

1635.

APPROVAL, NOTES OF CANFIELD VILLAGE SCHOOL DISTRICT, MAHONING COUNTY—\$55,000.00.

COLUMBUS, OHIO, March 19, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

1636.

MUNICIPALITY—USE OF MOTOR VEHICLE LICENSE AND GASOLINE TAXES FOR PURCHASING LAND WITH ASPHALT PLANT OR FOR ERECTING SAME UNAUTHORIZED—WHEN USE OF SAID TAXES FOR PURCHASING EQUIPMENT FOR SUCH A PLANT LEGAL.

SYLLABUS:

1. *The city's portion of the motor vehicle license tax and gasoline tax may not be used for the purpose of purchasing land upon which there is erected an asphalt plant or for the purpose of purchasing land upon which there is to be erected such a plant.*

2. *A municipality may properly use such funds for the purpose of purchasing equipment to be placed in an asphalt plant if such a procedure is reasonable in view of the cost of the same and the mileage of streets required to be maintained, when such plant is to be used for the sole and exclusive purpose of maintaining, repairing, constructing or repaving such streets.*

COLUMBUS, OHIO, March 19, 1930.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—In your recent communication you present the following inquiry:

“May a city's portion of the motor vehicle license and gasoline tax receipts be used legally for the purchase of an asphalt plant, including land?

May such funds be legally used for the purpose of constructing an asphalt plant and acquiring the necessary land?”

In an opinion found in Opinions of the Attorney General for 1927, page 256, it was held as disclosed by the first branch of the syllabus:

“A municipality can not purchase land to be used as a storage yard for the street repair department with its share of the registration fees for registering motor vehicles or out of its share of the gasoline excise tax receipts.”

The conclusion of the then Attorney General was reached after an extended discussion of the powers of the municipalities to use the motor vehicle license tax and the gasoline tax in pursuance of the provisions of the statutes directing the distribution thereof. Also, consideration was given to the case of *State ex rel. vs. City of Columbus*, 21 Ohio App., p. 1, in which it was held in substance that

a municipality could use the gasoline excise tax to buy a sand dryer to be placed in the city asphalt plant, operated exclusively to prepare materials for maintaining and repairing streets. The opinion of the then Attorney General concurs with that of the Court of Appeals case above cited, but distinguishes the purchase of real estate for such purposes from the purchasing of equipment to be used. Said opinion very properly points out that Section 1190-1, General Code, expressly authorizes the Director of Highways to pay from any fund appropriated for the purpose of maintaining the highways expenses incurred in providing buildings and storing, housing and caring for trucks and other machinery. Said opinion further pointed out that the Legislature has not at any place authorized a city or county to so use said money. The opinion above referred to also indicates that the purchase of real estate and the constructing of buildings thereon results in a permanent and continuous service.

While the laws to which you refer were amended by the 88th General Assembly, it is believed that said amendments in nowise affect the holding of the former Attorney General. The sections were amended so as to authorize the motor vehicle license tax and the gasoline tax distributed under Section 5537, General Code, to be used for the construction and repaving of public streets as well as the former use of maintenance and repair. Section 5541-8, as last amended, authorizes such funds to be used for the purpose of constructing and repaving and widening public streets and provides that they may not be used for maintenance and repair. However, as hereinbefore indicated, it is believed that said amendments did not affect the situation in so far as your question is concerned.

I am impelled to the conclusion, therefore, that the decision reached by my predecessor, as hereinbefore set forth, was correct and that the funds which you mention may not be expended for the purpose of purchasing real estate upon which to construct a municipal asphalt plant. It is obvious if such land could not be purchased for the purpose of storing equipment used in connection with the maintenance and repair of streets, these funds could not be used for the purpose of purchasing land upon which it is proposed to establish a so-called asphalt plant. The foregoing, it is believed, will dispose of both of your inquiries in so far as the purchase of land is concerned.

However, your inquiries necessarily involve the question as to whether personal property constituting a plant may be purchased or operated by a municipality with these funds. In the Columbus case, hereinbefore referred to, a sum in excess of five thousand dollars was expended for the purpose of installing a sand dryer in connection with the so-called plant. It is understood that such a plant consists of machinery whereby the process of mixing the basic materials which constitute the finished product of asphalt is prepared. The sand which constitutes the major portion of said finished product is mixed with other ingredients. It would seem, therefore, that if, as held in the Columbus case, a part of such equipment could be purchased from such funds, it is difficult to determine why as a matter of law all of such equipment could not be purchased if such a practice would result in a more efficient and economical method of improving the public streets of the municipality. Undoubtedly the power of a municipality in this respect could be abused. That is to say, the equipment could be installed which would result in a cost to a municipality wholly disproportionate to the amount of benefit received in view of mileage of streets which the municipality has to maintain. However, in view of the reasoning in the Columbus case, I am inclined to the view that so long as such equipment is purchased or installed for the sole and exclusive purpose of maintaining, repairing, constructing and repaving of public streets and the amount expended therefor is reasonable in view of the

needs of a municipality for such purpose, such expenditure may be made. However, as hereinbefore indicated, this would not include the power to purchase land from such funds.

In my Opinion No. 1024, issued to your Bureau under date of October 14, 1929, it was held that the gasoline tax distributed under Section 5537 could not be used to purchase additional land for the widening of the public streets. However, in my Opinion No. 1271, issued under date of December 9, 1929, it was held that the funds distributed under Section 5541-8 could be used for the purpose of purchasing additional right of way for widening the streets by reason of the express provisions of the section last mentioned, to the effect that the funds could be used for the purpose of widening.

In view of the foregoing, it is my opinion that:

1. The city's portion of the motor vehicle license tax and gasoline tax may not be used for the purpose of purchasing land upon which there is erected an asphalt plant or for the purpose of purchasing land upon which there is to be erected such a plant.

2. A municipality may properly use such funds for the purpose of purchasing equipment to be placed in an asphalt plant if such a procedure is reasonable in view of the cost of the same and the mileage of streets required to be maintained, when such plant is to be used for the sole and exclusive purpose of maintaining, repairing, constructing or repaving such streets.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1637.

MOTOR VEHICLE—EXCEEDING 30 FEET IN LENGTH—AUTHORIZED BY PERMIT TO BE DRIVEN ON HIGHWAYS—NECESSITY FOR REGISTRATION—PROVISION OF CONDITIONAL ISSUE SUBJECT TO SECURING OF PERMIT NOT TO BE INCORPORATED IN REGISTRATION.

1. *When a permit has been issued under Section 7247, General Code, authorizing a motor vehicle in excess of thirty feet in length to be operated on the public roads and highways of this State, such vehicle must also be registered as provided in Sections 6294 and 6298, General Code.*

2. *Such registration should not contain a provision that it is conditionally issued subject to a permit being secured for the operation of such vehicle, since such vehicle may, under the provisions of Section 7248-2, General Code, only be operated pursuant to the issuance of a permit irrespective of the registration thereof.*

COLUMBUS, OHIO, March 19, 1930.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Section 6294 of the General Code provides that every owner of a motor vehicle which shall be operated or driven upon the public roads or highways of this state, except as herein otherwise expressly provided, shall