

under Section 5541-8, General Code, and from taxes levied on motor vehicles under Section 6309-2, General Code, in my opinion No. 302, addressed to Hon. R. D. Williams, Prosecuting Attorney, Athens, Ohio, under date of April 13, 1929. I pointed out in that opinion that the bookkeeping suggestions therein made would make easier the application of the necessary interpretation of the legislative enactments considered. This opinion was quoted and followed in my opinion No. 802, to the Bureau of Inspection and Supervision of Public Offices, of August 27, 1929. In the last mentioned opinion I stated that proceeds of the gasoline tax apportioned to the township under Section 5541-8, General Code, should be kept in a separate fund, inasmuch as the Legislature had confined its use to certain specified township road purposes not excluded in the statutes governing the use of the township road fund.

In specific answer to your inquiry, I am of the opinion that the board of township trustees have no power to transfer funds from the township general fund to the township road fund except funds in the township general fund received by the township as its portion of inheritance taxes which may be transferred to the township road fund under authority of Section 5348-11 of the General Code of Ohio.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1830.

REALTY—OWNED BY COUNTY AND USED BY AGRICULTURAL SOCIETY FOR FAIRS—CONDITIONS UNDER WHICH COMMISSIONERS MAY SELL PART OF SUCH REALTY—SOCIETY'S CONSENT UNNECESSARY—PROCEEDS PAYABLE INTO COUNTY TREASURY.

*SYLLABUS:*

1. *Where lands are owned by the county and used by an agricultural society for the purpose of holding annual exhibitions the county commissioners, under the provisions of Section 9900-1 of the General Code, may sell any part thereof, if said property is greater in size than is necessary for the purposes and uses to which it is devoted.*

2. *Under such circumstances it is not necessary that the agricultural society give its formal consent to such a proceeding. However, the desires of the society may have a bearing upon the question of fact as to whether such land is necessary for its purposes.*

3. *Under such circumstances when the title is vested in the county the proceeds from such a sale should be paid into the county treasury.*

COLUMBUS, OHIO, May 6, 1930.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“The County Commissioners of this county are contemplating selling a small strip of land from the Fair Grounds, under authority of Section 9900-1, G. C., in which said premises is under the control of an Agricultural Society and used by it as a site on which to hold annual exhibitions, and in which the title thereof is in the county.

The question now arises as to whether or not said Commissioners may sell said strip of land, without the consent of the Agricultural Society and as

to where the purchase price goes from the sale of said strip of land, in other words does said purchase price go into the County Treasury or into the Treasury of the Agricultural Society?

Will you kindly let me have your opinion in this matter?"

Section 9900-1 of the General Code, to which you refer, provides:

"When the premises in the possession or under the control of an agricultural society and used by it as a site on which to hold annual exhibitions, is greater in size than is necessary for the purposes and uses to which it is devoted, or is not suitable in its formation or character, such society, or if the title thereof is in the county, the county commissioners, may sell any part thereof, or exchange any part thereof for other lands, so as to reduce the size of such premises or site, or change the formation or character thereof."

In analyzing the provisions of the section above quoted, it would appear that one of the basic things necessary to determine, before a sale can be made such as you describe, is whether said land is greater in size than is necessary for the purposes and uses to which it is devoted. Therefore, it would appear that there arises a question of fact in each case to be determined from all of the circumstances. The section further apparently authorizes the society to make a sale under certain circumstances, but, if the title is in the county, the county commissioners clearly are authorized to make the sale. Of course, the statute does not require the consent of the agricultural society to enable the commissioners to make such a sale. However, the desire and judgment of such a society, as to whether the same is necessary for the purposes for which it is used, may have a great bearing upon the question of fact which, of course, must be determined. While the statute does not expressly provide for the distribution of the fund, by reason of the fact that the title to the property is in the county, it is believed to be clear that the proceeds from such a sale under such circumstances would be properly paid into the county treasury. In this connection, it is well to note the provisions of Section 5625-1 of the General Code, which includes lands within the definition of "permanent improvement". Also Section 5625-10 of the General Code, which provides in part:

"\* \* \* If a permanent improvement of the subdivision is sold the amount received for the same shall be paid into the sinking fund or the bond retirement fund of the subdivision, or into a special fund for the construction or acquisition of a permanent improvement or improvements; provided that the proceeds from the sale of a public utility shall be paid into the sinking fund or bond retirement fund to the extent necessary to provide for the retirement of the outstanding indebtedness incurred in the construction or acquisition of such utility. Proceeds from the sale of property other than a permanent improvement shall be paid into the fund from which such property was acquired or is maintained, or if there be no such fund, into the general fund.

Money paid into any fund shall be used only for the purposes for which such fund is established."

In view of the foregoing, and in specific answer to your inquiries, it is my opinion that:

1. Where lands are owned by the county and used by an agricultural society for the purpose of holding annual exhibitions, the county commissioners, under the provisions of Section 9900-1 of the General Code, may sell any part thereof, if said property is greater in size than is necessary for the purposes and uses to which it is devoted.

2. Under such circumstances, it is not necessary that the agricultural society give its formal consent to such a proceeding. However, the desires of the society may have a bearing upon the question of fact as to whether such land is necessary for its purposes.

3. Under such circumstances, when the title is vested in the county, the proceeds from such a sale should be paid into the county treasury.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

1831.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN BELMONT AND  
GEAUGA COUNTIES.

COLUMBUS, OHIO, May 7, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1832.

APPROVAL, CONTRACTS FOR ROAD IMPROVEMENTS IN HAMILTON  
AND SUMMIT COUNTIES.

COLUMBUS, OHIO, May 7, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

1833.

MOTOR VEHICLE—SEIZED BY OFFICERS WHILE BEING USED FOR  
TRANSPORTATION OF INTOXICATING LIQUOR—WHEN OWNER IS  
ENTITLED TO ITS RETURN.

**SYLLABUS:**

*The owner of an automobile which has been seized by authority of Section 6212-43, of the General Code, is entitled to the return of such vehicle upon a showing of good cause before such vehicle is ordered sold in a forfeiture proceeding.*

COLUMBUS, OHIO, May 7, 1930.

HON. E. P. MCGINNIS, *Prosecuting Attorney, Caldwell, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows: