

193.

FUNDS — COUNTY ROAD AND BRIDGE — COMMON PLEAS COURT MAY ORDER TRANSFER TO COUNTY GENERAL FUND—PROVISO—FUNDS NOT DERIVED FROM EXCISE TAXES, MOTOR VEHICLE FUEL, ANNUAL LICENSE FEES ON MOTOR VEHICLES—SEE SECTIONS 5625-13a TO 5625-13g, G. C.

**SYLLABUS:**

*Funds of a county road and bridge fund may be transferred to the county general fund upon order of the Common Pleas Court as provided in Sections 5625-13a to 5625-13g, General Code, if such funds are not proceeds or balances derived from excise taxes on motor vehicle fuel, which are levied by law for specified purposes, or annual license fees upon motor vehicles, which fees are imposed by law for specified purposes.*

COLUMBUS, OHIO, February 23, 1939.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR: This is to acknowledge receipt of your recent communication, which reads as follows:

"On November 20, 1935, the Board of County Commissioners of Licking County, Ohio, petitioned the Common Pleas Court of this County for authority to transfer the sum of Seventeen Thousand and Thirty-five Dollars and Thirty-eight Cents carried in the Sinking Fund of the County for the payment of general bonded debt. The County Commissioners represented to the Court at that time that there was no general bonded debt of Licking County, Ohio, the last general bond of said County having been paid in December of 1931 ; that as a result the fund was not encumbered in any manner.

The County Commissioners further represented to the Court that there was a shortage in the County Road and Bridge Fund of the County. You may recall that at that particular time there was quite a bit of damage throughout the State of Ohio due to flood water conditions. It was felt by the County Commissioners that in all probability it would be necessary to expend money from the County Road Fund in order to meet this apparent emergency. However, as a matter of fact, this emergency never arose, as whatever damage was occasioned by the flood water conditions was paid out of the General Road Fund of the County without said Fund being overdrawn or overencumbered. Under Section 5625-13, sub-section B, the County Commissioners, anticipating this apparent emergency, secured the approval of the Court of Common Pleas of Licking County, Ohio, to transfer this sum of Seventeen Thousand and Thirty-five Dollars and Thirty-eight Cents to the County Road and Bridge Fund. As we have previously stated it later turned out that there was no emergency and that such transfer could have been made to the General Fund of the County.

Licking County now finds itself in the same situation as a great many other counties and desires very much to secure, if possible, the retransfer of this sum of Seventeen Thousand and Thirty-five Dollars and Thirty-eight Cents to its General Fund. On January 1, 1939, there was in the County Road and Bridge Fund of Licking County, Ohio, the sum of Thirty-seven Thousand, Four Hundred and Ten Dollars and Eighty Cents, which sum was unencumbered. This, of course, included the Seventeen Thousand and Thirty-five Dollars and Thirty-eight Cents previously transferred several years ago.

Will you kindly advise us as to whether or not you feel it would be proper or possible to legally retransfer this sum to the General Fund of the County in view of the fact that the County General Fund is overdrawn approximately Thirty-eight Thousand dollars?"

In general, provision for transfer of funds is contained in Section 5625-13, General Code. None of the provisions therein contained are applicable to the conditions outlined in your letter. If, then, a transfer is to be made, it must be made under authority of Sections 5625-13a to 5625-13g, inclusive, of the General Code. The latter sections apply to transfers in addition to those authorized by Section 5625-13, but specifically except transfers of the "proceeds or balances of loans, bond issues or special levies for the payment thereof, and except the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes, and except proceeds or balances of any license fees imposed by law for a specified purpose or purposes." The method authorized is by petition first submitted to the State Tax Commission for approval or rejection, and then filed in the Court of Common Pleas of the county in which the funds are held. The transfer may then be made upon order of the court.

Since the adoption of Article XII, Section 2 of the Constitution and Section 5625-2, General Code, being the ten-mill limitations on taxes, there have been but few counties able to levy taxes for any county road or bridge funds. In many instances when the counties have received their share of the excise tax on motor vehicle fuel (Section 5527, et seq., General Code), and the annual license tax upon motor vehicles (Section 6291, et seq., General Code), they have credited these funds to their road funds and their road and bridge funds. The proceeds or balances of such road funds and road and bridge funds, if derived from excise taxes levied for specified purposes, and license fees imposed by law for specified purposes, cannot be transferred from one fund to another (Section 5625-13a, General Code), but must be used as provided by the acts creating such excise taxes. If, then, your present road and bridge fund is made up in part or entirely of such excise taxes and license fees, the proceeds or balances in your road and bridge fund derived from such excise taxes and license fees cannot be transferred to your general fund.

Your letter states, "This, of course, included the Seventeen Thousand and Thirty-five Dollars and Thirty-eight Cents previously transferred several years ago." I infer from this statement that at least the amount of \$17,035.38 is not an earmarked fund derived from excise taxes or license fees and may, therefore, be transferred upon court order to your general fund.

In specific answer to your question, therefore, it is my opinion that under the provisions of Sections 5625-13a to 5625-13g, inclusive, of the General Code, funds of your county road and bridge fund, upon order of the Court of Common Pleas, may be transferred to your general fund, if such funds are not proceeds or balances derived from excise taxes on motor vehicle fuel, which are levied by law for specified purposes, or an-

nual license fees upon motor vehicles, which fees are imposed by law for specified purposes.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*