

as to the other. It appears from the language used that all other levies shall be subordinated to the three levies mentioned, and that it is necessary, in order that the budget commission's action conform to the statute, that all three of the levies mentioned be included in the budget within the fifteen mill limitation.

Because of the limitations on political subdivisions on the creation of debt charges within the fifteen mill limitation, and the fact that the sum total of the levies spoken of in clauses (c) and (d) of Section 5625-23, supra, is four and eighty-five hundredths mills, it is inconceivable that in any case it would be necessary to cut down the four and eighty-five hundredths mills levies in order to provide for debt charges.

Until such time as there is presented a specific situation where the debt charges within the fifteen mill limitation for any political subdivision are so great as to make it impossible to include all these debt charges as well as the levies spoken of in clauses (c) and (d) of Section 5625-23, supra, I am impelled to conclude that the levies provided for by clauses (b), (c) and (d) of said section stand on an equal footing and are to be authorized by the budget commission upon the final adoption of the budget and the same should be approved by them.

Respectfully,
GILBERT BETTMAN,
Attorney General.

801.

APPROVAL, FINAL RESOLUTIONS ON ROAD CONSTRUCTION PROJECT
IN DEFIANCE AND WYANDOT COUNTIES.

COLUMBUS, OHIO, August 27, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

802.

FUNDS—TOWNSHIP—WHERE INHERITANCE AND GASOLINE TAXES
CREDITED.

SYLLABUS:

1. *One-half part of the funds distributed to townships under the provisions of Section 5348-11, as enacted in House Bill 223 of the 88th General Assembly, should be credited to the general fund or to the fund created by paragraph (f) of Section 5625-9, in the discretion of the township trustees, When credited to the latter it may be used for the same purposes for which said fund was established.*

2. *Moneys arising under the provisions of Section 5541-8, General Code, as enacted by the 88th General Assembly, in House Bill 335, should be placed in a separate*

fund as provided in paragraph (f) of Section 5625-9 of the General Code, even though there are other funds which may be used for similar purposes.

COLUMBUS, OHIO, August 27, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, as follows:

“We respectfully request you to furnish this department your written opinion upon the following:

House Bill No. 223, enacted at the last session of the General Assembly, amends Section 5348-11 with reference to the distribution of the state inheritance taxes. It provides that the township’s portion of such taxes should be credited to the general fund or the road and bridge building fund. It further provides that in the event that there has already been credited to the general revenue fund of any township any part of the inheritance tax, the whole or any part of the same may, by resolution of the township trustees, be transferred to the road and bridge building fund of the township.

Section 5625-6 of the General Code provides for the making of special levies; and paragraph (g) of such section provides levies in the case of a township, for the construction, reconstruction, resurfacing and repair of roads and bridges. Section 5625-9, paragraph D, requires that a special fund be established for each special levy, which would establish a road and bridge fund to be used for the purpose designated in paragraph G of Section 5625-6. Paragraph F of Section 5625-9 requires the establishment of a special fund for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose.

Question 1. May the credit or transfer referred to in House Bill 223 be made to the road and bridge fund and used for the purposes set out in paragraph G of Section 5625-6, or will the fact that the act in question provides for a transfer to the ‘Road and Bridge Building Fund’ require that this be set up as a separate fund and paid out only for the building of roads and bridges as distinguished from the maintenance, repair, resurfacing, etc., for which the fund created under Section 5625-6 may be used? In other words, does the language of House Bill No. 223 require the use of this fund for the building of roads and bridges in such a way as paragraph F of Section 5625-9 would require the establishment of a special fund.

We also request your opinion upon the following:

Section 5541-8, as amended in House Bill No. 335, at the recent session of the General Assembly provides that a certain portion of the gasoline tax be apportioned to townships and that such taxes shall be used for the sole purpose of constructing, widening and reconstructing the public roads and highways within such township. It also contains the provisions that such funds should be used by the township trustees for the purpose of constructing, widening and reconstructing any unimproved dirt roads of the secondary or county system of highways in which event such funds should be used for the constructing, widening and reconstructing of such roads as the township trustees shall designate.

Question 2. May the money apportioned to the township under this act be credited to a special fund provided for in Section 5625-6 for the construction, reconstruction, resurfacing and repair of roads and bridges or would

such money constitute a separate fund, as provided in paragraph F of Section 5625-9, General Code?"

Section 5348-11, to which you refer, as amended by the 88th General Assembly, which relates to the distribution of part of the proceeds from the inheritance tax, provides:

"Fifty per centum of the gross amount of any taxes levied and paid under the provision of this chapter shall be for the use of the municipal corporation or township in which the tax originates, and shall be credited, one-half to the sinking or bond retirement fund, if any, of such municipal corporation or township, and the residue to the general revenue fund in the case of a municipal corporation; and to the general revenue fund or road and bridge building fund, as the trustees by resolution may approve, in the case of a township. In the event that there has already been credited, under provisions of this section, to the general revenue fund of any township any part of the inheritance tax, the whole or any part of the same may, by resolution of the township trustees, be transferred to the road and bridge building fund of the township. The remainder of such taxes, after deducting the fees and costs charged against the proceeds thereof under this subdivision of this chapter, shall be for the use of the state, and shall be paid into the state treasury to the credit of the general revenue fund therein."

Paragraph (g) of Section 5625-6 of the General Code, reads:

"In the case of a township, for the construction, reconstruction, resurfacing and repair of roads and bridges (except state roads and bridges on such roads), including the township's proportion of the cost and expense of the construction, improvement, maintenance and repair of county roads and bridges.

Each such special levy shall be within the fifteen mill limitation and shall be subject to the control of the county budget commission as provided by this act.

Excepting the special levies authorized in this section any authority granted by provision of the General Code to levy a special tax within the fifteen mill limitation for a current expense shall be construed as authority to provide for such expense by the general levy for current expenses."

Section 5625-9 of the General Code, as amended by the 88th General Assembly in H. B. 426, provides:

"Each subdivision shall establish the following funds:

- (a) General fund.
- (b) Sinking fund whenever the subdivision has outstanding bonds other than serial bonds.
- (c) Bond retirement fund, for the retirement of serial bonds, or of notes or certificates of indebtedness.
- (d) A special fund for each special levy.
- (e) A special bond fund for each bond issue.
- (f) A special fund for each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose.
- (g) A special fund for each public utility operated by a subdivision.

(h) A trust fund for any amount received by a subdivision in trust for any lawful purpose."

A literal and technical construction of the sections above referred to would probably justify the conclusion that a separate road and bridge building fund should be maintained, to which the proceeds of the inheritance taxes should be credited when the township trustees, by proper action, have decided to use such fund for road and bridge purposes. However, Section 5348-11, supra, in its provision that the proceeds of said tax may be credited in the general fund, would seem to contradict the argument that it was the intent of the Legislature that such funds were to be used in a technical and restricted sense in connection with the building of roads and bridges.

It has been noted that H. B. No. 223 and H. B. No. 426, hereinbefore mentioned, were passed on the same day and, of course, theoretically speaking, from a legal standpoint it must be assumed that the General Assembly was familiar with the provisions of both acts. It could be urged, therefore, that the Legislature was making nice distinctions with reference to the use of such funds in the building of roads and bridges rather than making a reference to a general purpose. However, it is believed to be unfair to contend that the Legislature intended its language, relating to road and bridge purposes, in dealing with the inheritance tax laws, to be construed with the same technical precision that is ordinarily given in the construction of laws that deal specifically with the improvement, maintenance and construction of highways and bridges. That is to say when the Legislature enacted the motor vehicle license and gasoline tax laws, it saw fit to make many fine differentiations with reference to the purpose for which the funds arising thereunder were to be used. Under the laws last mentioned, there have arisen many questions as to what is included within certain phrases, and it is often difficult to draw the line of demarcation between "maintenance and repairs" on the one hand and "construction and reconstruction" on the other. In other words, improvements that are clearly "maintenance and repair" may not include construction and reconstruction. It may be further stated that the word "building" is not used in any of these acts, and, therefore, the question necessarily arises as to what the term "building" means with reference to roads and bridges. While there can be no doubt but that the term includes construction and reconstruction, I am not so certain but that it may be more comprehensive and, to some extent, include some items that ordinarily under the highway laws are generally regarded as maintenance. In any event, I am of the opinion that in the general language used by the Legislature in the enactment of Section 5348-11 it referred to a fund that was already provided for and did not intend to create a new fund. In view of my conclusion, the question arises as to what fund the proceeds of said tax should be credited in order to carry out the intent of the Legislature in authorizing its use for building roads and bridges. Inasmuch as the sections hereinbefore referred to establish a township fund for the construction, reconstruction, resurfacing and repair of roads and bridges, it is thought that said fund should be credited to and used for the purposes intended in the fund created in pursuance of paragraph (g) of Section 5625-6 and paragraph (f) of Section 5625-9.

In considering your second question, it will be observed that the gasoline tax provided for in House Bill No. 335 is levied for the purpose of providing revenue, among other things, to enable the several counties, townships and municipal corporations of the state properly to construct, widen, reconstruct and maintain the public highways, etc.

Section 5541-8, General Code, provides that ten per cent of said highway construction fund arising by reason of such tax levy shall be divided in equal proportions among the several townships within the state and shall be expended by each township "for the sole purpose of constructing, widening and reconstructing the

public roads and highways within such township." Your attention is directed to my opinion No. 303, issued under date of April 13, 1929, to Hon. R. D. Williams, Prosecuting Attorney, Athens, Ohio, which dealt with the funds provided by reason of the tax levied upon gasoline under Section 5537, General Code, and upon motor vehicles under Section 6209-2, General Code, which it is believed by analogy applies to your second question in reference to the establishment of a proper fund. The following is quoted from said opinion:

"While the uses to which the proceeds of the motor vehicle license fees and the gasoline tax receipts of the county may be put are, in the main, the same, yet there is, as has been indicated, a distinction between the two. Section 5625-9 of the Code requires each subdivision of the state to establish certain funds, among which is that described in paragraph (f), as follows:

'A special fund from each class of revenue derived from a source other than the general property tax, which the law requires to be used for a particular purpose.'

In addition to this requirement, paragraph (d) of the section requires a subdivision to establish 'A special fund for each special levy.'

From your communication, it would appear that several funds have been grouped into one. Manifestly, the provisions of paragraph (f) would require a separate fund for the proceeds of the motor vehicle license tax and also a separate fund for the proceeds of the gasoline tax. Furthermore, there is no authority for the commingling of the proceeds of a special levy with revenue derived from a source other than a general property tax where the law requires the latter class of revenue to be used for a particular purpose. This comment is made in order that proper bookkeeping methods may be adopted which will tend to make more easy of application the conclusions reached in this opinion."

From the foregoing, it would appear to be clear that separate funds would have to be established for the proceeds of the gasoline tax distributed under the provisions of Section 5541-8, as enacted in House Bill 335.

In view of the foregoing, you are specifically advised:

1. The one-half part of the funds distributed to townships under the provisions of Section 5348-11, as enacted in House Bill 223 of the 88th General Assembly, be credited to the general fund or to the fund created by paragraph (f) of Section 5625-9, in the discretion of the township trustees. When credited to the latter it may be used for the same purposes for which said fund was established.

2. Moneys arising under the provisions of Section 5541-8, General Code, as enacted by the 88th General Assembly, in House Bill 335, should be placed in a separate fund as provided in paragraph (f) of Section 5625-9 of the General Code, even though there are other funds which may be used for similar purposes.

Respectfully,

GILBERT BETTMAN,
Attorney General.