

1. A municipality may legally purchase and install parking meters along the curb lines of a street for the purpose of regulating and controlling the parking of automobiles on such street, and may require that the person parking his automobile at designated places on such street pay a fee which is reasonably commensurate with the cost of enforcing such parking ordinance.

2. A municipality may not legally enter into an arrangement with a manufacturer whereby the manufacturer installs the parking meters, allowing the municipality a percentage of the revenue therefrom, and retains the balance until the total cost of the meters has been earned, at which time the title to the meters is transferred to the municipality.

3. A municipality may not legally use its proportion of the motor vehicle license tax and the gasoline tax receipts for the purchase and installation of such parking meters.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5751.

SALES TAX—PURCHASES OF MATERIAL BY BOARD OF
EDUCATION FOR STADIUM OR PLAYGROUND—NOT
TAXABLE ALTHOUGH FUNDS USED ARE VOLUNTARY
SUBSCRIPTIONS.

SYLLABUS:

Sales of materials made to the board of education of a school district for the construction of a stadium on the athletic field and playground of a school in the district, are exempt from the sales tax provided by section 5546-2, General Code, although a part or all of the moneys used by the board of education in purchasing such materials were paid into the treasury of the school district on voluntary subscriptions for this purpose.

COLUMBUS, OHIO, June 26, 1936.

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

GENTLEMEN: This is to acknowledge the receipt of your recent communication in which you request my opinion upon a question stated therein as follows:

“When a board of education proceeds to build a stadium on its athletic field and a large part of the cost of materials is being

paid out of money raised by popular subscription, while the labor is being furnished by the Federal Government, is the purchase of materials, paid for by money so subscribed and paid into the school treasury, subject to the sales tax?"

In the consideration of the question here presented, I assume that the materials referred to in your communication were purchased directly by the board of education from lumber dealers and other material men and were installed in the construction of the stadium by means of labor which, you state, was furnished by the federal government. In other words, it is assumed that this improvement was not constructed by a contractor acting under a contract with the board of education which required him to furnish the materials which were used in the construction of this improvement.

Subject to certain exemptions therein stated, Section 5546-2, General Code, provides for the levy of an excise tax on retail sales of tangible personal property which includes all sales of such property except those excluded by the provisions of Section 5546-1, General Code, defining the term "retail sale." The term "sale", under the definitive provisions of Section 5546-1, General Code, includes all transactions whereby title or possession or both of tangible personal property is or is to be transferred for a consideration in any manner, whether absolutely or conditionally, whether for a price in money or by exchange or barter, and by any means whatsoever. Inasmuch as the transaction or transactions in and by which the materials for the construction of this stadium were delivered to the board of education or to its authorized agents in the construction of this improvement, were clearly sales of this property made by the material men to the board of education, and since, further, such sales were not such as under the provisions of Section 5546-1, General Code, are excluded from the meaning of the term "retail sales", the sales of these materials were retail sales and were subject to the incidence of the sales tax provided for by Section 5546-2, General Code, unless these sales come within one or more of the exemptions provided for by this section. Section 5546-2, General Code, provides that "The tax hereby levied does not apply to the following sales: 1. When the consumer is the state of Ohio or any of its political subdivisions." The term "consumer", as used in this connection, "means the person to whom the transfer effected * * * by a sale is or is to be made or given." (Sec. 5546-1, G. C.) It appears, therefore, on the facts stated in your communication, that the board of education therein referred to is the consumer with respect to the sales of the materials here in question, and that under the above quoted provisions of Section 5546-2, General Code, the sales of such materials thus made to the board of education of the school district as a political subdivision of the state are exempt from the sales tax, unless the fact that these materials

were paid for in part out of moneys raised by popular subscription and paid into the school treasury, in some manner affected the application of the exemption above noted.

As to this, it is noted that Section 4755, General Code, provides that a board of education may accept gifts upon conditions connected with such gifts and that for the purpose of enabling the board to carry out the conditions upon which the gifts are made, such board may make rules and regulations required to carry into effect the conditions upon which the gifts were made. The moneys subscribed and paid into the school treasury in this case were so made and paid, I assume, upon the express or implied condition that these moneys were to be used for the purpose of purchasing materials to be used in the construction of the stadium. In any view, it may be said that when the moneys subscribed for this purpose were paid into the school treasury they became the property of the school district as much as any other moneys in the school treasury appropriated for the purpose of constructing this stadium, and the purchases of materials for the construction of the stadium made by the board of education out of moneys thus paid into the treasury were as clearly exempted from the incidence of the sales tax provided for by Section 5546-2, General Code, as if all of the moneys used by the board of education in the purchase of these materials had come into the school treasury as the proceeds of taxes or otherwise. I am of the opinion, therefore, by way of specific answer to the question presented in your communication that the sale or sales of the materials therein referred to are not subject to the sales tax provided for by the section of the General Code above referred to.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5752.

APPROVAL—CONTRACT FOR HIGHWAY IMPROVEMENT IN
UNION COUNTY, OHIO.

COLUMBUS, OHIO, June 26, 1936.

HON. JOHN J. JASTER, JR., *Director of Highways, Columbus, Ohio.*