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1. RESURFACING STATE HIGHWAY—PORTION OF COST—ASSUMED BY COUNTY COMMISSIONERS TO COOPERATE WITH DIRECTOR OF HIGHWAYS—MAY NOT BE PAID DIRECTLY FROM COUNTY GENERAL FUND—SECTION 1178-43 G. C.
2. MONEY IN COUNTY GENERAL FUND AND IN COUNTY ROAD MAINTENANCE AND REPAIR FUND, SECTION 6956-1a G. C. MAY BE USED BY COUNTY COMMISSIONERS TO PAY PREMIUMS ON POLICIES OF INSURANCE PROCURED UNDER AUTHORITY OF SECTION 2412-3 G. C.

SYLLABUS:

1. The portion of the cost of resurfacing a state highway which County Commissioners assume when cooperating with the Director of Highways under authority of Section 1178-43, General Code, may not be paid directly from the county general fund.

2. Money in the county general fund, and in the county road maintenance and repair fund provided for in Section 6956-1a, General Code, may be used by the County Commissioners for the purpose of paying premiums on policies of insurance procured by them under authority of Section 2412-3, General Code.

Columbus, Ohio, March 15, 1947

Hon. Raymond Miller, Prosecuting Attorney
Holmes County, Millersburg, Ohio

Dear Sir:

This will acknowledge receipt of your letter in which you state that the County Commissioners of Holmes County desire to cooperate with the Director of Highways in resurfacing a state highway within the cor-

poration limits of the village of Millersburg, and request my opinion on the question whether or not the portion of the cost to be contributed by the county may be paid from the county general fund, or from the funds budgeted for unanticipated emergencies and contingencies.

The authority of County Commissioners to cooperate with the Director of Highways in resurfacing a state highway, both within and without municipal corporations, is conferred by Section 1178-43, General Code, and that section and also Sections 1178-49a and 1178-49b, General Code, contain certain provisions under which the Commissioners may provide funds with which to pay the county's portion of the cost. In other words, Section 1178-43 provides that the county's portion may be specially assessed according to the provisions of law governing the levying of special assessments for county road improvements, and that bonds may be issued in anticipation of the collection of such assessments; Section 1178-49a provides that the county's portion may be provided by a tax levy not exceeding one and one-half mills upon the taxable property of the county; and Section 1178-49b provides that the Commissioners may issue bonds in anticipation of the collection of the taxes levied under the section last mentioned.

In addition to the aforesaid provisions in the state highway law for financing the county's portion of the cost, reference also may be made to Section 5625-6, General Code, paragraph e, which authorizes the Commissioners to make special levies for paying the county's proportion of the cost and expense of state highway road improvements.

I have been unable to find any statute which would authorize the Commissioners to pay its portion of the cost of a state highway improvement from the county general fund. As you know, the general fund primarily and in the main is for the purpose of paying the county's current operating expenses. This is clearly disclosed by Sections 5626-5 and 5625-10, General Code. And while it is true that Section 5625-5 authorizes the Commissioners to include in the general levy for current operating expenses, amounts required for the construction of permanent improvements, it expressly excepts from such authorization amounts required for the construction, reconstruction, resurfacing or repair of roads.

From the foregoing summary of the statutory law of the state, it is obvious that there is no statutory authority for paying the county's proportion of the cost of a state highway improvement from the county general fund, and inasmuch as the money budgeted for emergencies and contingencies, is merely an item or subdivision of the general fund, and is so recognized by Section 5625-2I, General Code, and also by the budget form prescribed under authority of law by the state Bureau of Inspection and Supervision of Public Offices, and used by the commissioners in making up their annual budgets, it follows that what I have said with respect to the use of the general fund applies equally to the money in the general fund which is earmarked for emergencies and contingencies.

The only county road money which might be applied to the payment of the county's portion of the cost of a state highway improvement, is that distributed to the county under the motor vehicle license law, Section 6309-2, General Code. Money distributed under that statute is distributed, according to the terms of the statute, "for the construction reconstruction, improvement, maintenance and repair of roads and highways," generally, without confining its use to roads in the county highway system. The authority to use the Section 6309-2 funds when cooperating with the Director of Highways is also recognized in Section 629I by the provision therein that one of the purposes of the license tax is for "paying the counties' proportion of the cost and expense of co-operating with the Department of Highways in the improvement and construction of state highways." Their use for such purposes has been sustained by two of my predecessors. See Opinions of the Attorney General for 1940, page 996; and for 1929, page 470

You also request my opinion on the question whether or not the premiums on policies of insurance taken out by the Commissioners under authority of Section 2412-3, General Code, insuring officers and employees of the county against liability on account of damage or injury to persons or property occasioned by the operation of motor vehicles, may be paid out of the county general fund and the "county maintenance fund."

I am assuming for the purposes of this opinion that the "county maintenance fund" mentioned in your letter is the county road fund referred to in Section 6956-1a as the "maintenance and repair fund," for which annual tax levies are made by the Commissioners.

Section 2412-3, General Code, when originally enacted in 1943, provided that the premiums for insurance "shall be paid out of the general fund of the county," but the section, as amended in 1945, and now in force, provides that the premiums "may be paid out of the county road fund."

If no provision had been made in this statute with respect to the fund from which the premiums should be paid, there would be no question that the annual premiums would be classed as "current expenses" of the county, and be payable out of the general fund, because of the statutory declaration or definition in Section 5625-1, paragraph (f) that "'Current operating expenses' and 'current expenses' shall mean the lawful expenditures of a subdivision, except those for permanent improvements, and except payments for interest, sinking fund and retirement bonds, notes and certificates of indebtedness of the subdivision."

It will be observed that Section 2412-3 does not in terms require that the premiums "shall" be paid out of the county road fund, but that they "may" be paid therefrom, and there is nothing in the language employed by the legislature in its 1945 amendment which prevents these premium charges from being classed as "current expenses." In other words, it seems to me that what the legislature intended when it employed the clause, "may be paid out of the county road fund," was to create a source of payment in addition to the general fund.

With respect to the "maintenance and repair fund" above referred to, it should be pointed out that Section 6956-1a provides that the fund shall be used solely for the maintenance and repair of roads within the county, and because of this provision as to use, it might be contended that the fund may not be used for any other purpose, such, for example, paying premiums under Section 2412-3. If this line of argument should be followed and accepted as the last word on the subject, none of the road funds of the county could be used for premium payment purposes, because all of the road funds are raised and received by the county under statutes which prescribe the purposes for which they are to be used, and none of them include the payment of premiums as one of the purposes. And the Uniform Tax Levy Law, which provides for the establishment of the several funds into which shall be paid all revenues belonging to and received by the subdivisions, also provides in Section 5625-10, that

“Money paid into any fund shall be used only for the purpose for which such fund is established.”

Section 2412-3, as now in force, is a law of later enactment than Section 6956-1a, and in my opinion may be read as an exception to the purpose clause contained in that section, and it is accordingly my opinion that money in the county road fund known as the maintenance and repair fund as well as money in the county general fund may be used in paying premiums on policies of insurance taken out by the county commissioners under authority of Section 2412-3.

Respectfully,

HUGH S. JENKINS,
Attorney General.