

fee, which is to be paid under any circumstances.

To support this view it may be noted that even though there is no value as determined by the Tax Commission, the corporation still has a right of franchise which it may exercise for the period for which a tax is charged. The policy of the corporation law has heretofore always been to maintain a minimum fee; in fact, the language of this section in reference to the minimum fee is substantially what it was in the former law. However, it does appear that under the method of determining the tax under the former law there could not be a situation in which there would be no tax upon a capital stock basis.

However, it will be observed that if the Commission should certify the fair value on an asset basis of a given corporation to be \$5.00 or any definite amount, no matter how insignificant then the minimum fee under such circumstances would be required to be paid. In the event a corporation which has a nominal fair value is required to pay the minimum fee of \$15.00, it would be discriminatory against competing companies whom the Tax Commission had certified as having no value if no fee be charged. It is not believed that this view was the intention of the legislature.

The tax is assessed upon the report which is required to be filed by section 5495 heretofore set forth. The language is clear that "each corporation incorporated under the laws of this state for profit, and each foreign corporation for profit, doing business in this state, or owning or using a part or all of its capital or property in this state," etc., shall file a report.

It would therefore seem that the phrase in section 5499 "which fee shall not be less than \$15.00 in any case," relates to a case in which a report is filed.

In view of the foregoing, you are advised that it is the opinion of this department that:

(1) The determination of the proportion of fees chargeable to a corporation for profit that has been adjudicated a bankrupt, or a receiver has been appointed therefor, or a general assignment has been made for the benefit of creditors, is a duty to be exercised by the Auditor of State.

(2) Under the provisions of section 5499 as amended in 109 O. L., a minimum fee of \$15.00 must be charged by the Auditor of State, even though the certification of the Tax Commission indicates that there is no fair value of the capital stock on an asset basis.

Respectfully,

C. C. CRABBE,
Attorney General.

3101.

GASOLINE TAX MONEY—MAY NOT BE USED BY MUNICIPALITY FOR PURCHASE OF STREET REPAIR EQUIPMENT, TOOLS AND MACHINERY.

SYLLABUS:

The proceeds derived from the gasoline tax may not be used by a municipality for the purchase of street repair equipment, tools and machinery.

COLUMBUS, OHIO, January 28, 1926.

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

GENTLEMEN:—I am in receipt of your communication propounding the following inquiry:

"May the municipality's share of gasoline tax be used for the purchase of street repair equipment, such as road rollers, trucks, etc.?"

Section 5537, General Code, of Ohio, provides:

Thirty per cent of such gasoline tax excise 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 used by such municipal corporations for the *sole purpose* of maintaining and repairing the public streets and roads within such corporation.

"Wherever a municipal corporation is on the line of an inter-county highway or main market road, one-sixth of the amount so paid to any municipal corporation shall be used by such municipal corporation for the *sole purpose* of maintaining and repairing such streets and roads within such municipal corporation, as may be designated by the director of highways and public works as extensions or continuances of inter-county highways or main market roads.'

I enclose herewith copy of Opinion No. —, to Hon. G. Walter Booth, prosecuting attorney. Akron, Ohio, which deals with this same question as it respects the power of the county to purchase such equipment.

Inasmuch as the municipalities had, prior to the enactment of the gasoline tax act, authority to purchase such machinery and equipment, irrespective of the provisions contained in said act, and in view of the limitation in section 5537, limiting the use of said tax to the "sole purpose of maintaining and repairing the public streets and roads within such corporation," I am of the opinion that the answer to the question you propound is the same as that contained in the enclosed copy of opinion with respect to authority of the county.

Respectfully,
C. C. CRABBE,
Attorney General.

3102.

SCHOOLS—LUNCH ROOM FUND PROVIDED IN SECTION 4762-1 G. C.
CONSIDERED PART OF GENERAL SCHOOL FUNDS.

SYLLABUS:

The lunch room fund provided in section 4762-1 G. C., shall be considered as a part of the general school funds to be deposited in the usual depositaries and paid out upon warrants properly signed by the president and clerk of the board of education as provided in section 4768 G. C.

COLUMBUS, OHIO, January 28, 1926.

HON. A. B. PECKINPAUGH, *Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you submit the following inquiry: