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FUNDS DISTRIBUTED TO A MUNICIPAL CORPORATION MAY BE USED TO EMPLOY OPERATING PERSONNEL AND PAY OTHER EXPENSES OF THE MAINTENANCE, REPAIR AND DAILY OPERATION OF A DRAWBRIDGE.—§§4501.04-5735.23 R.C.

## SYLLABUS:

Funds distributed to a municipal corporation under Sections 4501.04 and 5735.23, Revised Code, may be used to employ operating personnel and pay other expenses of the maintenance, repair and daily operation of a drawbridge which conducts a street of the municipal corporation across a navigable waterway.

Columbus, Ohio, August 5, 1960

Hon. James A. Rhodes, Auditor of State  
State House, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“During the course of an examination of the City of Toledo, it has come to the attention of the examiners working out of this office that revenues derived from motor vehicle license fees and motor vehicle fuel tax have been used to pay certain expenses incurred in the operation of drawbridges spanning the Maumee River within the City of Toledo.

“A review of the pertinent statutes, the decisions, and the opinions of your office reveals no clear legal decision as to whether such funds can be used in this manner. R. C. 5735.23 contains specific limitations on the purposes for which revenue derived from the motor vehicle fuel tax can be used by a municipality. R. C. 4501.04 provides similar limitations on the use of motor vehicle license fees.

“The specific expenses which are being paid for these revenues are as follows:

- (a) Salaries of drawbridge operating personnel.
- (b) Electric power for the operation of drawbridge lifts.
- (c) Supplies necessary to the operation of drawbridge lifts.
- (d) Maintenance and repair of bridge piers.

“For your further information it should be pointed out that the Maumee River is a navigable waterway within the limits of the city and serves a considerable volume of private and commercial watercraft. The low-level construction of the bridge in question makes it necessary that drawbridges be provided to afford such craft access to navigable river channels. Our examiner reports that all of the bridges in question serve main traffic arteries within the city.

“Your conclusions in regard to this problem will be of interest to other municipalities in the state which are located on navigable waterways. Therefore, your formal opinion is respectfully requested in response to the following question:

“Can revenues distributed to municipalities under Sections 5735.23 and 4501.04, Revised Code, be used by the municipality to employ operating personnel and pay other expenses of the maintenance, repair and daily operation of a drawbridge which conducts a street of the municipality across a navigable waterway?”

The provisions of Sections 4501.04 and 5735.23, Revised Code, as to the use by municipalities of the funds allocated to them pursuant to such sections, should be liberally construed. Opinion No. 4096, Opinions of the Attorney General for 1954, page 379. The provisions of Sections 6309-2 and 5537, General Code (now Sections 4501.04 and 5735.23, *supra*), were construed by one of my predecessors to permit the use of such funds for the maintaining and repairing of bridges within municipalities. Opinion No. 101, Opinions of the Attorney General for 1929, page 150. That such funds may now be used “to maintain and repair bridges” is expressly provided for in Section 4501.04 and 5735.23, *supra*. The question, therefore, is the extent to which a municipality may use such funds to maintain its bridges.

The word “maintain” has no precise legal significance in the construction of statutes, its meaning varying with the subject-matter of the law and the purpose to be accomplished. *Davis Holding Corp. v. Wilcox*, 112 Conn., 543, 153 A., 169. The subject-matter in the instant case is a drawbridge. In *The Brimstone*, 3 F. (2d), 1011, the court held that a duty is cast on those maintaining a drawbridge to see that the draw is properly operated. In this regard, it should be noted that federal law makes it the duty of all persons (states and cities included) owning drawbridges built across the navigable rivers of the United States to open the draws of such bridges for the passage of vessels. 33 U. S. C., Section 499 (28 Stat. 362). In *Brummett v. City of Jackson*, 211 Miss., 116, 51 So. 2d, 52, the word

“maintain” was held to be synonymous with “operate” under statutes authorizing a city to maintain an airport. In the instant case, the statutes authorize a city to use funds to maintain bridges. Since a duty is cast on the city in maintaining a drawbridge to see that the draw is properly operated, it follows that authority to use funds to maintain a drawbridge includes authority to use such funds to operate drawbridge lifts. The operation of such lifts obviously will entail the use of necessary personnel and supplies, and electric power.

Accordingly, it is my opinion and you are advised that funds distributed to a municipal corporation under Sections 4501.04 and 5735.23, Revised Code, may be used to employ operating personnel and pay other expenses of the maintenance, repair and daily operation of a drawbridge which conducts a street of the municipal corporation across a navigable waterway.

Respectfully,

MARK MCELROY

Attorney General