

However, the financial report required by section 7785 applies only to city districts, but does require that such report shall be made and be published annually, "and include therein a complete exhibit of the financial affairs of the district."

Section 7787, also a part of title V, chapter 5, part second of the General Code, requires that the board of education of *each district* shall make a report to the county auditor on or before the first day of August of each year, and in accordance with the provisions of the latter part of section 260-1, *supra*, this report would be for the *school year* beginning July 1st, and closing June 30th of the succeeding calendar year.

Section 7787 also requires that this report shall contain a statement of the receipts and expenditures of the board and seems to apply to boards of education of all districts. However, I find nowhere any requirement that the report provided for in section 7787 need be published.

Therefore, aside from the possible provision of section 7785 G. C., with reference to city schools, it is not believed that there is any statutory provision requiring two reports to be made and published by school districts other than city school districts. In view of the fact that the publication of the report provided by section 291 G. C. is within the discretion of the Bureau of Inspection and Supervision of Public Offices, publication of an annual financial report by city school districts, other than that provided in section 7785, could be dispensed with by the order of your department.

Respectfully,

C. C. CRABBE,

Attorney General.

3174.

GASOLINE TAX FUND DOES NOT SUPPLEMENT IN ALL RESPECTS
THE FUND DERIVED FROM REGISTRATION OF MOTOR VEHICLES.

SYLLABUS:

The revenue derived from the gasoline tax excise fund does not supplement in all respects and for all uses and purposes the funds derived from the registration of motor vehicles.

COLUMBUS, OHIO, March 6, 1926.

HON. JOSEPH T. TRACEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"Your opinion is desired with reference to the expenditure of the funds which are available for the use of the highway department in the maintenance of highways, by virtue of the gasoline tax and the automobile registration fees.

Section 1221 of the General Code, provides that the state highway commissioner may use part of the license fee funds for the purchase of such machinery and tools as may be found necessary in the maintenance of the state roads

Sections of the law relating to the imposition and use of the gasoline tax provide that the fund is to be used to supplement revenue already available from motor vehicle registration fees but does not make any specific state-

ment with reference to the purchase of necessary machinery and equipment. In addition to the equipment feature, there are other differences in the wording of the two laws even though the purpose to be accomplished in the use of the funds appears to be substantially the same.

"The question at issue is whether the one fund actually does supplement the other in all respects and for all uses and purposes of expenditure."

Section 5537 of the General Code, found in 111 Ohio Laws, page 299, in part provides as follows:

"Forty-five per cent of such gasoline tax excise fund shall be apportioned to and expended by the department of highways and public works of the state of Ohio for the purpose of maintaining, repairing, and keeping in passable condition for travel the roads and highways of the state now or hereafter required by law to be maintained by the department of highways and public works of this state."

Section 5527 of the General Code, found in 111 Ohio Laws, page 295, in part provides as follows:

"For the purpose of providing revenue for maintaining the main market roads and inter-county highways of this state in passable condition for travel, for repairing the damage caused to such highway system by motor vehicles used on the same, for widening existing surfaces on such highways where such widening is rendered necessary by the volume of motor vehicle traffic thereon, for resurfacing such highways where existing surfaces have become worn or rutted, for enabling the several counties and municipal corporations of the state to properly maintain and repair their roads and streets, and supplementing revenue already available for such purposes and arising from direct taxation and from registration fees of motor vehicles."

It will be noted that the above section mentions numerous purposes for which revenue is provided and then states as follows:

"And supplementing revenue already available for such purposes and arising from direct taxation and from registration fees of motor vehicles."

the evident intent being to supplement revenue already available for the purposes mentioned in section 5527.

Nowhere in this act can be found any direct reference to the use of the gasoline tax excise fund for the purpose of purchasing machinery, tools and other equipment found necessary for the maintenance of state roads.

Section 6309-2 of the General Code in part provides as follows:

"(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.'

The 'state maintenance and repair fund' provided for herein shall be available for the use of the secretary of state in defraying the expenses incident to carrying out and enforcing the provisions of this chapter and for the use of the state highway commissioner in the manner provided by law. The general assembly shall make appropriations therefrom for such purpose."

In providing for the manner in which the state maintenance and repair fund may be used by the state highway commissioner the legislature has enacted section 1221 of the General Code, a part of which provides as follows :

"4. The funds derived by the state highway department from the registration of automobiles shall be used for the maintenance and repair of the inter-county highways and main market roads of the state. The state highway commissioner may use part of said funds as may be necessary in the establishing a system of patrol or gang maintenance on the inter-county highways and main market roads, and for that purpose may employ such patrolmen, laborers and other persons and teams and purchase or lease such oilers, trucks, machinery, tools, material and other equipment and supplies as may be necessary."

By this section specific authority is given to the state highway commissioners to use such a part of the funds derived from the registration of automobiles as may be necessary in establishing a system of patrol or gang maintenance and for that purpose may purchase or lease oilers, trucks, machinery, tools, material and other equipment and supplies as may be necessary.

House Bill No. 44 providing for a gasoline tax differs with the law relating to the use of the money derived from the registration of automobiles in that there is no specific authority granted the state highway commissioners to use the gasoline tax excise fund for the purchase of machinery, supplies or equipment.

If it was intended that the gasoline tax excise fund was to supplement in all particulars the funds derived from automobile registration it would have been easy to have included in such act a statement authorizing the same.

In an opinion rendered to the Hon. G. Walter Booth, prosecuting attorney of Summit county, Ohio, on January 25th, 1926, with reference to the use of the gasoline tax excise fund by counties for the purchase of machinery and equipment, may be found the following :

"While the question is not free from doubt, it is the conclusion that since the legislature has (1) expressly limited the use of these moneys to 'the sole purpose of maintaining and repairing the county system of public roads and highways,' (2) has given the county express power to purchase machinery, equipment and tools under section 7200, which power excludes any reliance upon the implied power, and (3) has in other cases made express provision for the purchase of machinery, equipment and tools as in section 1221, it did not intend to permit the purchase of such equipment, machinery and tools from the proceeds of the gasoline tax."

While the part of the gasoline tax excise fund which is to be used by the director of highways does not contain the words "for the sole purpose of maintaining and repairing the county system of public roads and highways," express power has been given by section 1221 of the General Code to the director of highways to use the revenue derived from automobile registration for the purpose of purchasing machinery, equipment and tools.

By analogy it is believed the same reasons given why the county may not use the proceeds of the gasoline tax excise fund to purchase machinery, equipment, etc., is applicable to the director of state highways in his use of the state's portion of the gasoline tax excise fund.

You are therefore advised that the revenue derived from the gasoline tax excise fund does not supplement in all respects and for all uses and purposes the funds derived from the registration of motor vehicles.

Respectfully,
C. C. CRABBE,
Attorney General.

3175.

APPROVAL, STATUS OF TITLE TO PREMISES IN SUMMIT COUNTY,
COVENTRY TOWNSHIP.

COLUMBUS, OHIO, March 6, 1926.

HON. G. F. SCHLESINGER, *Director, Department of Highways and Public Works,*
Columbus, Ohio.

DEAR SIR:—You have submitted an abstract certified by the Bankers Guarantee Title & Trust Company on October 16, 1925, and supplemented by them on October 23, 1925, and inquire as to the status of 8.8 acres of land situated in the county of Summit, township of Coventry and state of Ohio, which premises are more particularly described at the caption of said abstract.

Upon an examination it is believed that said abstract, with the supplementary matters attached thereto, disclose a sufficient title to said premises to be in the names of William T. Sawyer and William B. Haynes, as trustees, subject to the following:

According to the abstract the taxes for the year 1925 are unpaid and a lien. Before the deed is accepted and the warrant delivered in payment of the premises, the receipt for said taxes should be presented for said year.

It also appears that there are certain road assessments against said premises which also are a lien. Before the delivery of the warrant, the proportionate share of the assessment should be paid and a receipt presented therefor.

It further appears that the county commissioners executed a quit-claim deed to said trustees for a certain portion of an abandoned roadway upon said premises without having first passed the necessary resolution therefor. It appears now that the proper resolution has been passed by said trustees, and it is believed that said commissioners should now execute a similar deed to the said William T. Sawyer and William B. Haynes, trustees, and that said deed should be executed and delivered before the delivery of the warrant.

Examination has been made of the deed submitted by the said William T. Sawyer and wife and William B. Haynes and wife, which it is believed is sufficient to convey the interests of said grantors to the state when properly delivered.

Your attention is called to the fact that before you are authorized to accept this conveyance and make an expenditure therefor, it will be necessary for you to obtain the consent of the Board of Control as provided by section 12 of the last appropriation bill. You should further obtain the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to cover the purchase price.

Said abstract, deed and other data submitted are being herewith returned.

Respectfully,
C. C. CRABBE,
Attorney General.