

OPINION NO. 73-010

Syllabus:

The \$5.00 inspection fee imposed by R. C. 4505.11 should be collected by the clerk of the court of common pleas, who will then remit it to the Registrar of Motor Vehicles, who will pay it into the State Highway Safety Fund established by R.C. 4501.06.

To: Robert M. Chiaramonte, Supt., State Highway Patrol, Columbus, Ohio
By: William J. Brown, Attorney General, February 13, 1973

Your request for my opinion reads as follows:

Amended Substitute House Bill #85 was filed in the Secretary of State's Office on June 23, 1972 and becomes effective September 22 of this year.

Provisions in this act stipulate that if a motor vehicle is restored for operation upon the highways, application shall be made to the clerk of courts for a certificate of title. Upon inspection by the State Highway Patrol, which shall include establishing proof of ownership, the clerk, upon the surrender of the salvage certificate of title, shall issue a certificate of title for a fee prescribed by the Registrar. A fee of \$5 shall be assessed for each inspection made pursuant to this division.

It is not stipulated in the statute who shall collect the \$5 fee nor is there any indication as to its final disposition.

An opinion is requested regarding who shall collect the \$5 fee assessed for each inspection and what disposition shall be made of this money upon collection.

Amended Substitute House Bill No. 85 amends R.C. 4505.07, 4505.11, 4505.19 and 4505.99, and enacts R.C. 4505.062, relative to the salvage of motor vehicles. That Section which is pertinent to your request is Section 4505.11, and reads in part as follows:

(D) If such a motor vehicle is restored for operation upon the highways, application shall be made to the clerk for a certificate of title. Upon inspection by the state highway patrol, which shall include establishing proof of ownership, the clerk upon the surrender of the salvage certificate of title shall issue a certificate of title for a fee prescribed by the registrar. Such certificate of title shall be in the same form and color as the original certificate and bear the same number as the salvage certificate and the original certificate. A fee of five dollars shall be assessed for each inspection made pursuant to this division.

To determine the intent of the legislature in enacting this Section, I must apply the standard rules of statutory construction. It is presumed that "[t]he entire statute is intended to be effective" and that "[a] result feasible of execution is intended", under R.C. 1.47 (E) and (D), respectively. Thus, I will seek a construction which allows the collection and provides for the disposition of the \$5.00 fee.

To answer the latter question first, it seems clear that money derived from fees relating to motor vehicles, if its disposition is not otherwise directed by statute, must be paid into the State Highway Safety Fund, established by R.C. 4501.06, which reads as follows:

The taxes, fees, and fines levied, charged, or referred to in sections 4501.07, 4503.07, 4503.09, 4503.10, 4503.14, 4503.15, 4503.17, 4503.18, 4503.181, 4503.182, 4503.19, 4503.26, 4503.27, 4503.31, 4503.33, 4505.061, 4505.09, 4505.10, 4505.12, 4505.13, 4505.14, 4507.13, 4507.23, 4507.25, 4508.05, 4509.05, 4513.41, 4513.42, 4517.04, and 4517.05 of the Revised Code, unless otherwise designated by law, shall be deposited by the treasurer of state in a fund to be known as the state highway fund, and shall * * * be used, subject to appropriation by the general assembly, for the purpose of enforcing and paying the expenses of administering the law relative to the registration and operation of motor vehicles on the public roads or highways and for the purpose of enforcing and paying the expenses of administering the law to provide reimbursement for hospitals on account of the expenses for the care of indigent persons injured in motor vehicle accidents.

This result is compelled by Article XII, Section 5a, Ohio Constitution, which reads as follows:

No moneys 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 public highways.

This provision is implemented by R.C. 4501.03-4501.07. R.C. 4501.03 specifically requires the Registrar of Motor Vehicles to pay all moneys received by him, and not otherwise provided for, into the State Highway Safety Fund. That Section reads as follows:

The registrar of motor vehicles shall open an account with each county and district of registration in the state. He shall pay all moneys received by him under sections 4503.02, 4503.12 and 4504.09 of the Revised Code, directly to the treasurer of state for distribution in the manner provided for in sections 4501.04, 4501.041 and 4501.042 of the Revised Code. All moneys received by the registrar shall be deposited in the state

highway safety fund established in section 4501.06 of the Revised Code and shall be subject to appropriation by the general assembly for the purposes enumerated in section 4501.06 of the Revised Code, unless otherwise provided by law.

Of course, it can be argued that the fees in question may not be paid into the Fund, because R.C. 4501.06 does not refer to fees collected under R.C. 4505.11, although it does refer to many other statutes. Prior to the enactment of Amended Substitute House Bill No. 85, R.C. 4505.11 did not authorize the collection of any fees. When the legislature enacted that Bill, it did not amend R.C. 4501.06 to refer to it. This would seem to be a classic case for application of the rule of statutory construction expressio unius est exclusio alterius. Yet it must be remembered that rules of statutory construction, including this one, are merely aids to determine legislative intent, and should not be applied to defeat that intent. See 50 O. Jur. 2d 167, Statutes § 189, and the cases cited therein. Since the Constitution and other statutes require the disposition of the fees in question pursuant to R.C. 4501.06, I will not infer a contrary legislative intent from the mere absence of a reference to R.C. 4505.11 in that Section.

The question remains, who is to collect the fee? Since the actual inspection is performed by members of the Highway Patrol, it may be that the legislature intended that they collect the fee. However, R.C. 4505.11 must be read in the light of the other Sections of R.C. Chapter 4505. All other fees imposed by this Chapter are collected by the clerk of the court of common pleas, with the exception of fees for lists of title information, which are paid to the Registrar, who furnishes the information (R.C. 4505.14). See R.C. 4505.06, 4505.061 and 4505.09. The latter two Sections also establish a procedure for remitting to the Registrar money which is destined for the State Highway Safety Fund. R.C. 4505.09 provides that such money

* * * shall be forwarded to the registrar not later than the fifth day of the month next succeeding that in which the certificate is forwarded, or that in which the registrar is notified of a lien or cancellation thereof. The registrar shall pay such remaining sums into the state highway safety fund established in section 4501.06 of the Revised Code.

R.C. 4505.061 provides that such money

* * * shall be forwarded to the registrar not later than the fifth day of the month next succeeding that in which the certificate is received by the clerk. The registrar shall pay such remaining sums into the state highway safety fund established by section 4501.06 of the Revised Code.

This language may fairly be read into the related statute, R.C. 4505.11, to provide guidelines for a workable procedure, until the legislature chooses to specify another. Hence, I

feel that the \$5.00 inspection fee should be collected by the clerk of the common pleas court, at the time he issues a certificate of title to a restored vehicle. The clerk of courts will then remit the fees collected to the Registrar, who will pay it into the Fund.

In specific answer to your question it is my opinion, and you are so advised, that the \$5.00 inspection fee imposed by R.C. 4505.11 should be collected by the clerk of the court of common pleas, who will then remit it to the Registrar of Motor Vehicles, who will pay it into the State Highway Safety Fund established by R.C. 4501.06.