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HIGHWAY CONSTRUCTION FUND — TRAFFIC LIGHTS — TRAFFIC CONTROL DEVICE — SUCH PART OF PROCEEDS OF TAXES LEVIED BY SECTION 5541 G. C. WHERE DISTRIBUTED TO MUNICIPAL CORPORATIONS, SECTION 5541-8 G. C., MAY NOT BE EXPENDED FOR PURCHASE AND INSTALLATION OF STREET NAME SIGNS.

SYLLABUS:

Such part of the proceeds of taxes levied by Section 5541 of the General Code, when appropriated by the General Assembly and distributed in the manner provided by Section 5541-8 of the General Code to municipal corporations, may not be expended for the purchase and installation of street name signs.

Columbus, Ohio, April 12, 1944

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads:

“In view of the enactment of Section 6307-2, General Code, which defines ‘Traffic Control Devices’ as including ‘signs denoting names of streets and highways’, may we request that you review Attorney General’s Opinions of 1930, Nos. 1370 and 2210, and give us your opinion in answer to the following question:

May the proceeds of the gasoline tax as distributed to cities under the provisions of Section 5541-8, General Code, be used or expended for the purchase and installation of street name signs?

In this connection we inclose herewith a letter received from our City of Toledo Examiner.”

The inclosure mentioned in your request reads as follows:

“Traffic control devices, as now defined in section no. 6307-2 G. C., of the ‘Uniform Traffic Act’, as amended effective August 16, 1943, includes, among other signs, signals,

etc., 'names of streets and highways'.

Section no. 6307-9 G. C., as amended effective September 6, 1941, is mandatory as to the adoption of a uniform system of traffic control devices, including 'signs denoting names of streets and highways'.

Traffic signs, as mentioned in Attorney General's 1930 Opinions nos. 1370 and 2210, have been understood as referring to 'Traffic Signals' for which the second 1½ cent gasoline excise tax proceeds may be used (5541-8 G. C.).

Question: May the proceeds of gasoline taxes distributed to municipalities under the provisions of section 5541-8 G. C., be used for the purchase and erection of 'signs denoting the names of streets and highways?'"

In determining the use which may be made of the proceeds resulting from levies of taxes made by the General Assembly, we must bear in mind the provision of Section 5 of Article XII of the Ohio Constitution that:

"* * * every law imposing a tax, shall state, distinctly, the object of the same, *to which only, it shall be applied.*"

(Emphasis added.)

In levying the tax referred to in your inquiry, the General Assembly has observed the mandate of such constitutional provision. In Section 5541 of the General Code, the following language is contained:

"For the purpose of providing revenue for supplying the state's share of the cost of constructing, widening and reconstructing the state highways of this state, and also for supplying the state's share of the cost of eliminating railway grade crossings upon such highways, and also for enabling the several counties, townships and municipal corporations of the state properly to construct, widen, reconstruct and maintain their public highways, roads and streets, and for paying the costs and expenses of the tax commission incident to the administration of the motor vehicle fuel laws, and supplementing revenue already available for such purpose, an excise tax is hereby imposed on all dealers in motor vehicle fuel, upon the use, distribution, or sale within the state by them of motor vehicle fuel, * * *."

In Section 5541-8, General Code, the General Assembly has provided for the distribution or allocation of the proceeds of the tax so

levied among certain political subdivisions. The part of such section applicable to the distribution or allocation to municipal corporations reads:

“When appropriated by the General Assembly such highway construction fund shall be appropriated and expended in the following manner and subject to the following conditions: * * *

Seven and one-half per cent of said highway construction fund shall be paid on vouchers and warrants drawn by the auditor of state to the municipal corporations within the state in proportion to the total number of motor vehicles registered within the municipalities of Ohio during the preceding calendar year from each such municipal corporation as shown by the official records of the secretary of state, and shall be expended by each municipal corporation for the sole purpose of constructing, maintaining, widening, reconstructing, *cleaning and clearing* the public streets and roads within such corporation, *and for the purchase and maintenance of traffic lights.*”

(Emphasis added.)

The matters which I have emphasized in the preceding quotation were added by the General Assembly in 1931 (114 O. L. 507). Such being true, it would seem to have been the legislative intent that the tax so levied, after having been appropriated by the General Assembly and distributed to municipalities, prior to the 1931 amendment, could not have been legally used either for cleaning or clearing of the streets or for the acquisition and maintenance of traffic lights and that in order to authorize such funds to be so used by municipal corporations for those purposes, the amendments were necessary.

Such was the ruling of one of my predecessors in office in an opinion No. 1370, reported in Opinions of the Attorney General for 1930, Vol. I, page 35, the syllabus of which reads:

“A municipal corporation may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purpose of paying the cost of installing traffic signals or the cost of rentals thereof.”

In a later opinion of the same Attorney General reported in Opinions of the Attorney General for 1930, Vol. I, page 790, being Opinion No. 1896, he ruled with respect to metal disks being inserted in the pavement to designate safety zones, that:

“The cost of metal disks inserted in municipal streets to mark safety zones may properly be paid from the receipts of the gasoline and motor vehicle license taxes.”

Still later, such Attorney General ruled in Opinion No. 2210, reported in Opinions of the Attorney General for the year 1930, Vol. II, page 1286, that:

“A municipality may legally expend its portion of the gasoline and motor vehicle license taxes for the purpose of purchasing and installing traffic signs and to pay the cost of paint used in marking spaces and traffic division lines.”

The signs being considered in such opinion were “no parking”, “boulevard stop” and “stop” signs having reference to the use of the highway or street.

The same Attorney General in an opinion No. 3664, reported in Opinions of the Attorney General for the year 1931, Vol. II, page 1263, held with reference to the use of funds distributed under authority of Section 5541-8 by the county commissioners, that:

“The cost of purchasing and maintaining automatic traffic signals at the intersection of public highways, outside of municipalities, on the state highway system, may not be paid by a board of county commissioners from moneys arising from the county’s share of the proceeds of the gasoline taxes.”

A review of such opinions of my predecessor indicates that he, in construing the statute prior to its amendment in 1931, consistently adopted and followed the premise that the item for which the expenditure was to be made must be a part of the highway in order that it might be paid for from funds distributed to a municipality by virtue of the provisions of Section 5541-8 and an appropriation thereunder. It would seem that the Legislature, in making its amendment in 1931, also adopted such premise and made the amendment for the express purpose of extending the authority to use the funds so to be distributed beyond that theretofore provided and added the words “cleaning and clearing” and specifically provided that such funds might be used for the acquisition and maintenance of traffic lights.

There is a rule of statutory interpretation which must be observed

in construing Section 5541-8 of the General Code to the effect that where a statute makes specific provisions in regard to several enumerated cases or objects but omits to make similar provision for a case or object which is analogous to those enumerated, or which stands on the same reason, and it appears as though such case or object had been omitted through inadvertence or because of its having been overlooked, such omission may not be supplied by the courts through the guise of interpretation. As stated by Wanamaker J. in *Weirick v. The Mansfield Lumber Co., et al.*, 96 O. S. 386, 397:

“It is an old rule of construction that where a statute specifically and expressly mentions certain things, other things belonging to the same class, or occurring at the same time, are excluded. In short, when a statute makes certain definite things^o therewith are not mandatory.”

As stated by Wanamaker J. in *Weirick v. The Mansfield Lumber Co., et al.*, 96 O. S. 386, 397:

See also *Hough v. Dayton Manufacturing Co.*, 66 O. S. 427.

In view of such rule of statutory construction and the fact of the enumeration of the purposes for which the tax proceeds may be used in such Section 5541-8 of the General Code, it would appear that such section limits the use of the funds distributed to municipalities from the “highway construction fund” to the purposes therein mentioned and does not permit the use for any other purpose than therein specifically mentioned. Such being true, it would necessarily follow that the moneys distributed to municipal corporations from the “highway construction fund” may not be used for the purpose of erecting and maintaining signs setting forth the names of the streets and highways unless it may be said that such signs are an integral part of the highway.

In an opinion of one of my predecessors in office, being Opinion No. 6070, reported in *Opinions of the Attorney General for the year 1936, Vol. III, page 1387*, he held:

“A municipality may not legally purchase with funds from its portion of the gasoline tax, an automatic guard at a railroad crossing which rises when a train approaches and which prevents automobiles from crossing while a train is approaching or crossing the tracks at a street intersection.”

In view of the reasoning of my predecessors in office to the effect

that the funds in question, in so far as they are used for the construction or maintenance of the roads of streets are limited to the physical improvement of the surface of the street, I am constrained to the view that the erection and maintenance of street name signs is not included within the terms "maintaining" or "constructing" streets or highways.

In the letter from your examiner is contained an inference that since the erection and maintenance of signs designating the names of streets and highways comes within the definition of the term "traffic control device" as defined in Section 6307-2 of the General Code, such fact might change the view indicated in the opinions of my predecessors. You will observe, however, that Section 5541-8 does not authorize the expenditure of funds for the purpose of constructing any type of traffic control device other than "traffic lights".

Specifically answering your inquiry, it is my opinion that such part of the proceeds of taxes levied by Section 5541 of the General Code, when appropriated by the General Assembly and distributed in the manner provided by Section 5541-8 of the General Code to municipal corporations, may not be expended for the purchase and installation of street name signs.

Respectfully,

THOMAS J. HERBERT

Attorney General