

1896.

MUNICIPALITY—COST OF METAL DISKS AND THEIR INSTALLATION
IN SAFETY ZONES PAYABLE FROM PROCEEDS OF GAS AND MOTOR
VEHICLE LICENSE TAXES.

SYLLABUS:

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.

COLUMBUS, OHIO, May 22, 1930.

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

GENTLEMEN:—Your recent communication reads:

“Metal disks are used in many municipal corporations to designate safety zones in streets.

Question. May the cost of such disks, and the cost of installing same, be legally paid from a municipality's share of the motor vehicle license and gasoline tax receipts?”

Both the motor vehicle license tax, which is levied under authority of Section 6309-2 of the Code, and the first gasoline tax levied under authority of Section 5537 of the Code, authorized the expenditure of the funds resulting from these levies in the maintenance and repair of public roads, highways and streets. The additional gasoline tax levied under authority of Section 5541-1 of the Code, may only be expended for the purpose of construction, widening and reconstruction of streets and roads. Your inquiry accordingly resolves itself into the determination of whether or not the installation and replacement of metal disks to designate safety zones may properly be regarded as the construction, reconstruction, maintenance or repair of streets.

While the designation of safety zones has but comparatively recently become an ordinary incident in the maintenance of public thoroughfares, the practice may now be said to be almost universal. Modern traffic conditions necessitate, from the standpoint of safety, the designation of a place where pedestrians lawfully using the street may stand. This is but one of several instances in which the development of vehicular traffic has resulted in a necessary part of street construction and maintenance beyond that which was necessary before the advent of the motor vehicle.

In my earlier opinion to you under date of April 12, 1929, and found in Opinions of the Attorney General for the year 1929, at page 452, similar questions were under discussion. It was there held that the cost of posts and wire mesh for repairing safety fences along the sides of streets and roadways and the cost of repairing loading platforms constructed in the streets for the use of street car passengers may properly be paid from the proceeds of the taxes here under consideration. In reaching the conclusion, the opinion states (page 455):

“In your first question you inquire as to the authority to pay for the cost of posts and wire mesh for the repair of safety fences along streets and highways from the revenues herein under discussion. Quite obviously these expenditures are maintenance and repair for they consist simply in returning the fences to their original condition. The only question is as to whether the fences may be regarded legitimately as a part of the highway.

Had this question been propounded in earlier times I have no doubt the answer would have been in the negative. It is necessary, however, to

take into consideration changed conditions and the modern development of street and highway construction and traffic conditions before a proper answer can be reached. For example, the use of curbing in rural highway construction was practically unheard of until comparatively recent times. Similarly, the use of safety fences which, in the past, was a rarity, is now not only common practice but a virtual necessity by reason of the danger incident to the congestion and speed of modern traffic. For these reasons I am of the opinion that safety fences must now be regarded as a legitimate part of street and highway construction and accordingly the use of the funds in question for the maintenance and repair of such fences is proper.

The foregoing discussion is equally applicable to the repair of so-called loading platforms constructed in streets for the use of street car passengers. Here again is a direct and necessary result of changing traffic conditions. The safety of pedestrians in legitimate uses of the highways must be conceded to be a proper consideration in highway construction. Construction of these platforms is, in my opinion, the construction of a portion of the streets and constitutes an improvement thereof so as to authorize the expenditure of the funds in question in the maintenance and repair of such structures."

Certainly, if the cost of loading platform be a legitimate expense from these funds, the cost of metal disks for the designation of safety zones which accomplish substantially the same purpose may also properly be paid from these funds.

In view of the foregoing, I am of the opinion 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.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1897.

COUNTY BOARD OF EDUCATION—UNAUTHORIZED TO ELECT ASSISTANT SUPERINTENDENTS OF SCHOOLS TO PERFORM DUTIES OF LOCAL PRINCIPALS.

SYLLABUS:

It is unlawful for a county board of education to elect assistant county superintendents of schools for the purpose of requiring of those assistant county superintendents of schools the performance of duties in connection with the administration of high schools and consolidated schools within the county school district, which administrative duties should be performed by a principal of schools designated as such from among the teachers employed by the several local boards.

COLUMBUS, OHIO, May 23, 1930.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion with reference to the following:

"In a county in which there are ten village and rural districts, each having a high school, and each of which hires a principal for the high school, may the county board of education elect ten assistant county superintendents,