

substantially regular, your order and finding is hereby approved by me, as is evidenced by my approval endorsed in and upon the resolution attached to your finding and made a part of the proceedings in this matter and in and upon the copies thereof, all of which are herewith returned.

Respectfully,

JOHN W. BRICKER,
Attorney General.

2688.

TOWNSHIP—TRUSTEES UNAUTHORIZED TO TRANSFER MONEY FROM GENERAL OR GASOLINE TAX FUNDS TO COUNTY TREASURY FOR POOR RELIEF.

SYLLABUS:

Trustees of a township have no authority to transfer any money from its general fund or gasoline tax fund to the county treasury to be used by the county commissioners for the purposes of poor relief.

COLUMBUS, OHIO, May 18, 1934.

HON. FRED W. EVERETT, JR., *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication, which reads as follows:

“I would like your decision on the following question:

Have Township Trustees authority to contribute funds under their control from either the general or gasoline tax fund to the County Treasury for the use of the County Relief Commission?”

Since county relief commissions are not authorized by statute to expend public funds of the state, or of any of its subdivisions, I assume that your question is as to whether township trustees have the authority to transfer funds from the general fund or gasoline tax fund of the township to the county treasury to be used by county commissioners for poor relief purposes.

By virtue of section 5625-5, General Code, the levy made by a township for poor relief is included in the general levy for current expenses and the proceeds of such levy become part of the general fund of the township. Consequently, expenditures for poor relief from township levies are now made from the general fund. The kinds of poor relief which may be given by a township from this fund are set forth in sections 3476, et seq., General Code. Funds of a township ordinarily can be expended only by authority of its trustees, and I know of no law whereby the trustees of a township may transfer money from its general fund to the county treasury to be expended by the county commissioners for poor relief, the nature of which may be entirely different than that authorized to be granted by the township from taxes levied by it.

Townships are entitled to share in only those motor vehicle taxes which are levied by virtue of section 5541, General Code, there being no provision for the allocation to townships of any part of the taxes which are levied by section 5527, General Code. Section 5541, General Code, provides that such taxes shall be levied "for the purpose of providing revenue for supplying the state's share of the cost of constructing, widening and reconstructing the state highways of this state, and also for supplying the state's share of the cost of eliminating railway grade crossings upon such highways, and also for enabling the several counties, townships and municipal corporations of the state properly to construct, widen, reconstruct and maintain their public highways, roads and streets, and for paying the costs and expenses of the tax commission incident to the administration of the motor vehicle fuel laws, and supplementing revenue already available for such purposes, and as to the tax levied between the effective date of this act and March 1, 1935, for the purpose of providing poor relief in the various counties of this state * * ." Section 5541-7, General Code, provides that after deducting the amount necessary for the rotary fund and for the administration costs of the tax commission, the balance of the proceeds of such taxes shall be credited to the highway construction fund "and shall be used solely for the purposes enumerated in section 5541 of the General Code." Money so received by a township should be placed in a separate fund as provided by paragraph (f) of section 5625-9, General Code. Opinions of the Attorney General for 1929, Volume I, page 470; Opinions of the Attorney General for 1929, Volume II, page 1229.

Sections 1 and 2 of Amended Senate Bill No. 3, passed at the first special session of the 89th General Assembly, as amended by Amended Senate Bill No. 61, which provide for the expenditure of the proceeds of such taxes for poor relief, read as follows:

Section 1. "In addition to the purposes specified in sections 5527 and 5541 of the General Code, for which the proceeds of the gasoline taxes, allocated under existing law to counties and cities, may be expended, at any time prior to the first day of March, 1935, the whole or any part of the proceeds of the gasoline taxes allocated under existing law to counties and cities, hereafter received may, by action of the county commissioners of any county or the council of any city, with the approval of the state relief commission, be expended for work or poor relief within such subdivision. The taxing authority of such subdivision shall adopt and submit to the state relief commission, a statement in such form as the commission shall prescribe, of the amount proposed to be so expended and the particular type or types of relief proposed to be rendered. Two or more copies of such statement shall be filed in the office of the fiscal officer of the subdivision for public inspection not less than five days before its adoption by the taxing authority; and such taxing authority shall hold one or more public hearings thereon, of which notice shall be given not less than five days previous to the date thereof, by publication in the official publication of such subdivision or in a newspaper having a general circulation in such subdivision."

Section 2. "At any time prior to the first day of March, 1935, the county commissioners of any county, may upon approval of the state relief commission, transfer to cities or townships in such county, all

or any part of the proceeds of the gasoline taxes hereafter collected and allocated under existing laws to the county, such funds to be used for work or poor relief in the subdivision to which they are allocated and for no other purpose."

It seems that while the whole or any part of the proceeds of gasoline taxes which are allocated to counties and cities may, with the approval of the state relief commission, be expended prior to March 1, 1935, for work or poor relief therein, there is no provision for the expenditure of any part of the proceeds of such taxes which are allocated to townships for purposes of poor relief. On the other hand, the proceeds of taxes which have been allocated to a county may, with the approval of the state relief commission, be transferred to townships to be used for work or poor relief in such townships.

Section 5541-8, General Code, reads in part as follows:

"When appropriated by the General Assembly such highway construction fund shall be appropriated and expended in the following manner and subject to the following conditions:

* * * * * * * * *

Seventeen and one-half per cent of said highway construction fund shall be appropriated for and divided in equal proportions among the several townships within the state, and shall be paid on vouchers and warrants drawn by the auditor of state to the county treasurer of each county for the total amount payable to the townships within each of the several counties. Upon receipt of said vouchers and warrants each county treasurer shall pay to each township within the county its equal proportional share of said funds which shall be expended by each township for the sole purpose of constructing, maintaining, widening and reconstructing the public roads and highways within such township.

Provided, however, that no part of said funds shall be used for any purpose except to pay in whole or part the contract price of any such work done by contract or to pay the cost of labor in constructing, widening and reconstructing such roads and highways and the cost of materials forming a part of said improvement; provided further that no portion of such funds shall be used for the purchase of road machinery or equipment; and, provided further that all such improvement of roads shall be under the supervision and direction of the county surveyor as provided in section 3298-15k of the General Code; and provided further that no obligation against such funds shall be incurred unless and until plans and specifications for such improvement, approved by the county surveyor, shall be on file in the office of the township clerk; and provided further that all contracts for material and for work done by contract shall be approved by the county surveyor before being signed by the township trustees and all disbursements of such funds shall be upon vouchers of the township trustees approved by the county surveyor. The trustees of any township are hereby authorized at their discretion to pass a resolution permitting the county commissioners to expend such township's share of such funds, or any portion

thereof, for the improvement of such roads within said township as may be designated in said resolution."

While the trustees of a township may, by resolution, permit the county commissioners to expend their share of such funds, or any portion thereof, such funds may be so expended only for the purposes provided by law, namely, "for the improvement of such roads within the township as may be designated in said resolution." It is clearly the intention of the legislature, as expressed by the above statutes, that no part of the proceeds of gasoline taxes which have been allocated to a township as provided by section 5541-8, General Code, may be used for poor relief. It necessarily follows, therefore, that the trustees of a township would have no authority to transfer money from its gasoline tax fund to the county commissioners to be used by them for the purpose of poor relief.

I am of the opinion, therefore, that trustees of a township have no authority to transfer any money from its general fund or gasoline tax fund to the county treasury to be used by the county commissioners for the purposes of poor relief.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

2689.

UNCLAIMED COSTS—UNDER SECTION 3043, GENERAL CODE, MAY BE RECOVERED WITHIN FIVE YEARS—DISPOSITION AFTER THAT PERIOD.

SYLLABUS:

A person entitled to money under the provisions of section 3043, General Code, may receive the same in accordance with the provisions of that section at any time within five years. At the end of that period, such unclaimed costs should be paid into the general fund of the political subdivision where the money was collected.

COLUMBUS, OHIO, May 19, 1934.

HON. PAUL A. BADEN, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

"The Clerk of Courts of Butler County has informed me that he has on hand certain costs which have been unclaimed for a number of years. These costs consist mainly of witness fees and go back for a period of approximately ten years. The certified lists have been published as provided in Section 3041 G. C. and have been paid to the Treasurer of the County as provided in Section 3042 G. C.