

6740

BUILDING—MONEYS DISTRIBUTED TO MUNICIPALITIES UNDER SECTIONS 6309-2, 5537, 5541-8 G. C. MAY NOT BE USED TO FINANCE COST OF A BUILDING, NOTWITHSTANDING USE OF SAID BUILDING IS FOR SOLE PURPOSE OF HOUSING STREET REPAIR AND CONSTRUCTION EQUIPMENT.

**SYLLABUS:**

Moneys distributed to municipalities under the provisions of Sections 6309-2, 5537 and 5541-8 of the General Code may not be used to finance the cost of a building, notwithstanding said building is to be used for the sole purpose of housing street repair and construction equipment.

Columbus, Ohio, March 10, 1944

Bureau of Inspection and Supervision of Public Offices  
Columbus, Ohio

Gentlemen:

Acknowledgment is made of your communication requesting my opinion, which reads:

"We are inclosing herewith a letter received from the Attorney for a Village, in which it is claimed that the proceeds of the motor vehicle license fees and gasoline tax distributed to the Village under the provisions of Sections 6309-2, 5537 and 5541-8 of the General Code, should be available to finance the construction of a building in which to house the street repair equipment owned by said village.

We are unable to find a ruling bearing directly upon this subject, but Opinion No. 1636 of the year 1930, indicates that the equipment to be placed in an asphalt plant, when such plant is used solely for maintenance, repair and construction of streets, may be purchased from said funds.

Will you kindly examine the inclosure and give us your opinion in answer to the following question:

May the proceeds of the motor vehicle license fees or gasoline tax, or both, be used by a municipality to finance the cost of a building to be used solely for the housing of street repair and construction equipment?"

In the letter accompanying your communication it is stated among other things that:

"\* \* \* the building proposed, which is to be built upon property presently owned by the village and a part of its Town Hall site, will cost approximately \$600 to \$700, and will be built solely for the purpose of getting under cover a truck, an air compressor, a snow plow, weed cutting equipment, and such other incidental tools and machinery as is used by the village in the maintenance and repair of its streets. \* \* \*"

It is further stated in said communication from the attorney for the village that the building which now houses the machinery is being torn down and no place has been found in the village where it can be housed. In the opinion of the Attorney General for the year 1930 referred to in your communication it was held as disclosed by the syllabus:

"1. The city's portion of the motor vehicle license tax and gasoline tax may not be used for the purpose of purchasing land upon which there is erected an asphalt plant or for the purpose of purchasing land upon which there is to be erected such a plant.

2. A municipality may properly use such funds for the purpose of purchasing equipment to be placed in an asphalt plant if such a procedure is reasonable in view of the cost of the same and the mileage of streets required to be maintained, when such plant is to be used for the sole and exclusive purpose of maintaining, repairing, constructing or repaving such streets."

The sections of the General Code to which you refer have been amended many times and have been construed in a great number of opinions. However, an examination of the sections will disclose that all of them now contain substantially the same provision with reference to the use of the funds distributed thereunder to municipal corporations with respect to maintenance, repair, and reconstructing of the public streets. By reason of such provisions, it has been concluded that such funds may be used for the purchase of equipment and labor used exclusively for the purposes above enumerated and obviously if such funds may be used for the construction of a building, it would be by virtue of such authority.

The opinion mentioned in your letter contains a rather comprehensive discussion of the use of the funds by a municipality and in the body thereof, after referring to the case of *State ex rel v. City of Columbus*, 21 O. A., 1 and an opinion of the Attorney General for the year 1927, page 1, the then Attorney General stated:

"\* \* \* The opinion above referred to also indicates that the purchase of real estate and the constructing of buildings thereon results in a permanent and continuous service. \* \* \*"

It is fundamental that buildings of a permanent nature become a part of the realty and by analogy, it would seem clear that if money may not be used for the purchase of realty, it could not be used for the construction of a building. In support of this conclusion, as pointed out in the opinion you refer to, Section 1190-1 of the General Code expressly authorizes the Director of Highways to pay from any fund appropriated for the purpose of maintaining the highways, expenses of providing buildings for storing machinery, etc. From the above it is believed that it may be argued with some force that when the

Legislature intended that the use of funds levied for maintenance could be used to construct buildings, it so expressed such intent in a legislative enactment.

It further must be kept in mind that the Legislature has provided means whereby municipalities may obtain funds to construct buildings. Section 2293-1 of the General Code authorizes bond issues for building purposes under certain conditions. Section 5625-5 authorizes a general tax levy and Section 5626-6 provides for a special tax levy, for building purposes.

Furthermore, in connection with your question we must not overlook the mandate of Article XII, Section 5 of the Ohio Constitution which requires that moneys arising from tax levies shall be expended for the purposes for which the levy was made.

In view of the foregoing, and in specific answer to your inquiry, it is my opinion that moneys distributed to municipalities under the provisions of Sections 6309-2, 5537 and 5541-8 of the General Code may not be used to finance the cost of a building, notwithstanding said building is to be used for the sole purpose of housing street repair and construction equipment.

Respectfully,

THOMAS J. HERBERT  
Attorney General