

OPINION NO. 894

Syllabus:

1. The erection and maintenance of street lighting systems for urban portions of "limited access highways" as defined in Section 5535.02, Revised Code, may be paid from motor vehicle fuel and license taxes received by municipalities from the state. The State ex rel. Walter v. Vogel, 169 Ohio St., 368.

2. The cost of lighting a street, alley, public road, or place or parts thereof under authority of Section 727.14, Revised Code, may not be paid by a municipality from motor vehicle fuel and license taxes received from the state.

To: George E. Schroeder, Putnam County Pros. Atty., Ottawa, Ohio
By: William B. Saxbe, Attorney General, March 2, 1964

I have before me your request for my opinion as to "whether or not street lighting in certain specific situations would be a proper expenditure out of the highway maintenance fund by a village."

The uses of the motor vehicle license tax levied pursuant to Sections 4503.02 and 4503.04, Revised Code, and the excise tax on motor vehicle fuels levied pursuant to Section 5735.02 to 5735.06, Revised Code, are restricted by Article XII, Section 5a, Constitution of Ohio, which provides, in part, as follows:

"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 * * * payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes.* * *" (Emphasis added)

Similar restrictions are found in the statutes relating to the uses of the revenues of each specific tax assessment. These provisions are found in Section 4503.02, Revised Code, and in Section 5735.23, Revised Code (as amended by 130 Ohio Laws, H.B. 466, effective October 10, 1963).

I assume the street lighting to which you refer is

that erected pursuant to the specific authority of Section 727.14, Revised Code. That section reads as follows:

"In lieu of the procedure provided in section 727.13 of the Revised Code, the legislative authority may provide for notice of the passage of a resolution of necessity providing for the lighting, sprinkling, sweeping, or cleaning of any street, alley, public road, or place, or parts thereof or for treating the surface of the same with dust-laying or preservative substances, and the filing of the estimated assessment under section 727.12 of the Revised Code, to be given by publication of such notice once a week for two consecutive weeks in a newspaper of general circulation in the municipal corporation. When it appears from the estimated assessment filed as provided by section 727.12 of the Revised Code, that the assessment against the owner of any lot or parcel of land will exceed two hundred and fifty dollars, such owner shall be notified of the assessment in the manner provided in section 727.13 of the Revised Code."

In State ex rel. Walter v. Vogel, 169 Ohio St., 368, the Supreme Court of Ohio decided the lighting systems of urban portions of "limited access highways" (as defined in Section 5535.02, Revised Code) are appurtenances thereto and that monies received by municipalities from the state which are derived from the motor vehicle fuel and license taxes may be used to maintain such systems.

The court pointed out (169 Ohio St., at 373) that the street lighting considered in that opinion was not to be confused with the lighting by a municipality of its streets as contemplated by Section 727.07, Revised Code (prior analogous statute to Section 727.14, supra). The court remarked that the lighting contemplated in that section has nothing to do with the lighting of "limited access highways" which are especially designed for through traffic since the lighting contemplated by the then Section 727.07, supra, which is now Section 727.14, supra, is primarily designed for the benefit of pedestrians and abutting property owners. Since that is the only lighting contemplated by that section I cannot accept your premise that the proposed lighting in your situation is designed for traffic and thus within the exception of State ex rel. Walter v. Vogel, supra.

You have pointed out in your letter of request that it is your contention "from the language used by the Court in State ex rel. Walter v. Vogel, supra, that under certain situations the Supreme Court would make further exceptions if the question were presented to them for their consideration." It may well be true that the Court would make further exceptions to the limitation of uses of the aforementioned tax revenues stated in Article XII, Section 5a, Constitution of Ohio. However, this office is not empowered, nor shall we attempt to extend a Supreme Court decision construing a provision of the Ohio Constitution. The case of State ex rel. Walter v. Vogel, supra, because it does involve con-

struction of Article XII, Section 5a, Constitution of Ohio, must be contained to the facts giving rise to it.

Therefore, it is my opinion and you are advised that:

1. The erection and maintenance of street lighting systems for urban portions of "limited access highways" as defined in Section 5535.02, Revised Code, may be paid from motor vehicle fuel and license taxes received by municipalities from the state. The State ex rel. Walter v. Vogel, 169 Ohio St., 368.

2. The cost of lighting a street, alley, public road, or place or parts thereof under authority of Section 727.14, Revised Code, may not be paid by a municipality from motor vehicle fuel and license taxes received from the state.