

uses in the manner above indicated, without incurring any liability to the owner of the adjoining lands in and to which such waters might otherwise find their way.

In this connection, it may be observed by way of illustration of the rule above noted that if there were a spring or pool on the Grossjean lands formed by the accumulation of percolating waters and such waters flowed therefrom over Grossjean's lands through a well defined channel and thence by such channel in and upon the lands of the adjoining property owner, the owner of the spring or pool would be entitled to such portion only of the water therein as would be necessary for the reasonable use and purposes of the tract of land on which the spring was located. However, consistent with this rule, there would be nothing to prevent the owner of the land from sinking a shaft or well in some other part of such land and taking therefrom percolating waters which might find their way into such shaft or well, for any purpose for which the owner might desire to use the water. And in this same connection it has been held that the owner of land on which a new spring breaks out may make such use of the waters as he pleases, although the waters, if unmolested, would cause a stream to flow across another's land. *Mason vs. Yearwood*, 58 Wash. 276, 30 L.R.A. (N. S.) 1158.

In the consideration of this question it is but fair to note that in many of the later cases in other jurisdictions the courts have declined to follow the English rule above noted to which the courts of this state have subscribed, and have held that the right of a land owner to take percolating waters therefrom is limited by and conditioned upon the reasonable and proper use of such water upon the lands from which such water is taken. However, in many of the cases holding to this rule, it is frankly conceded that the rule in Ohio and other states is contra, and is in line with the original English rule on this question. In none of the cases considered by the Supreme Court of this state, above referred to, was there involved the specific question here presented as to the right of the owner of lands to take therefrom accumulated percolating water for the purpose of using such water on premises other than that from which the water is taken. However, in the consideration of this question it cannot be assumed that the Supreme Court of this state will depart from the broad rules laid down by it in the cases cited.

In closing, I venture the thought that it is extremely doubtful whether the taking by the Ohio Agricultural Experiment Station of water from the Grossjean tract of land in the amount and in the manner above indicated will seriously interfere with the total amount of water which now finds its way by percolation from the Grossjean tract to adjoining lands. However, aside from this observation, I am of the opinion, in answer to the question submitted, that the Ohio Agricultural Experiment Station may take from the Grossjean tract of land waters accumulated in a spring or well therein for use on said premises or on other premises owned and controlled by said institution, and that without liability to the owner or owners of adjoining land.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3285.

TOWNSHIP—MONEYS TRANSFERABLE FROM GENERAL FUND TO
ROAD AND BRIDGE FUND WHEN.

SYLLABUS:

Moneys may not be transferred from the general fund of a township to the

road and bridge fund of such township except pursuant to the provisions of, Sections 5625-13a, et seq., of the General Code.

COLUMBUS, OHIO, October 6, 1934.

HON. HOWARD S. LUTZ, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Will you please advise me as to whether in order to make a transfer from the general fund of a township to the road and bridge fund of a township it is necessary to follow the provisions of Section 5625-13a or whether the trustees by resolution may make this transfer without court proceedings?”

As you indicate, unless there is some authority to make this transfer other than that contained in Sections 5625-13a, et seq., General Code, such court proceedings are required.

Since the only other general provisions for transferring funds are contained in Section 5625-13, General Code, it is necessary to determine whether or not this section authorizes such transfer as is contemplated. The only authority for transferring moneys from the general fund contained in this last mentioned section is set forth in paragraphs e and f thereof. Paragraph e relates to transferring funds from the general fund to the bond retirement fund and is, of course, not applicable. Paragraph f, however, provides that “Moneys appropriated therefor may be transferred from the general fund of a subdivision to a fund authorized by sections 5625-11 or 5625-12 of the General Code or to the proper fund of a district authority.”

In view of these provisions of paragraph f of Section 5625-13, supra, it remains to be determined whether or not sections 5625-11 or 5625-12 of the General Code authorize the creation of a road and bridge fund. Both of these last mentioned sections refer to special funds that may be established in addition to those funds which are required to be established by Section 5625-9. Section 5625-9, General Code, in paragraph d thereof requires a special fund for each special levy and in paragraph f requires 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. The proceeds of the gasoline tax which are distributable to townships would clearly fall within paragraph f of Section 5625-9; and furthermore any township road levies would fall within paragraph d of such section. It follows, therefore, that the road and bridge fund to which it is desired to transfer moneys from the general fund is authorized by Section 5625-9, General Code, and not by Sections 5625-11 and 5625-12, General Code.

It must accordingly be concluded in my opinion that moneys may not be transferred from the general fund of a township to the road and bridge fund of such township except pursuant to the provisions of Sections 5625-13a, et seq., of the General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.