume such funds were collected from a tax levied pursuant to Section 5705.19 (G), Revised Code. Section 5705.19, Revised Code, provides in pertinent part:

"The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

* * * * *

"(G) For the general construction, reconstruction, resurfacing, and repair of roads and bridges in counties or townships;

"* * * * *"

"(M) For regional planning.

"* * * * *"

"Such resolution shall be confined to a single purpose, and shall specify the amount of increase in rate which it is necessary to levy, the purpose thereof, and the number of years during which such increase shall be in effect, which may or may not include a levy upon the duplicate of the current year. * * *"

Subsections (G) and (M) of Section 5705.19, Revised Code, are separate purposes. The master plan for the purpose contemplated would require a levy pursuant to Section 5705.19 (M), Revised Code.

I am of the opinion that bridge funds levied pursuant to Section 5705.19 (G), Revised Code, may not lawfully be used for the purpose of a regional master plan for sanitary sewer, water and storm drainage.

I am of the opinion and you are advised that county funds derived from motor vehicle fuel taxes and motor vehicle license taxes may be lawfully expended to finance, in part, the development of a master plan for sanitary sewers, water and storm drainage for Greene, Miami, and Montgomery Counties, in cooperation with the Miami Valley Regional Planning Commission, but only to the extent that such expenditures are pursuant to an agreement entered into under Section 307.152, Revised Code, which agreement must limit such expenditures to planning related directly to the construction, reconstruction, improvement and repair of roads and bridges.