

OPINION NO. 80-016**Syllabus:**

1. In reenacting G.C. 6309-2 as R.C. 4501.04, the General Assembly has not altered that section to the extent that premiums for fire and theft insurance covering county road machinery or premiums for employees' liability insurance may be paid from the funds received by the county thereunder. (1953 Op. Att'y Gen. No. 2819, p. 299 followed.)
2. R.C. 4501.04, which states the purposes for which the funds constituting a county's allocation of motor vehicle license taxes may be expended, does not allow expenditure of those funds for the payment of premiums for fire and theft insurance covering county road machinery or for employees' liability insurance.
3. R.C. 5735.23, which states the purposes for which the funds constituting a county's allocation of gasoline excise taxes may be expended, does not allow expenditure of those funds for the payment of premiums for fire and theft insurance covering county road machinery or for employees' liability insurance.

To: James R. Unger, Stark County Pros. Atty., Canton, Ohio
By: William J. Brown, Attorney General, May 6, 1980

I have before me your request for my opinion regarding the purchase by a board of county commissioners of fire and theft insurance covering road equipment and liability insurance covering county employees operating the equipment. You are specifically concerned with a prior opinion of this office, 1953 Op. Att'y Gen. No. 2819, p. 299, in which it was concluded that G.C. 6309-2, the forerunner of R.C. 4501.04, did not allow the expenditure of motor vehicle license tax moneys for such insurance. When G.C. 6309-2 was reenacted as the present R.C. 4501.04, several changes were made in the provisions of the statute. Thus, your questions are as follows:

1. Have the changes and deletions in General Code Section 6903-2 in its reenactment as Revised Code Section 4501.04 changed the 1953 opinion rendered[?]
2. May the board of county commissioners pay the premiums on fire and theft insurance for [county-owned] road machinery and equipment or [employees'] liability insurance out of the county's allotment of gasoline excise tax and auto license tax funds?

Your first question is whether the changes in R.C. 4501.04 affect the applicability of Op. No. 2819, which concludes that the statute prohibits the use of motor vehicle license tax moneys for the purchase of insurance. G.C. 6309-2, the statute on which the opinion was based, stated in pertinent part:

The remainder of the revenue collected under the provisions of this chapter shall, after payment of the expenses of the bureau of motor vehicles. . . , be distributed as follows:

(1) Twenty-five percentum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. . . . In the treasuries of such counties, such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways and maintaining and repairing bridges and viaducts, and for no other purpose, and shall not be subject to transfer to any other fund excepting to the extent temporarily authorized by paragraph (3a) hereof. "Maintenance and repair" as used in this section, includes all work done upon any public road or highway in which the existing foundations thereof are used as a subsurface of the improvement thereof, in whole or in substantial part; (Emphasis added.)

R.C. 4501.04 states as follows:

All moneys paid into the state treasury under section 4501.03 of the Revised Code, . . . shall be distributed as follows:

(A) Thirty-four per cent of all such moneys are for the use of the municipal corporation or county which constitutes the district of registration. . . .

The county portion of such funds shall be retained in the county treasury and shall be used for the planning, maintenance, repair, construction, and repaving of public streets, and maintaining and repairing bridges and viaducts and for no other purpose. (Emphasis added.)

Both sections provide for the allocation of state funds derived from the sale of motor vehicle licenses. Under these provisions, a portion of the money is allocated to the county or municipal corporation which is the district of registration of the motor vehicle. The changes made in the reenactment of G.C. 6309-2 as R.C. 4501.04 include the addition of several purposes for which the funds may be used and the deletion of the definition of "maintenance and repair." Specifically, R.C. 4501.04 states that the fund shall be used for "planning, maintenance, repair, construction, and repaving" of public streets, while G.C. 6309-2 simply provided that the funds be used for "maintenance and repair" of public roads. G.C. 6309-2, however, contained a definition of those terms, stating: "'Maintenance and repair' as used in this section, includes all work done upon any public road or highway in which the existing foundations thereof are used as a subsurface of the improvement thereof. . . ." Thus, in adding the terms "planning," "repaving" and "construction" to the statute, it appears that the General Assembly intended to state the purposes for which expenditures could be made by list, rather than by definition. It also appears that the work performed on highways is no longer limited to that done on existing foundations which are used as a subsurface for the work, but may be work performed in constructing new roadways.

The important factor is that, even though the type of road work which may be performed with the funds has been expanded, the limitation that the funds may be used only for work on roads or streets has not been changed. The purposes stated in R.C. 4501.04—planning, maintenance, construction, repair and repaving—still pertain to the actual work performed in constructing or improving a street, just as the purposes set forth in G.C. 6309-2 were limited to maintenance and repair of

roads and highways. Nothing in the changes suggests that the purposes of the statute have been expanded to include indirectly-related or contingent uses arising from the construction, repair or maintenance of streets or roads.

It is my conclusion, therefore, that the analysis contained in 1953 Op. Att'y Gen. No. 2819, p. 299, applies to the construction of R.C. 4501.04. Following the reasoning of that opinion, it is clear that the county commissioners possess the power to insure the county's road equipment against fire and theft loss. See Op. No. 2819 at 300-01. It is also clear that the county commissioners have the authority to insure their employees who operate such machinery against liability for any resulting damages. R.C. 307.44. Although R.C. 307.44 (formerly G.C. 2412-3) provides that such insurance may be purchased with moneys from the "county road fund," my predecessor concluded that the state motor vehicle license taxes were not included in that fund. See Op. No. 2819 at 302-03. The major reason that the funds described in G.C. 6309-2 could not be used for purchase of insurance, however, is, as noted above, that the provisions of that section are limited to these purposes listed in the statute. I reach the same conclusion with respect to R.C. 4501.04.

Your second question is whether the premiums for the insurance may be paid with funds derived from the gasoline excise tax or the auto license tax. You refer to these funds as coming from "the county's allotment"; I assume that, by "the county's allotment," you mean the state funds allocated to the county under R.C. 4501.04 for license taxes and R.C. 5735.23 for gasoline excise taxes. Thus, your question is basically the same as the question posed in 1953 Op. Att'y Gen. No. 2819, p. 299.

It is a well-settled principle of law that where expenditure of public funds is expressly limited by statute, the funds may not be spent for any purposes other than those specified. State ex rel. Walton v. Edmundson, 89 Ohio St. 351, 106 N.E. 41 (1914). See 1979 Op. Att'y Gen. No. 79-022; 1975 Op. Att'y Gen. No. 75-088. R.C. 4501.04 lists the permissible uses of the license tax funds and states that the funds shall be used "for no other purpose." I have concluded above that the listed purposes do not include purchase of fire and theft insurance or employees' liability insurance; thus, expenditures for such insurance may not be made from the license tax fund.

R.C. 5735.23, regarding gasoline excise taxes, was also discussed in Op. No. 2819. That section was changed to a certain extent when it was reenacted from former G.C. 5537. The changes that are significant to this opinion were additions made as underlined below:

[S]uch gasoline excise tax fund. . . shall be used only for the purpose of planning, maintaining and repairing the county system of public roads and highways within such county, the planning, construction and repair of walks or paths along county roads in congested areas, the planning, construction and maintenance of suitable buildings for the housing of county road machinery, the payment of costs apportioned to the county under section 4907.47 of the Revised Code [for installation of protective devices at a public railroad highway grade crossing], and the purchase, installation, and maintenance of traffic signal lights. (Emphasis added.)

Thus, the statute was changed to allow expenditure of gasoline excise taxes for planning of the county road system and for payment of costs under R.C. 4907.47, in addition to the purposes originally stated. Although the gasoline tax may be used for more purposes than the motor vehicle license tax, the purposes are set forth specifically by list as in R.C. 4501.04 and may not be further extended to purposes which are not mentioned in the statute. As was explained in Op. No. 2819 at 304:

Housing of county road machinery and insuring the county upon its county road machinery against loss by fire and theft, are both precautions taken to protect the county against damage or loss to the

road machinery, both being designed to preserve the road machinery essential to the actual upkeep of the roads. The day to day housing of road machinery bears a more immediate and direct relationship to the maintenance and repair of county roads, through preservation of the road machinery, than does the insuring of the road machinery against fire and theft and the insuring of the operators of the machinery against tort liability. Since the legislature thought it necessary to specifically provide that the gas tax funds might be used for the construction and maintenance of a suitable building for the housing of county road machinery, even though an earlier portion of the gas tax statute allows the funds to be used for the purpose of maintaining and repairing the county system of roads, the conclusion would seem inescapable that had the legislature intended to authorize the county to pay for insurance premiums upon road machinery out of the gas tax funds it would have so provided by express language. (Emphasis added; emphasis of original omitted.)

Similarly, the other purposes now contained in R.C. 5735.23 bear a more immediate and direct relationship to the maintenance and repair of county roads than does the insuring of road machinery against fire and theft or the insuring of operators of the machinery against tort liability. The General Assembly has not expressly authorized the county to pay for insurance premiums out of the gasoline excise tax funds, and I can find no basis for inferring that such authority exists.

Accordingly, it is my opinion, and you are advised, that:

1. In reenacting G.C. 6390-2 as R.C. 4501.04, the General Assembly has not altered that section to the extent that premiums for fire and theft insurance covering county road machinery or premiums for employees' liability insurance may be paid from the funds received by the county thereunder. (1953 Op. Att'y Gen. No. 2819, p. 299 followed.)
2. R.C. 4501.04, which states the purposes for which the funds constituting a county's allocation of motor vehicle license taxes may be expended, does not allow expenditure of those funds for the payment of premiums for fire and theft insurance covering county road machinery or for employees' liability insurance.
3. R.C. 5735.23, which states the purposes for which the funds constituting a county's allocation of gasoline excise tax may be expended, does not allow expenditure of those funds for the payment of premiums for fire and theft insurance covering county road machinery or for employees' liability insurance.