

1949.

TOWNSHIP TRUSTEES — MAY NOT PAY FOR ROAD MACHINERY OUT OF TOWNSHIP GENERAL FUND — NO POWER BY RESOLUTION TO TRANSFER FROM GENERAL FUND TO ROAD AND BRIDGE OR GASOLINE TAX FUND— PROCEEDINGS SHALL BE PURSUANT TO SECTIONS 5625-13a TO 5625-13g G. C.

SYLLABUS:

1. *A board of township trustees may not pay for road machinery purchased by such board out of the general fund of the township.*
2. *A board of township trustees is without power to transfer funds from the general fund of a township to its road and bridge fund or to its gasoline tax fund by mere resolution of said board of trustees. Such transfer can be made only where appropriate proceedings are had pursuant to Sections 5625-13a to 5625-13g, both inclusive, General Code.*

Columbus, Ohio, March 1, 1940.

Hon. D. Harland Jackman, Prosecuting Attorney,
London, Ohio.

Dear Sir:

Your recent request for my opinion is as follows:

“The township trustees of Deercreek township find themselves with a balance on hands in the general fund which is in excess of the amount needed for usual general fund purposes. This comes about by reason of the payment of inheritance taxes to their township as the subdivision in which the tax originated.

They would like to purchase some needed road machinery. Apparently General Code Section 3373 provides the authority for purchasing machinery, but also provides that the payments must be made from the township road fund as provided by law. This township maintains a fund known as the Road and Bridge Fund.

They now inquire whether they would be permitted to purchase machinery and pay for the same out of the general fund, or if that cannot be done, whether money can be transferred from their general fund to the road and bridge fund, or to the gasoline tax fund.”

Section 3373, General Code, to which you refer, provides in part as follows:

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Township trustees are hereby authorized to purchase or lease such machinery and tools as may be deemed necessary for use in maintaining and repairing roads and culverts within the township. The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township. They shall have the power to purchase such material and to employ such labor and teams as may be necessary for carrying into effect the provisions of this section, or they may authorize the purchase or employment of the same by one of their number or by the township highway superintendent at a price to be fixed by the township trustees. *All payments on account of machinery, tools, material, labor and teams shall be made from the township road fund as provided by law.* All purchases of materials, machinery, and tools, shall, where the amount involved exceeds five hundred dollars, be made from the lowest responsible bidder after advertisement made in the manner hereinbefore provided. All force account work shall be done under the direction of a member of the board of township trustees or of the township highway superintendent.” (Emphasis mine.)

The terms of this section unqualifiedly prohibit the payment of the purchase price of road machinery from the general fund of a township.

Section 5625-5, General Code, which is part of the Uniform Tax Levy Law, provides in part as follows:

“The purpose and intent of the general levy for current expenses is to provide one general operating fund derived from taxation from which any expenditures for current expenses of any kind may be made, and the taxing authority of a subdivision may include in such levy the amounts required for the carrying into effect of any of the general or special powers granted by law to such subdivision, including the acquisition or construction of permanent improvements and the payment of judgments, but except the construction, reconstruction, resurfacing or repair of roads and bridges in counties and townships and the payment of debt charges. * * *”

Section 5625-10, General Code, provides that all revenue derived from the general levy for current expense shall be paid into the general fund. It will be noted that subdivisions may expend revenue derived from the general levy for current expense for the acquisition of a permanent improvement, which term is defined in Section 5625-1, General Code, as property with an estimated life of usefulness of five years or more. It might well be that the road machinery which the township contemplates purchasing would be a

permanent improvement within the meaning of this section. However, the section further provides that the general levy for current expense may not be used for the construction, reconstruction, re-surfacing or repair of roads and bridges in counties and townships. In view of the conclusion which I have reached, it is unnecessary for me to determine in this opinion whether the terms "construction," "reconstruction," "re-surfacing" and "repair" of roads include the purchase of machinery for such purposes.

Section 3373, General Code, requires that payments on account of such machinery purchased by a board of township trustees be made out of the township road fund. If there be a conflict between Section 3373, General Code, and that part of Section 5625-5, General Code, authorizing revenue derived from the general levy for current expense to be expended for the acquisition of permanent improvements, I am of the opinion that the provisions of Section 3373, General Code, to the extent of such conflict, prevail.

I am not unmindful that Section 5625-5, General Code, was enacted at a later date than Section 3373, General Code. However, Section 5625-5, General Code, is a general statute dealing with the levying and expenditure of taxes generally, while Section 3373, General Code, is a special statute having to do with the maintenance and repair of township roads. In 37 O. Jur., 409, Section 150, it is said:

"As a general rule, general statutory provisions do not control, or interfere with, specific provisions. To the contrary, to the extent of any irreconcilable conflict, the special provision generally operates as an exception to the general provision, which accordingly, must yield to the former. The special provision has been declared to modify, qualify, limit, restrict, exclude, supersede, control, govern, and prevail over the general provision, although the words of the general act, standing alone, would be broad enough to include the subject to which the more particular provisions relate. The general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment."

It would therefore seem that the provisions of Section 3373, General Code, which require payment on account of road machinery purchased by township trustees to be made from the township road fund, are still effective.

You also ask whether the township trustees may transfer funds from the general fund to the road and bridge fund. In my Opinion No. 791, (Opinions Attorney General, 1939, page 996), I reached the following conclusion as disclosed by the syllabus:

“A board of township trustees is without power to transfer funds from the general fund of a township to its road and bridge fund by mere resolution of said board of trustees.”

The reasoning therein contained would preclude a transfer from the general fund to the gasoline tax fund. However, Sections 5625-13a to 5625-13g, both inclusive, General Code, provide that such transfer may be made where approved by the Tax Commission (now the Department of Taxation) and the court of common pleas when appropriate proceedings are had pursuant to the provisions of such sections.

I am therefore of the opinion that:

1. A board of township trustees may not pay for road machinery purchased by such board out of the general fund of the township.
2. A board of township trustees is without power to transfer funds from the general fund of a township to its road and bridge fund or to its gasoline tax fund by mere resolution of said board of trustees. Such transfer can be made only where appropriate proceedings are had pursuant to Sections 5625-13a to 5625-13g, both inclusive, General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.