

1635.

APPROVAL, NOTES OF CANFIELD VILLAGE SCHOOL DISTRICT, MAHONING COUNTY—\$55,000.00.

COLUMBUS, OHIO, March 19, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1636.

MUNICIPALITY—USE OF MOTOR VEHICLE LICENSE AND GASOLINE TAXES FOR PURCHASING LAND WITH ASPHALT PLANT OR FOR ERECTING SAME UNAUTHORIZED—WHEN USE OF SAID TAXES FOR PURCHASING EQUIPMENT FOR SUCH A PLANT LEGAL.

SYLLABUS:

1. *The city's portion of the motor vehicle license tax and gasoline tax may not be used for the purpose of purchasing land upon which there is erected an asphalt plant or for the purpose of purchasing land upon which there is to be erected such a plant.*

2. *A municipality may properly use such funds for the purpose of purchasing equipment to be placed in an asphalt plant if such a procedure is reasonable in view of the cost of the same and the mileage of streets required to be maintained, when such plant is to be used for the sole and exclusive purpose of maintaining, repairing, constructing or repaving such streets.*

COLUMBUS, OHIO, March 19, 1930.

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

GENTLEMEN:—In your recent communication you present the following inquiry:

“May a city's portion of the motor vehicle license and gasoline tax receipts be used legally for the purchase of an asphalt plant, including land?

May such funds be legally used for the purpose of constructing an asphalt plant and acquiring the necessary land?”

In an opinion found in Opinions of the Attorney General for 1927, page 256, it was held as disclosed by the first branch of the syllabus:

“A municipality can not purchase land to be used as a storage yard for the street repair department with its share of the registration fees for registering motor vehicles or out of its share of the gasoline excise tax receipts.”

The conclusion of the then Attorney General was reached after an extended discussion of the powers of the municipalities to use the motor vehicle license tax and the gasoline tax in pursuance of the provisions of the statutes directing the distribution thereof. Also, consideration was given to the case of *State ex rel. vs. City of Columbus*, 21 Ohio App., p. 1, in which it was held in substance that