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REVENUES FOR USE ON STATE HIGHWAYS MAY BE USED BY A MUNICIPAL CORPORATION TO PAY COST OF REMOVAL OF SNOW, ETC. AND LEAVES FROM SUCH HIGHWAYS—§5735.28.

SYLLABUS:

Revenues which are segregated under Section 5735.28, Revised Code, for use on state highways, may be used by a municipal corporation to pay the cost of the removal of snow, ice, and leaves from such highways.

Columbus, Ohio, June 23, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“I enclose for your reference a copy of a letter of opinion from the Director of Law of an Ohio city.

“The question posed in this correspondence relates to the limitations which are imposed upon the expenditure of revenues which are segregated for State highway purposes within municipalities, under Section 5735.28, Revised Code. Various references to former Opinions of the Attorney General, as to the proper use of similar revenues, are contained in the letter of the Law Director forwarded herewith.

“The specific question which we present for your opinion is:

‘Can those revenues, which are segregated under R.C. 5735.28 for use on State highways, be used by a municipality to pay the cost of the removal of snow, ice, and leaves from such highways?’

“Your conclusion on this point will affect the permissible use of such funds in most municipalities of the State. Therefore, we request your formal opinion on this point.”

Section 5735.28, Revised Code. provides as follows:

“Wherever a municipal corporation is on the line of the state highway system as designated by the director of highways

as an extension or continuance of the state highway system, seven and one half percent of the amount paid to any municipal corporation pursuant to sections 4501.04, 5735.23, and 5735.27 of the Revised Code, shall be used by it only to construct, reconstruct, repave, widen, maintain, and repair such highways and to erect and maintain street and traffic signs and markers on such highways.”

In Opinion No. 5661, Opinions of the Attorney General for 1942, page 825, one of my predecessors had occasion to discuss the definition of the word “maintenance.” Paragraph one of the syllabus in that opinion reads as follows:

“1. The term ‘maintenance’ as used in Section 5537, 5541-8 and 6309-2, General Code, will include the use of such materials and processes as are reasonably necessary to keep the streets and highways in good and safe condition for public travel.”

Sections 5537 and 6309-2, General Code, provided a restriction on the use of funds to “maintaining, repairing, construction and repairing,” which is similar to the restriction found in Section 5735.28, *supra*. On page 830 of Opinion No. 5661, *supra*, the then Attorney General said:

“It appears to me that all operations designed to keep a road or street in good and safe condition for the purpose for which it is constructed, may properly be included within the term ‘maintenance’. In some cases maintenance may amount to repair; in others it may be of a purely temporary or emergency character. If a portion of a concrete road or street should cave in and a planking should be substituted for a few days or a few months so as to permit traffic to go on safely until the road could be repaired, would there be any question that that is maintenance? And it would seem to follow that if the surface becomes impassable or dangerous from any other cause, such as a coat of ice, the placing thereon of material that would make a safe and usable roadway even though temporary, would with equal reason be maintenance.

Opinion No. 5661, *supra*, was approved and followed in Opinion No. 1485, Opinions of the Attorney General for 1952, page 419. Paragraph one of the syllabus in that opinion provides as follows:

“1. Destruction of weeds and brush in a highway under the control of township trustees constitutes maintenance of such highway, and the township trustees are authorized to expend the funds allocated to them under Section 5541-8, General Code, for employing the labor and purchasing the equipment and materials necessary for that purpose.”

It is common knowledge that the accumulation of leaves upon a highway, especially when they are wet, results in an extremely slippery and hazardous condition. Based upon the conclusions drawn by my predecessors in Opinions No. 5661 and 1485, *supra*, it is my opinion that the removal of snow, ice, and leaves from highways would be maintenance of such highways within the meaning of Section 5735.28, *supra*.

It is my opinion, therefore, and you are accordingly advised that revenues which are segregated under Section 5735.28, Revised Code, for use on state highways, may be used by a municipal corporation to pay the cost of the removal of snow, ice, and leaves from such highways.

Respectfully,

MARK McELROY

Attorney General