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COUNTY COMMISSIONERS—NO AUTHORITY TO EXPEND MONEYS DERIVED FROM MOTOR VEHICLE LICENSE FEES AND GASOLINE EXCISE TAXES—PURPOSE, TO PURCHASE PASSENGER AUTOMOBILE—USE, COUNTY ENGINEER OR COUNTY SURVEYOR—OFFICIAL CAPACITY.

SYLLABUS:

County commissioners are without authority to expend moneys derived from motor vehicles license fees and gasoline excise taxes for the purpose of purchasing a passenger automobile to be used by the county engineer and/or county surveyor in his official capacity.

Columbus, Ohio, July 7, 1949

Hon. Frank T. Cullitan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

This will acknowledge receipt of your letter requesting my opinion, as follows:

“The Auditor of Cuyahoga County in a letter to me states that on December 21, 1948, he certified a purchase order in the sum of \$2,831.10, for three passenger automobiles for the use of the County Engineer out of the Motor Vehicle Road and Bridge Fund, in pursuance to the provisions of Section 7200 G. C. He further states that the bill is now up for payment and that he has been advised by Mr. Gallagher of the office of the State Examiner that by reason of the existence of an opinion of the Attorney General, such passenger automobiles may not be purchased from funds derived from gasoline or motor vehicle license taxes.

"It seems that in the Opinions of the Attorney General, No. 4806 of 1935, there is a ruling that the County Commissioners may not use the proceeds of gasoline excise taxes for the purchase of passenger automobiles even though it is contemplated that after acquisition such passenger automobiles will be used solely in connection with road work.

"The certification of the Auditor is based on the specific provision of Section 7200 G. C. authorizing the County Commissioners to purchase automobiles for the use of the County Surveyor and his assistants when on official business, and further directing that such expenditures authorized by the provisions of this section shall be paid out of any available road funds of the county. The auditor advises that the only available road funds in the county are from gasoline taxes and motor vehicle license fees.

"I note that in Section 7200 G. C. prior to 1921 the phrase 'which shall be paid out of the road funds of the county' was subjoined to the first sentence, which provided that the commissioners may purchase such machinery, tools and other equipment for the construction, etc. (107 O. L. 115). It is, therefore, understandable why prior to 1921 the expenditures for the purchase of passenger automobiles could not be paid out of such funds.

"Section 7200 G. C. now in effect provides in part as follows :

"The county commissioners may purchase such machinery, tools or other equipment * * * as they may deem necessary. *The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business * * *. All expenditures authorized by the provisions of this section shall be paid out of any available road funds of the county.* (Emphasis added.)

"Prior opinions of the Attorney General (1931 Vol. 2, page 871; 1935 Vol. 1, page 71) have authorized the purchase of an automobile truck because a truck may be included within the phrase 'road machinery and equipment,' but not a passenger automobile for the reason that it would not appear by its very nature to be appropriate to such use.

"In view of the express authority given by Section 7200 G. C. to the County Commissioners to purchase automobiles for the use of the County Surveyor when on official business and the all inclusive provision that *all* expenditures authorized by this section shall be paid out of any available road funds of the county, and the request of the County Auditor that the matter be submitted to the Attorney General for reconsideration, your opinion is respectfully requested on the question as follows: May the County Commissioners purchase a passenger automobile for the

use of the County Engineer or County Surveyor when on official business, payment therefor to be made out of any available road funds of the county, to wit, motor vehicle license fees and gasoline excise taxes?"

Your attention is directed to Article XII, Section 5a, Ohio Constitution, which provides:

"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."

What are the statutory highway purposes as referred to in Article XII, Section 5a of the Ohio Constitution, which provides:

Section 7200 of the General Code provides in part as follows:

"The county commissioners may purchase such machinery, tools or other equipment, including special wearing apparel, for the construction, improvement, maintenance or repair of the highways, bridges and culverts under their jurisdiction as they may deem necessary. The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business. * * * All expenditures authorized by the provisions of this section shall be paid out of any available road funds of the county."

The above cited section was enacted and became effective in 1915 and was amended in 1917 to provide for the purchase of automobiles by the county commissioners; it was further amended in 1947 to provide for the purchase of special wearing apparel.

Section 5537, General Code, was enacted in 1925 as a part of the "Gasoline Excise Tax Law." Said section has been further amended, however, these amendments do not essentially affect the instant question. This section makes provision for the distribution and purposes for which

funds derived from the imposition of tax on motor vehicle fuel may be expended. In so far as counties are concerned, Section 5537 provides:

“Twenty-five per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the auditor of state in equal proportion to the county treasurer of each county within the state, *and shall be used only for the purpose* of maintaining and repairing the county system of public roads and highways within such counties, the construction and repair of walks or paths along county roads in congested areas and the construction and maintenance of a suitable building or buildings for the housing of county road machinery shall be within this purpose.”

(Emphasis added.)

Section 6309-2 of the General Code was enacted in 1919 and has been amended numerous times by the General Assembly, however, such amendments are not pertinent to the question involved. This section makes provision for the distribution and purpose for which funds derived from the imposition of fees on motor vehicles may be expended. In so far as counties are concerned, the section provides:

“Twenty-five per centum of all taxes collected under the provisions of this chapter shall be for the use of the * * * county which constitutes the district of registration as provided in this chapter. The portion of such money due the municipal corporation shall be paid into the treasuries of such municipal corporations forthwith upon receipt by the county auditor, and the remainder retained in the county treasury. In the treasuries of such counties, *such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways and maintaining and repairing bridges and viaducts, and for no other purpose*, and shall not be subject to transfer to any other fund excepting to the extent temporarily authorized by paragraph (3a) hereof. ‘Maintenance and repair’ as used in this section, includes all work done upon any public road or highway in which the existing foundations thereof are used as a subsurface of the improvement thereof, in whole or in substantial part; * * *”

(Emphasis added.)

It is to be noted that Section 6309-2, *supra*, discloses a definite purpose and that the “maintenance and repair fund” is distinguished from all other funds of a county.

In the construction and interpretation of statutes, it is a cardinal rule that the legislature is presumed to know existing statutes. It must be presumed, therefore, that in the enactment of Sections 5537 and 6309-2 the legislature knew of the existence of the provisos “the county commis-

sioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business” and “all expenditures authorized by the provisions of this section shall be paid out of any available road funds of the county,” as provided for in Section 7200 of the General Code. In view of said existing statute, the legislature, nevertheless, enacted Sections 5537 and 6309-2, specifically limiting the uses for which gasoline excise tax moneys and motor vehicle license fees may be used. Thus those moneys are not available within the contemplation of Section 7200, General Code.

The county engineer is charged by law with duties other than (1) maintaining and repairing county roads, as provided for in Section 5537, and (2) maintenance and repair of public roads and highways and maintaining and repairing bridges and viaducts as provided for in Section 6309-2. Furthermore, your communication indicates that the automobile will be used for purposes other than those provided in said sections.

In view of the foregoing, it is therefore my opinion that county commissioners are without authority to expend moneys derived from motor vehicle license fees and gasoline excise taxes for the purpose of purchasing a passenger automobile to be used by the county engineer and/or county surveyor in his official capacity.

Respectfully,

HERBERT S. DUFFY,
Attorney General.