

1920.

TOWNSHIP TRUSTEES—MAY NOT ISSUE NOTES IN ANTICIPATION OF RECEIPT OF GAS TAX FUNDS FROM STATE AUDITOR.

*SYLLABUS:*

*A board of township trustees may not issue notes as provided in Section 2293-4, General Code, in anticipation of the receipt of funds from the gasoline tax to be distributed to the several townships within this state under the provisions of Section 5541-8, General Code.*

COLUMBUS, OHIO, May 29, 1930.

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

GENTLEMEN:—Your letter of recent date is as follows:

“We respectfully request your written opinion upon the following:

When the board of trustees of a township include in its estimated revenues the estimated amount to be received from the state on account of gas tax, may such trustees under the provisions of Section 2293-4 of the General Code borrow money and issue notes therefor in anticipation of the receipt of such gas tax revenues?”

The provisions for the distribution of a portion of gasoline tax money among the several townships within this state is contained in Section 5541-8, General Code, 113 O. L. 71, 72, 73, which, insofar as is pertinent, provides:

“Ten per cent of said highway construction fund shall be appropriated for and divided in equal proportions among the several townships within the state, and shall be paid on vouchers and warrants drawn by the Auditor of State to the county treasurer of each county for the total amount payable to the townships within each of the several counties. Upon receipt of said vouchers and warrants each county treasurer shall pay to each township within the county its equal proportional share of said funds which shall be expended by each township for the sole purpose of constructing, widening and reconstructing the public roads and highways within such township. Provided, however, that such funds shall be used by the township trustees for the purpose of constructing, widening and reconstructing unimproved dirt roads of the secondary or county system of highways within the township, unless there be no unimproved dirt roads of the secondary or county system of highways within such township, in which event such funds may be used for constructing, widening and reconstructing such township roads as the township trustees shall designate. Provided, however, that no part of said funds shall be used for any purpose except to pay in whole or part the contract price of any such work done by contract or to pay the cost of labor in constructing, widening and reconstructing such roads and highways and the cost of materials forming a part of said improvement; and provided further that all such improvement of roads shall be under the supervision and direction of the county surveyor as provided in Section 3298-15k of the General Code; and provided further that no obligation against such funds shall be incurred unless and until plans and specifications for such improvement, approved by the county surveyor, shall be on file in the office of the township clerk; and provided further that all disbursements of such funds shall be upon vouchers of the township trustees approved by the county surveyor. The trustees of any township are hereby authorized at their discretion to pass a

resolution permitting the county commissioners to expend such township's share of said funds, or any portion thereof, for the improvement of such roads within said township as may be designated in said resolution."

Section 2293-4 of the Uniform Bond Act, authorizing the taxing authority of any subdivision to borrow money and issue notes in anticipation of the collection of current revenues in and for any fiscal year, is as follows:

"In anticipation of the collection of current revenues in and for any fiscal year, the taxing authority of any subdivision may borrow money and issue notes therefor, but the aggregate of such loans shall not exceed one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received for the payment of debt charges, and all advances. The sums so anticipated shall be deemed appropriated for the payment of such notes at maturity. The notes shall not run for a longer period than six months and the proceeds therefrom shall be used only for the purposes for which the anticipated taxes were levied, collected and appropriated. No subdivision shall borrow money or issue certificates in anticipation of the February tax settlement before January first of the year of such tax settlement."

The limitation in this section upon the amount that may be borrowed thereunder is fixed as one-half of the amount estimated to be received from the next ensuing semi-annual settlement of taxes for such fiscal year as estimated by the budget commission, other than taxes to be received from the payment of debt charges and all advances. I do not believe that it may be said that the Legislature has adopted this limitation solely as a measure for determining the amount that may be borrowed in anticipation of the collection of revenues other than general taxation revenues of the subdivision. It seems apparent that the revenues against which these notes may be issued are only revenues derived from general taxes levied by the taxing authority of the subdivision. The fact that the notes may not run for a longer period than six months clearly indicates that the Legislature contemplated that these notes may be issued only in anticipation of a semi-annual tax settlement, which view is further strengthened by the last sentence of the section to the effect that these notes in anticipation of the February tax settlement may not be issued before January first of the year of such tax settlement. Clearly the revenue to be received under Section 5541-8, supra, is not such current revenue as is contemplated by Section 2293-4.

In view of the foregoing and in specific answer to your question, it is my opinion that a board of township trustees may not issue notes as provided in Section 2293-4, General Code, in anticipation of the receipt of funds from the gasoline tax to be distributed to the several townships within this state under the provisions of Section 5541-8, General Code.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*