

4153

1. FEES COLLECTED BY REGISTRAR OF MOTOR VEHICLES—AMENDMENT OF STATUTORY FORMULA—SECTION 4501.01 RC—MOTOR VEHICLE LICENSE TAXES—DISTRIBUTION—ELIMINATION OF STATE MAINTENANCE AND REPAIR FUND—AMENDMENT HAS NO APPLICATION TO OR EFFECT AS TO DISPOSITION OF MISCELLANEOUS FEES COLLECTED BY REGISTRAR OF MOTOR VEHICLES—SECTIONS 4503.12, 4503.26, 4505.09, 4505.14, 4507.23, 4507.25, 4517.05 RC.
2. LEGISLATURE—FAILED TO PROVIDE FOR DISPOSITION OF \$2.00 HIGHWAY USE TAX PERMIT FEE COLLECTED UNDER SECTION 5728.02 RC OTHER THAN PAYMENT INTO STATE TREASURY—PROCEEDS OF FEES—SHOULD BE EARMARKED AND PAID INTO STATE TREASURY—SPECIAL ACCOUNT MAY BE OPENED AND FUNDS RETAINED UNTIL LEGISLATURE INDICATES DISPOSITION OF MONEY.

SYLLABUS:

1. The amendment, effective November 7, 1953, of the statutory formula in Section 4501.01, Revised Code, providing for the distribution of certain motor

vehicle license taxes to districts of registration, counties and townships, and eliminating from such formula any share for the state maintenance and repair fund, has no application or effect with respect to the disposition of the miscellaneous fees collected by the registrar of motor vehicles under the provisions of Sections 4503.12, 4503.26, 4505.09, 4505.14, 4507.23, 4507.25 and 4517.05, Revised Code.

2. The Legislature has failed to make any provision for the disposition, other than payment into the state treasury, of the \$2.00 highway use tax permit fee collected under the provisions of Section 5728.02, Revised Code. The proceeds of such fees, therefore, should be paid into the state treasury, earmarked in any convenient way, such as the opening of a special account for that purpose, and thus retained until the Legislature has indicated what disposition is to be made of such money.

Columbus, Ohio, July 29, 1954

Bureau of Motor Vehicles
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“Your attention is invited to the provisions of the Wheeler Bill, Amended Substitute House Bill No. 734, 100th General Assembly, 125 Ohio Laws, 819, enacted to become effective November 7, 1953, by the terms of which section 4501.04, Revised Code, was amended so as to change the formula therein provided for the distribution of certain of the revenues collected under the provisions of Chapter 4501., 4503., 4505., 4507., 4511., 4513., 4515., and 4517. of the Revised Code. You will observe that by this amendment there was deleted from the provisions of Section 4501.04, Revised Code, the provision which it previously contained providing for payment of twenty-three percent ‘of all taxes collected under such chapters’ to the ‘state maintenance and repair fund.’

“You will observe also that these chapters provide for the collection by the registrar of numerous fees with respect to which the statutes involved make special provisions for payment to the state maintenance and repair fund, and certain other minor miscellaneous fees which for a number of years under rulings of the Attorney General have been paid into such fund.

“Our question in this regard is: Does the recent change in the distribution formula set out in Section 4501.04, Revised Code, have the effect of changing the previously existing statutory provisions relative to the payment into the state maintenance and repair fund of any of such miscellaneous fees?

“Your opinion is requested also as to the proper distribution of the two dollar use tax permit fees collected under the pro-

visions of Section 5728.02, Revised Code, bearing in mind that in many cases *such* fees will be paid by non-residents and that it is not possible in such cases to determine either the place of business in Ohio or the district of registration so as to permit distribution under the formula set out in Section 4501.04, Revised Code, if such section otherwise is applicable.”

With respect to the several miscellaneous fees mentioned in your inquiry, we may first observe that Section 4501.04, Revised Code, the amendment of which was recently effected by the so-called Wheeler Bill, refers initially to “the remainder of the *revenue* collected” under the provisions of certain designated chapters whereas in the formula which follows this preliminary language provision is found for the distribution of “all *taxes* collected under such chapters.”

The significance of the use of these varying terms becomes readily apparent from an examination of the history of this legislation. Section 4501.04, Revised Code, is a recodification of Section 6309-2, General Code. This section was originally enacted in 1919 in House Bill 573, 83rd General Assembly, 108 Ohio Laws, Part II, 1078, 1083. As so enacted this section read in part:

Section 6309-2:

“The *revenue* collected under the provisions of this chapter shall be distributed as follows:

“(1) All *fees* collected under this chapter shall be paid into the state treasury to the credit of a fund to be designated as ‘State maintenance and repair fund.’

“(2) Fifty per centum of all *taxes* collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration
* * *

“(3) Fifty per centum of all *taxes* collected under the provisions of this chapter, shall be paid by the secretary of state into the state treasury to the credit of the ‘State maintenance and repair fund.’” * * * (Emphasis added.)

The reference in this statute to “this chapter” is indicative of Chapter 21, Title II, Part Second, General Code, and included at the time of such enactment Sections 6290 to 6310, General Code. At the time of this enactment there was in effect the provisions of Section 6294-1, General Code, providing for the transfer fee of \$1.00, one of the fees with which we are presently concerned.

In a 1925 enactment the Legislature revised the entire system of collection of the tax known as motor vehicle registration fees. By the enactment of Section 6290-1, General Code, 111 O.L. 460, the office of commissioner of motor vehicles was created. Such commissioner was authorized to designate the county auditor in each county, and one or more other persons in each county, as deputy commissioner for the purpose of accepting applications for registration and payments of the tax. Such tax funds when received by a deputy commissioner, other than the county auditor, were required to be paid to the county auditor for deposit in the county treasury. It was provided also in this enactment, Section 6309, General Code, that the auditor was to pay the state's portion thereof monthly to the commissioner of motor vehicles who in turn was required to deposit the same in the state treasury.

In this same section it was provided that the county auditor was to distribute the proceeds of such *tax* collections among the several districts of registration according to a formula provided in Section 6309-2, General Code. This latter change made it necessary to change the provisions of the first subparagraph in Section 6309-2, as quoted above, since the county auditor would not come into possession of the "fees" as distinguished from the "taxes" collected or received by him. Accordingly there was deleted from this section the first subparagraph quoted above as enacted in 1919, House Bill 573, 108 O. L., Pt. 2, 1078-1083, which subparagraph provided that all "fees" collected under the provisions of this chapter should be paid into the "state maintenance and repair fund"; and as revised such section related only to the disposition of funds, collected by the county auditor, or received by that officer from other deputy commissioners.

In 1931 this system of collections was again changed and by the amendment of Section 6309, General Code, the duty of collection and distribution of these tax funds was placed on the Commissioner of Motor Vehicles.

In this amendment certain changes were made in the distribution formula set out in Section 6309-2, but the expression "all taxes collected" was retained. This language having been adopted from the original 1919 enactment, *supra*, it must be deemed to exclude fees as distinguished from taxes. I am unable to find in House Bill 283, the 1925 enactment by which this subparagraph was eliminated from Section 6309-2, any pro-

vision for the distribution of the "fees" which were collected by the commissioner of motor vehicles, but it appears that under subsequent rulings of this office such miscellaneous fees as were not distributed under special provisions of the statute pursuant to which they were collected, have continued to be paid into the highway maintenance and repair fund. In any event, since the formula set out in Section 4501.04, Revised Code, has application to taxes only, it is quite evident that the revision of such formula by the enactment of the Wheeler Bill, supra, did not have the effect of changing the law with respect to the distribution of the several miscellaneous fees mentioned in your inquiry.

This brings us to a consideration of the \$2.00 highway use tax permit fee under Section 5728.02, Revised Code. The final paragraph of this section is as follows:

"All moneys collected pursuant to the provisions of this section shall be deposited in the state treasury in accordance with the provisions of section 4501.03 of the Revised Code."

Section 4501.03, Revised Code, merely provides the method whereby various funds collected by the registrar are to be paid into the state treasury. It contains no provision for any distribution of any of such funds either to any of the local subdivisions or to any of the state departments, nor does it contain any indication that any of such moneys are to be credited in the treasury to particular statutory funds. Moreover, even though this section be considered in *pari materia* with the section immediately following, Section 4501.04, we still find nothing to aid in the solution of the problem for as noted above, the latter section deals with *taxes* and not with fees of this sort. We must conclude, therefore, that this is an instance where the Legislature has provided for the collection of a fee, but has made no provision whatever for distributing it to the credit of any fund from which it has made an appropriation. Having thus failed to indicate the ultimate disposition or use of such revenues, it might be supposed upon first impression that the following provision in Section 115.26, Revised Code, would apply:

"All moneys paid into the state treasury, the disposition of which is not otherwise provided for by law, shall be credited by the auditor of state to the general revenue fund." * * *

Any funds credited to such general revenue fund would be available, however, for use for any purpose for which the Legislature has made an

appropriation from such fund, but in the case at hand the use of such funds are limited by the provisions of Article XII, Section 5a, Ohio Constitution, which reads as follows:

“No money derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.”

In this situation it becomes necessary to conclude that such revenues may neither be distributed to the subdivisions as provided in Section 4501.04, Revised Code, nor credited to any fund from which an appropriation has been made for a “statutory highway purpose” in conformity with the constitutional limitation above noted. It would appear obligatory, therefore, for the state treasurer upon receipt of such funds as provided in Section 4501.03, Revised Code, to earmark them in any convenient way, such as the opening of a special account for that purpose, and thus to retain them until such time as the Legislature indicates what disposition is to be made of them.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. The amendment, effective November 7, 1953, of the statutory formula in Section 4501.01, Revised Code, providing for the distribution of certain motor vehicle license taxes to districts of registration, counties and townships, and eliminating from such formula any share for the state maintenance and repair fund, has no application or effect with respect to the disposition of the miscellaneous fees collected by the registrar of motor vehicles under the provisions of Sections 4503.12, 4503.26, 4505.09, 4505.14, 4507.23, 4507.25 and 4517.05, Revised Code.

2. The Legislature has failed to make any provision for the disposition, other than payment into the state treasury, of the \$2.00 highway use tax permit fee collected under the provisions of Section 5728.02, Revised Code. The proceeds of such fees, therefore, should be paid into the state

treasury, earmarked in any convenient way, such as the opening of a special account for that purpose, and thus retained until the Legislature has indicated what disposition is to be made of such money.

Respectfully,

C. WILLIAM O'NEILL

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