

3103.

INHERITANCE TAX MONEY—TOWNSHIP PORTION—INTO WHAT SUCH MONEYS TO BE PAID WHEN TOWNSHIP HAS NO BONDS OR NOTES OUTSTANDING AND NO SINKING FUND OR BOND RETIREMENT FUND—HOW FUNDS MAY BE MADE AVAILABLE FOR ROAD IMPROVEMENT PURPOSES.

SYLLABUS:

1. *In the event a township has no bonds or notes outstanding and no sinking fund or bond retirement fund, the township portion of inheritance tax money should, under the provisions of Section 5348-11, General Code, be paid into the general revenue fund or road and bridge building fund, as the trustees may by resolution approve. The fact that the county may have issued bonds in anticipation of the collection of township taxes levied by the county commissioners does not authorize a township to establish a bond retirement or a sinking fund.*

2. *Funds which have, under such circumstances, been erroneously paid into the sinking fund of a township may be transferred under the provisions of Section 5625-13, General Code.*

3. *In order that such funds appearing in the sinking fund of a township may be available for road improvement purposes when the township has no bonds or notes outstanding, transfer should be made to the road improvement fund under Section 5625-13, General Code.*

COLUMBUS, OHIO, March 31, 1931.

HON. J. FRANK POLLOCK, *Prosecuting Attorney, Painesville, Ohio.*

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

“Several questions have arisen relative to the proper construction of Section 5348-11 of the General Code, which I feel I should submit to you for an opinion.

First. The Township of Kirtland, in this county, does not have any bonds outstanding which have been issued by the Township Trustees, but does have a bonded indebtedness, which was created by the Commissioners of Lake County under the provisions of Section 6906 and following, for the township's share in county secondary roads in this township. Under the circumstances, is it mandatory under section 5349-11 to place inheritance tax coming to the township in a Sinking or Bond Retirement Fund, or may they place the entire amount in their Road and Bridge Building Fund?

Second. In the last two or three years, under my advice, the trustees have placed half of their inheritance fund in their Sinking Fund and have now accumulated approximately \$30,000.00. During all of this time the township has not had any bonded indebtedness, other than that created under Section 6906 and following. If I was in error in advising them to place this money in their Sinking Fund, is it now possible to correct this error by proper legislation so as to place this money in the General Revenue Fund or Road and Bridge Building Fund?

Third. The County Commissioners of Lake County, now contemplate the improvement of a secondary county road in Kirtland Township, and the issuance of bonds for this purpose. It is contemplated that

Kirtland Township will pay a portion of the cost of this improvement under the provisions of Section 6919, General Code. Is it possible for them to pay their proportionate share of this cost out of the Sinking Fund, which has accumulated as above mentioned, instead of being bonded for their share by the Commissioners?"

Section 5348-11, General Code, relating to the disposition of inheritance taxes, is as follows:

"Fifty per centum of the gross amount of any taxes levied and paid under the provisions of this subdivision of this chapter shall be for the use of the municipal corporation or township in which the tax originates, and shall be credited, one-half to the sinking or bond retirement fund, if any, of such municipal corporation or township, and the residue to the general revenue fund in the case of a municipal corporation; and to the general revenue fund or road and bridge building fund, as the trustees by resolution may approve, in the case of a township. In the event that there has already been credited, under provisions of this section, to the general revenue fund of any township any part of the inheritance tax, the whole or any part of the same may, by resolution of the township trustees, be transferred to the road and bridge building fund of the township. The remainder of such taxes, after deducting the fees and costs charged against the proceeds thereof under this subdivision of this chapter, shall be for the use of the state, and shall be paid into the state treasury to the credit of the general revenue fund therein,"

Section 5625-9, General Code, provides the funds which a subdivision shall establish. It is in part as follows:

"Each subdivision shall establish the following funds:

* * * * *

(b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.

(c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.

* * * * *

In the event a township has no bonds or notes outstanding, I think it is manifest that there is no need or even authority for the establishment of a sinking fund or bond retirement fund. When the property in a township is taxed by a county to meet the interest and principal requirements of county bonds issued in anticipation of the collection of such township tax, the proceeds of such township taxes are payable into the county bond retirement fund. It must follow, therefore, that the township portion of inheritance tax money is entirely payable into the general revenue fund or road and bridge building fund as the trustees by resolution may approve, when there are no township bonds or notes outstanding.

You next inquire as to the disposition of these moneys appearing in the sinking fund of the township in question. Section 5625-13, General Code, provides for transfers from one fund to another. This section, insofar as pertinent, reads as follows:

"No transfers shall be made from one fund of a subdivision to any

other fund, by order of the court or otherwise, except as hereinafter provided:

* * * * *

c. The unexpended balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision.

* * * * *

Except in the case of transfers in accordance with paragraphs (e) and (f) of this section, transfers herein authorized shall only be made by resolution of the taxing authority passed with the affirmative vote of two-thirds of the members thereof."

If there were no provisions for transferring moneys from a sinking fund or bond retirement fund to another fund of a subdivision when there is no occasion for their remaining in such fund, it might perhaps be contended that since the payment of the money in question into the sinking fund was unauthorized the error could be corrected by the mere transfer of these moneys to the proper fund by a resolution of the taxing authority. It is my opinion, however, in view of the express provisions of Section 5625-13, supra, that the orderly process of government would require that the transfer be made in accordance with this section, notwithstanding the fact that the original payment of the funds in question to the sinking fund may have been erroneously made.

Coming now to your third question, Section 5625-10, General Code, provides that "money paid into any fund shall be used only for the purposes for which such fund is established." A sinking fund may not be established for the purpose of improving roads. Before money appearing in a sinking fund may be available for road improvement purposes, it is, therefore, necessary that such money be transferred to a fund which is in existence or created for such purpose. Such a fund is the road improvement fund. Since it is sought to use the moneys in question for road improvement purposes in co-operation with the county, transfer should be made under Section 5625-13, supra, with the approval of the court of common pleas, to the road improvement fund. After having effectuated this transfer, it is, of course, unnecessary that bonds be issued providing there are sufficient moneys on hand to pay the township portion of the cost of the contemplated improvement.

Summarizing and in specific answer to your questions, it is my opinion that:

1. In the event a township has no bonds or notes outstanding and no sinking fund or bond retirement fund, the township portion of inheritance tax money should, under the provisions of Section 5348-11, General Code, be paid into the general revenue fund or road and bridge building fund, as the trustees may by resolution approve. The fact that the county may have issued bonds in anticipation of the collection of township taxes levied by the county commissioners does not authorize a township to establish a bond retirement or a sinking fund.

2. Funds which have, under such circumstances, been erroneously paid into

the sinking fund of a township may be transferred under the provisions of Section 5625-13, General Code.

3. In order that such funds appearing in the sinking fund of a township may be available for road improvement purposes when the township has no bonds or notes outstanding, transfer should be made to the road improvement fund under Section 5625-13, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3104.

ATTORNEYS FEES—DEFENDING INDIGENT PRISONER ON FELONY CHARGE—MISTRIAL RESULTS—COUNSEL MAY NOT RECEIVE MORE THAN ALLOWED BY STATUTE.

SYLLABUS:

Where counsel is assigned to defend a case of felony less than manslaughter and is allowed a fee by the court, and a mistrial is declared, the counsel so appointed may not receive more than the \$50.00 fee allowed by statute, and a court of common pleas, by the terms of Section 13439-3, General Code, has no authority to allow an additional amount.

COLUMBUS, OHIO, March 31, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of the receipt of your request for my opinion concerning the payment of attorneys appointed to defend indigent prisoners under Section 13439-3, General Code. In the request you refer to a letter received from one of your examiners in which he inquires whether or not an attorney, after having defended an indigent prisoner in a felony case not involving murder in the first or second degree or manslaughter, which action resulted in a mistrial, may receive a payment of \$50.00 and later receive an additional fee of \$25.00 in the retrial of the case.

The second question presented is whether or not the judges of the common pleas court in joint session may provide that, in case of retrial, counsel shall be allowed an additional fee of not more than one-half the amount allowed at the original trial, even though such payment results in an attorney's compensation being in excess of the statutory limitation of \$50.00 as provided in Section 13439-3, General Code.

Section 13439-3, General Code, to which you refer, was passed by the 88th General Assembly and reads as follows:

“Counsel so assigned in case of felony shall be paid for their services by the county, and shall receive therefor in case of murder in the first and second degree such compensation as the court may approve; in a case of manslaughter not exceeding \$100.00, in other cases of felony not exceeding \$50.00.”

Section 13439-3, *supra*, which repealed Section 13618, General Code, contains