

a waiver of notice in the manner provided by this statute, by advertisement in the newspapers, even though the two hundred and fifty-seven landowners were all the owners of real estate in Brunswick Township, for the raising or lowering of the valuation on land might well be interpreted as having a prejudicial effect upon the valuation of other types of taxable property such as buildings or improvements.

It therefore appears that since the county auditor failed to advertise as provided by Section 5606, General Code, the proceedings for the determination of valuation for assessments of the land have proceeded to that stage where the board of revision has completed its work of equalization and has transmitted the statements and returns to the county auditor. The county auditor should therefore now proceed to advertise in the manner provided in Section 5606, *supra*. In such advertisement a date for hearing the complaints should be fixed and when these proceedings have been completed the valuation should again be certified to the Tax Commission for its approval or correction. After that time any claimant may file his complaint under Section 5609 of the General Code, and have a hearing as therein provided.

I am therefore of the opinion that my holding in this matter disposes of your other queries.

In specific answer to your question, it is my opinion that:

1. Section 5606, General Code, is mandatory in its provisions as to advertisement of appraisements by the county auditor.
2. Since such statute is mandatory, unless such advertisement shall have been made in the manner provided therein, all further proceedings for the determination of valuation are void, and no valuation for the purposes of taxation is fixed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3918

GASOLINE TAX—AUTHORITY TO USE FOR MAINTENANCE AND REPAIR OF BRIDGES ON COUNTY HIGHWAYS WHEN—DEPUTY COMMISSIONER OF MOTOR VEHICLES LIMITED TO 15 CENT FEE FOR ISSUING MOTOR VEHICLE LICENSES—COUNTY COMMISSIONERS UNAUTHORIZED TO RELEASE CONTROL OF MORTGAGES GIVEN AS SECURITY FOR COUNTY DEPOSITS.

SYLLABUS:

1. *A deputy commissioner of motor vehicles may not charge more than the fifteen cent fee fixed by statute for receiving applications for and issuing motor vehicle licenses.*
2. *The county's share of the proceeds of the gasoline tax arising under Sections 5527 and 5541 of the General Code may be used for the maintenance and repair of bridges on public roads and highways in the county system of highways.*

3. *The proceeds of the gasoline tax levied under the provisions of Section 5541, General Code, and expended under the authority of Section 5541-8, General Code, may be used for the construction of new bridges upon public roads and highways in the county system of highways.*
4. *Under the provisions of Section 5537, General Code, a county's portion of the proceeds of the gasoline tax arising by authority of Section 5527, General Code, may not be expended in the construction of new bridges upon the public roads and highways in a county system of highways.*
5. *County Commissioners have no authority to return mortgages given to them by a county depository as security for county deposits, to such depository and take in lieu thereof a receipt for the same.*

COLUMBUS, OHIO, January 6, 1932.

HON. JOSEPH J. LABADIE, *Prosecuting Attorney, Ottawa, Ohio.*

DEAR SIR:—Your recent request for my opinion reads as follows:

"I am writing you with respect to several questions that have arisen in this county. Will you please advise me whether or not under Section 6291 of the General Code of Ohio, deputy commissioners who handle distribution of auto license tags are allowed to charge more than 15c for filling out the necessary blanks and securing the application? This county was to charge 25c under the old statute, but the intent of the legislature seems to me to be that only 15c can be charged for each application. I shall appreciate a reply at your earliest convenience.

"The question has also arisen whether or not our county can expend the gas tax money paid in for the purpose of constructing of new and repairing old bridges on county highways, or whether the statute applies merely to the highway itself.

"Also I called your department the other day by telephone to determine whether or not banks depositing first mortgage on real-estate as security for county funds with the commissioners, would be permitted to retain possession of said mortgages for the purposes of collection, and thus give the commissioners a receipt for same, so that when payments are made on the mortgages the property owner can pay directly at the bank.

"I advised the commissioners that they should obtain possession of such security, and keep it in their possession during the time the depository contract exists, and that upon payment of any part of said mortgages, said depository bank should be required to deposit additional mortgage to cover the funds then on deposit, thus never allowing the amount of security deposited by the bank to fall below the amount of money deposited by the county. Please advise me whether or not I am correct, or whether it would be permissible that the depository banks be permitted to retain said mortgages for collection purposes as above outlined."

Section 6294, General Code, as enacted by the 89th General Assembly, reads in part as follows:

"* * * Each deputy commissioner shall be allowed a fee of not to exceed fifteen cents, which shall be in addition to the license tax and shall be for the purpose of paying for the additional help required in the receiving of applications and the issuing of licenses. In the case of the county auditor, such fifteen cent fee shall be paid into the auditor's fee fund. Each application for registration shall be signed and verified by the owner before a person authorized by law to administer oaths and each deputy commissioner shall be authorized to administer oaths in the matter of applications for registration and no fee shall be charged for such service. Each statement in any application for registration shall be deemed a material statement in any prosecution for perjury.
* * *"

It should be noted that the fee in question is not to be charged by the county, with the exception of when the county auditor receives applications for and issues motor vehicle licenses, but it is to be received by the deputy commissioner of motor vehicles.

Your inquiry requests information as to the charge to be made for filling out necessary blanks and securing the applications. A reading of the excerpt from Section 6294, supra, discloses no duty imposed upon a deputy commissioner of motor vehicles to fill out necessary motor vehicle license blanks, and I express no opinion thereon; the statute merely imposes upon him the duty to receive and issue such motor vehicle licenses. It follows from the plain language of the statute that a deputy commissioner of motor vehicles or an auditor of a county may only receive a fee of not exceeding fifteen cents for receiving an application for and issuing a motor vehicle license.

Coming now to your second question, namely, the expenditure of gasoline tax money derived from the levies imposed by Sections 5527 and 5541, General Code, by a county for the purpose of constructing new and repairing old bridges on county highways, it should be noted that while Section 5537 and Section 5548-8, General Code, relative to the disposition of proceeds arising from gasoline tax levies were amended by the 89th General Assembly, the purposes for which a county's portion of the proceeds of the taxes arising under said gasoline tax sections may be expended were not changed, with the exception of the addition of the word "maintaining" in the purposes authorized under Section 5541-8, General Code.

In an opinion found in Opinions of the Attorney General, 1929, page 150, I held, as disclosed by the second branch of the syllabus, that:

"County commissioners may legally expend the county's portion of the motor vehicle license and gasoline tax receipts for the purpose of maintaining and repairing bridges on public roads and highways in the county system of highways."

Since, as before stated, the purposes for which a county's portion of gasoline tax moneys may be expended have not been changed by the recent amendments, with the exception noted, it follows that under the holding of the above opinion, such proceeds may be expended for the purpose of maintaining and repairing bridges on the county system of highways.

As to your inquiry concerning the use of these moneys for the purpose of constructing new bridges, it should be noted that a county's portion of the pro-

ceeds arising under the gasoline tax authorized by Section 5541, General Code, may only be used as provided in Section 5541-8, General Code, namely, "for the sole purpose of maintaining, constructing, widening and reconstructing the county system of public roads and highways within such county." Since the maintenance of bridges is held to be maintenance of highways, it follows that the "construction of highways" would authorize the construction of bridges, so that a county's portion of the proceeds of the gasoline tax arising by virtue of Section 5541 could, by the provisions of Section 5541-8, be used for the construction of bridges on the public roads and highways in the county system of highways.

However, the tax arising under Section 5527, General Code, can only be expended by the county as provided in Section 5537, General Code, namely, "for the sole purpose of maintaining and repairing the county system of public roads and highways within such county." From an examination of said section, it is apparent that the same does not authorize the expenditure of the proceeds from such gasoline tax in the construction of a new road on the public system of highways in the county, and, therefore, would not allow the proceeds arising under and by virtue of Section 5527 and distributed under the provisions of Section 5537 to be used for the construction of a new bridge.

In view of the foregoing, I am of the opinion that (1) the county's share of the proceeds of the gasoline tax arising under Sections 5527 and 5541 of the General Code may be used for the maintenance and repair of bridges on public roads and highways in the county system of highways; (2) the proceeds of the gasoline tax levied under the provisions of Section 5541, General Code, and expended under the authority of Section 5541-8, General Code, may be used for the construction of new bridges upon public roads and highways in the county system of highways; and (3) under the provisions of Section 5537, General Code, a county's portion of the proceeds of the gasoline tax arising by authority of Section 5527, General Code, may not be expended in the construction of new bridges upon the public roads and highways in a county system of highways.

Coming now to your third question relative to the authority of county commissioners to allow a depository bank to retain mortgages given to the county for security for county deposits, it is to be noted that under the provisions of Sections 2715 and 2745, General Code, providing for county depositories, the county commissioners are chargeable with the duty of providing for the safe keeping of the securities hypothecated by depository banks to secure the deposit of county funds. See Opinions of the Attorney General, 1921, page 745.

In an opinion found in Opinions of the Attorney General, 1927, page 990, the then Attorney General held, as disclosed by the syllabus, that:

"Securities deposited with a board of education by a depository of public funds should be kept at all times under the control and dominion of such board."

It was therein stated that

"the hypothecated securities should be in the exclusive control or dominion of the board of education and available without the concurrence of any one else for the purpose for which the deposit was made. For this reason, I am of the opinion that the funds of the board of education in the case which you present are not properly protected by the delivery of the securities to another bank and their receipt in the manner set forth."

In view of the similarity of the statutes regarding the hypothecation of securities to secure funds of boards of education and for the securing of county funds, I am of the opinion that the reasoning of the above opinion is applicable to the instant situation, and that the retention by the bank of the mortgages given by it to the county commissioners as security for county deposits, by their return by the county commissioners to the bank upon the giving of a receipt for the same, is unauthorized.

In view of the foregoing and in specific answer to your inquiries, I am of the opinion that:

1. A deputy commissioner of motor vehicles may not charge more than the fifteen cent fee fixed by statute for receiving applications for and issuing motor vehicle licenses.
2. The county's share of the proceeds of the gasoline tax arising under Sections 5527 and 5541 of the General Code may be used for the maintenance and repair of bridges on public roads and highways in the county system of highways.
3. The proceeds of the gasoline tax levied under the provisions of Section 5541, General Code, and expended under the authority of Section 5541-8, General Code, may be used for the construction of new bridges upon public roads and highways in the county system of highways.
4. Under the provisions of Section 5537, General Code, a county's portion of the proceeds of the gasoline tax arising by authority of Section 5527, General Code, may not be expended in the construction of new bridges upon the public roads and highways in a county system of highways.
5. County Commissioners have no authority to return mortgages given to them by a county depository as security for county deposits to such depository and take in lieu thereof a receipt for the same.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3919

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND BABCOCK & WILCOX COMPANY OF PITTSBURGH, PENNSYLVANIA, FOR STEAM GENERATING EQUIPMENT FOR THE OHIO PENITENTIARY, AT AN EXPENDITURE OF \$85,080 00. SURETY BOND EXECUTED BY THE NEW YORK CASUALTY COMPANY OF NEW YORK.

COLUMBUS, OHIO, January 6, 1932.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and opinion a contract between the State of Ohio, acting by and through the Department of Public Wel-