

2694.

DITCH IMPROVEMENT — ASSESSMENT WHICH BENEFITS STATE OR COUNTY ROADS OR HIGHWAYS, MADE AGAINST COUNTY, SHOULD BE PAID FROM GENERAL FUND OF COUNTY, NOT ROAD AND BRIDGE FUND.

SYLLABUS:

An assessment made against a county for a ditch improvement which benefits state or county roads or highways should be paid from the general fund of such county and not from the road and bridge fund.

Columbus, Ohio, August 28, 1940.

Hon. Hugh A. Staley, Prosecuting Attorney,
Greenville, Ohio.

Dear Sir:

This will acknowledge the receipt of your request for my opinion as follows:

“When the county commissioners make an assessment against the county in a ditch improvement, out of which fund should this assessment be paid; out of the general fund of the county or out of the bridge and road fund on the theory that the roads of the county will be benefited?”

Section 6463 of the General Code, specifying the method of assessment for ditch improvement, provides in part as follows:

“* * * That part of the assessment that is assessed for benefits to the general public by reason of the improvement being conducive to the public welfare shall be paid by the public, and shall be assessed against the county, and such part of the assessment as may be found to benefit state or county roads or highways, shall be assessed against the county, and such part of the assessment as may be found to benefit any public corporation or political subdivision of the state shall be assessed against such corporation or political subdivision, and shall be paid out of the general funds of such corporation or political subdivision of the state, except as otherwise provided by law. * * * ”

Under the provisions of section 5625-9, General Code, it is mandatory that certain funds be established by the county. A reference to said section

discloses that a special fund for each special levy shall be established. One of the special funds provided for in said section is the road and bridge fund which is made up of the proceeds of special levies for road and bridge work. Section 5625-6, General Code, which provides for the making of special levies, reads in part:

“The following special levies are hereby authorized without vote of the people:

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d. In the case of a county, for the construction, reconstruction, resurfacing, and repair of roads and bridges, other than state roads and bridges thereon.”

With reference to the setting up of special funds, section 5625-10, General Code, provides in part:

“All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

All revenue derived from a source other than the general property tax and which the law prescribes shall be used for a particular purpose, shall be paid into a special fund for such purpose.

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

Obviously, therefore, the road and bridge fund, consisting, as it does, of the proceeds of special levies for the construction, reconstruction, resurfacing and repair of roads and bridges, may only be used for such purpose.

Consequently, I am of the opinion that an assessment made against a county for a ditch improvement which benefits state or county roads or highways should be paid from the general fund of such county and not from the road and bridge fund.

Respectfully,

THOMAS J. HERBERT,
Attorney General.