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GASOLINE TAX FUNDS—PURCHASE AND MAINTENANCE OF TRAFFIC LIGHTS—SECTIONS 5537, 5541-8 G. C. DO NOT AUTHORIZE USE OF ANY PORTION OF SUCH FUNDS TO ERECT TRAFFIC LIGHTS OR CONSTRUCT POWER LINES LEADING THERETO.

SYLLABUS:

Sections 5537 and 5541-8, General Code, authorizing municipalities to use gasoline tax funds for the purchase and maintenance of traffic lights, do not authorize the use of any portion of such funds for the erection of such traffic lights or the construction of power lines leading thereto.

Columbus, Ohio, May 25, 1948

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your communication in which you request my opinion, reading as follows:

“We are enclosing herewith a copy of letter received from our City of Columbus Examiner, relative to the use by municipal corporations of funds derived from the gasoline excise tax under the provisions of Sections 5537 and 5541-8, General Code.

“Both Sections 5537 and 5541-8, General Code, contain identical provisions as follows:

‘* * * and for the purchase and maintenance of traffic lights.’

“Certain cities are attempting to construe the above quoted statutory provision to include the cost of extending a power line for the erection of new traffic lights. The unrestricted use of gasoline excise tax funds for such purposes would in all probability, lead to abuse which might result in extending the street lighting system at the expense of the gasoline excise tax fund.

“Since the proposed use of gasoline excise tax funds as outlined above is a matter of state-wide interest, we respectfully request that you give us your opinion and answer to the following questions:

QUESTION 1: Is any portion of the revenue received by a municipal corporation under the provisions of Sections 5537 and 5541-8, General Code., and credited to the gasoline excise tax fund available for use by such municipal corporation for the purpose of extending a power line to be used for the erection and operation of a traffic light or lights?

QUESTION 2: If the answer to the above is in the affirmative, to what extent are such funds available for the extension of power lines for traffic lights?

QUESTION 3: If it is legal to expend gasoline excise tax funds for the purpose of extending power lines to be used in the operation of traffic lights, how far can a municipality extend such power line for the purpose of erecting a traffic light or lights, and pay the cost of such extension out of the gasoline excise tax fund?”

Section 5537, General Code, to which you refer, relates to the distribution of the gasoline tax provided for in Section 5526 et seq., General Code, and commonly known as the “first gasoline tax.”

Section 5541-8, General Code, relates to the distribution of the additional gasoline tax provided for by Section 5541 et seq., General Code, and commonly known as the “second gasoline tax.” Section 5541-8, in its former reading, set aside a certain portion of the tax for the use of municipalities “for the sole purpose of constructing, maintaining, widening and reconstructing the public streets and roads within such corporation.” In an amendment of that section, found in 114 O. L., page 507, the use of this fund by municipal corporations was enlarged by adding “cleaning

and clearing” such public streets and roads, and also “for the purchase and maintenance of traffic lights.”

Section 5537 *supra*, did not contain any reference to traffic lights until House Bill No. 155 of the 97th General Assembly incorporated in the provision for the expenditure by municipal corporations of the first gasoline tax the words, “and for the purchase and maintenance of traffic lights”. This act was subsequently amended by House Bill No. 498, for the purpose of clarification in other respects, but the same language as to purchase and maintenance of traffic lights was retained.

We have, therefore, before us the question whether the authority to expend these gasoline tax funds “for the purchase and maintenance of traffic lights” authorizes the use of such funds to pay the cost of extending power lines for the new traffic lights which may be purchased. It will be noted that the statute makes no mention of *erection* of traffic lights. The authority is only for their purchase and maintenance. I cannot construe either of these words as containing authority for the expenditure of these particular funds for the erection of traffic lights or for the construction or installation of any of the equipment and materials that might be incidental to their complete installation, such as the construction and extension of power lines. The other portions of these statutes relating to the distribution of these gasoline tax funds contemplate construction of highways, and the language of the statute is explicit in authorizing such to be done. Such grant of authority would include such matters as are necessary or incidental to such construction. Thus, it was held by the Court of Appeals that under the power granted to a municipality by said Section 5537, it could use such fund to buy a sand drier for its city asphalt plant to be used in maintaining and repairing streets. See *State ex rel. Crabbe v. Columbus*, 21 O. App., 1. On the other hand, the authority to use these funds for the purpose of construction or repair is to be limited to those purposes. It was held in 1937 *Opinions of the Attorney General*, page 447, that such power would not include the acquisition of a new right-of-way for the opening or extending of streets.

But in the case which you have presented we find no authority to erect traffic lights—only to purchase them. Presumably, the cost of erection must come from other sources. If the General Assembly had meant to include the erection of these traffic lights, it would very naturally have used such words as “purchase, erect and maintain”.

Certainly authority to erect these lights and their accessories cannot be found in the grant of the right to use the funds in question for "maintenance". "Maintenance" presupposes that a building, road or other improvement has already been erected or constructed and is thereafter to be maintained in such condition as will continue its usefulness.

The word was discussed and defined in an opinion of my immediate predecessor, found in 1942 Opinions of the Attorney General, page 825. The discussion in that opinion was in reference to Section 5537 supra, as applying to maintenance of highways, and it was held to include whatever was designed to keep a road or street in good and safe condition for the purpose for which it *had been constructed*. Quoting from an opinion reported in 1939 Opinions of the Attorney General, page 2208, it was said:

"The term 'maintenance' when used in its broad sense might well include reconstruction, enlargement, improvement, alteration, repair of highways, and all other types of duties with reference to highways *other than original construction*."

(Emphasis added.)

Inasmuch as the provisions under consideration do not, in my opinion, authorize the use of these funds for the erection of traffic lights which a municipality is authorized to purchase, it clearly follows that they cannot be used for the construction of power lines which are, at most, supplemental to the lights themselves. It is quite evident as you suggest, that if these statutes were held to confer authority to extend the power lines to a traffic light, such authority could readily be subject to abuse, as it might be employed for the purpose of extending the street lighting system at the expense of the gasoline excise tax fund, which is certainly beyond the contemplation of the law.

The above appears to me to be a sufficient answer to all of the questions which you have submitted. It is my opinion that Sections 5537 and 5541-8, General Code, authorizing municipalities to use gasoline tax funds for the purchase and maintenance of traffic lights, do not authorize the use of any portion of such funds for the erection of such traffic lights or the construction of power lines leading thereto.

Respectfully,

HUGH S. JENKINS,
Attorney General.