

**Note from the Attorney General's Office:**

1963 Op. Att'y Gen. No. 63-152 was modified by  
1964 Op. Att'y Gen. No. 64-1499.

152

**SYLLABUS:**

1. The office of the county engineer must under Section 315.11, Revised Code, be maintained within the county seat.

2. Funds available to the county under Section 5735.23, Revised Code, may be expended for the purchase of a site and for payment of architects and engineers, and for the purchase of plans and specifications when necessary to the purpose of "construction and maintenance of suitable buildings for the housing of county road machinery."

3. Funds available to the county under Section 5735.23, Revised Code, may not be expended for construction of a multiple-purpose building to provide offices for the county engineer and to house equipment and county road machinery.

4. Funds derived by the county from Section 5735.27, Revised Code, may not be expended for the construction and maintenance of buildings for the housing of road repair equipment.

Columbus, Ohio, April 17, 1963

Hon. George C. Steinemann  
Prosecuting Attorney  
Erie County  
Sandusky, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

**"IN RE: Proposed County Engineer's Highway  
Garage and Office Building**

"The Erie County Engineer has proposed to the Board of County Commissioners of Erie County a suggestion to erect a large combination garage, workshop

and office area for the storage of machinery and equipment of the Erie County Engineering Department, for work space for maintenance of such equipment and inside activities of the highway department, for the general activities of the Office of the Erie County Engineer, and for office space for the Engineer himself. Since the proposed structure would be erected in Perkins Township outside the City limits of the County seat of the City of Sandusky but close to the center of the working area for the Engineer, he further proposes to maintain an office in the Erie County Court House and to maintain the office of the Tax Map Draftsman in the Court House.

“The proposal is dictated by the need for additional space, and for the need to be close to the base of operations. Since these needs must be met the Engineer proposes to move as many operations as possible to this central location so that the work of his office may be correlated.

“The Engineer and the Commissioners have been advised of the provisions of Section 315.11 of the Revised Code, the pertinent part of which reads as follows :

‘The county engineer shall keep his office at the county seat, in such rooms as are provided by the board of county commissioners, and which shall be furnished with all necessary cases and other suitable articles at the expense of the county. Such office shall also be furnished with all tools, instruments, books, blanks, and stationery necessary for the proper discharge of the official duties of such engineer. - - -’

“It is the opinion of this office that so long as the County Engineer himself maintains an office at the County seat and is available to the public at such office that the provisions of this Section have been complied with.

“The Engineer and the Board have further been advised that funds derived by Erie County from the motor vehicle fuel excise tax of two cents per gallon imposed by Section 5735.05 of the Ohio Revised Code (distributed to the County from the ‘gasoline excise tax fund’ under the provisions of Section 5735.23 of the Revised Code) may be used for the following purposes:

‘ - - for the purpose of maintaining and repairing the county system of public roads and highways within such county, the construction and repair of walks or paths along county roads in congested areas, *the construction and maintenance of suitable build-*

*ings for the housing of county road machinery, the payment of costs apportioned to the county under the provisions of Section 4907.47 of the Revised Code, and the purchase, installation and maintenance of traffic signal lights.*' (italics added) (R. C. 5735.23).

"The Engineer and the Board have further been advised that funds derived by Erie County from the additional motor vehicle fuel excise tax of two cents per gallon imposed by Section 5735.25 of the Ohio Revised Code (distributed to the county from the 'highway construction fund' under the provisions of Section 5735.27 of the Revised Code, may be used for the following purpose and no other (except as provided in R. C. 315.12 and 325.14):

' - - for the sole purpose of maintaining, constructing, widening and reconstructing, the county system of public roads and highways and paying costs apportioned to the county under the provisions of Section 4907.47 of the Revised Code.' (R. C. 5735.27)

"It was further pointed out, however, that this Section now provides in addition that such funds may be used for the purchase of road machinery and equipment and for the construction and maintenance of suitable buildings for housing road machinery and equipment.

"The Engineer and the Board have been further advised that funds derived by Erie County from motor vehicle license taxes (and related sources of revenue) under the provisions of Section 4501.04 of the Ohio Revised Code may be used solely for the following purpose (except as provided in R. C. 315.12 and 325.14):

' - - for the construction, reconstruction, improvement, maintenance and repair of roads and highways, for the payment of costs apportioned to the county under the provisions of Section 4907.47 of the Revised Code, and maintaining and repairing bridges and viaducts.' (R. C. 4501.04)

"In the light of the foregoing will you please issue your opinion on the following matters:

- “1. Is the maintenance of an office in the County Court House by the Engineer and the Office of the county Tax Map Draftsman sufficient compliance with the provisions of Section 315.11 of the Revised Code?
- “2. Can the funds distributed by Sections 5735.23 and 5735.27 of the Revised Code be applied in connection with the construction and maintenance of a combination building for garage, storage operations and office purposes of the County Engineer in the manner of:

  - a) Purchase of the necessary site.
  - b) Architect, and engineering services.
  - c) Construction.
  - d) Equipment.
- “3. If your answer to No. 2 is ‘No’, can said funds be used in part with General County Funds for such a project for the following:

  - a) Purchase of the necessary site.
  - b) Architect, and engineering services.
  - c) Construction.
  - d) Equipment.
- “4. Can the funds distributed by Sections 5735.23 and 5735.27 of the Revised Code be used for such a project if the purposes are limited to the uses of the County Highway Department only in the following:

  - a) Purchase of the necessary site.
  - b) Architect, and engineering services.
  - c) Construction.
  - d) Equipment.
- “5. If your answer to No. 3 is ‘Yes’, in what proportions or percentages may the funds distributed by Sections 5735.23 and 5735.27 of the Revised Code be used together with the funds necessary to be provided from the County General Fund for the following:

  - a) Purchase of the necessary site.
  - b) Architect, and engineering services.
  - c) Construction.
  - d) Equipment.”

In answer to Part 1 of your request, I am in accord with your opinion that the maintenance of an office in the county courthouse by the county engineer complies with Section 315.11 of the

## Revised Code.

Coming now to Part 2 of your request, Section 5735.23, Revised Code, reads in part as follows:

“Twenty-five per cent of such gasoline excise tax fund shall be paid on equal proportions on vouchers and warrants drawn by the auditor of state to the county treasurer of each county within the state, and shall be used only for the purpose of maintaining and repairing the county system of public roads and highways within such county, the construction and repair of walks or paths along county roads in congested areas, the *construction and maintenance of suitable buildings for the housing of county road machinery*, the payment of costs apportioned to the county under the provisions of section 4907.47 of the Revised Code, and the purchase, installation, and maintenance of traffic signal lights.” (Emphasis added)

It is clear from the foregoing that money derived pursuant to Section 5735.23, *supra*, may be used for the construction and maintenance of buildings to house county road machinery. This express power impliedly carries with it the authority to expend funds necessary for the purchase of a building site and for architectural and engineering plans and specifications, and to pay for all labor and materials required in actual construction. By its own terms, however, and by the force of Article XII, Sec. 5A, Constitution of Ohio, expenditures for construction of a building under this section are limited to a single purpose building to house county road machinery and may not be for a combination or multiple-purpose building such as is suggested by your request.

Section 5735.27, Revised Code, authorizes appropriations by the general assembly to the “highway construction fund.” The funds available to the county from the highway construction fund are for the sole purpose of maintaining, constructing, widening, and reconstructing the county system of public roads and highways, and for paying costs apportioned to the county under the provisions of Section 4907.47, Revised Code.

The answer to your second question is no.

In answer to your third question, I see no reason why funds from the general fund may not be used with funds available under Section 5735.23, Revised Code, for purposes incidental and neces-

sary to the express purpose of "the construction and maintenance of suitable buildings for the housing of county road machinery." But Section 5735.27, *supra*, funds may not be so used.

Your fourth and fifth questions are disposed of by the answers to the first three.

In specific answer to your questions I am of the opinion that:

1. The office of the county engineer must under Section 315.11, Revised Code, be maintained within the county seat.

2. Funds available to the county under Section 5735.23, Revised Code, may be expended for the purchase of a site and for payment of architects and engineers, and for the purchase of plans and specifications when necessary to the purpose of "construction and maintenance of suitable buildings for the housing of county road machinery."

3. Funds available to the county under Section 5735.23, Revised Code, may not be expended for construction of a multiple-purpose building to provide offices for the county engineer and to house equipment and county road machinery.

4. Funds derived by the county from Section 5735.27, Revised Code, may not be expended for the construction and maintenance of buildings for the housing of road repair equipment.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General