

1. In the event a school building has been destroyed by fire, bonds may be issued for the purpose of rebuilding or repairing such building without a vote of the electors, subject to the limitations provided in Section 2293-15, General Code.

2. In the event it is determined to submit the question of issuing such bonds to the electors, such submission must be at a November election unless the Tax Commission consents to such submission at a primary or special election after finding that the requirements of the people of the subdivision so demand.

3. Bonds issued for the purpose of repairing or rebuilding a fireproof school building may not mature over a period exceeding twenty-five years, as provided in Section 2293-9, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1829.

TRANSFER OF FUNDS—TOWNSHIP TRUSTEES UNAUTHORIZED TO
TRANSFER MONEYS FROM GENERAL FUND TO ROAD FUND—
EXCEPTION.

SYLLABUS:

The board of township trustees has no power to transfer funds from the township general fund to the township road fund except funds in the township general fund received by the township as its portion of inheritance taxes which may be transferred to the township road fund under authority of Section 5348-11, of the General Code of Ohio.

COLUMBUS, OHIO, May 6, 1930.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

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

“Please advise the proper procedure to transfer funds from the Township General Fund to the Township Road Fund.”

To answer your inquiry it will be necessary first to determine whether township trustees have the power to transfer funds from the township general fund to the township road fund.

The township road fund is either the special fund described in Section 5625-9, subsection (d), General Code, (as amended in 113 O. L., 672) and composed of proceeds of special levies authorized by Sections 5625-6, subsection (g), (112 O. L. 394), 3298-15 (d), (107 O. L. 69 [79]), 3298-18 (as amended in 108 O. L., Pt. I, 478 [498]), General Code, or a special fund derived from revenues within the class defined by Section 5625-9, subsection (f), General Code.

Section 5625-13, General Code, as amended by the 88th General Assembly (113 O. L. 673), passed April 6, 1929, provides:

“No transfers shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:
* * *”

There is no authority contained in the provisions of Section 5625-13, General

Code, *supra*, following that quoted above, or when construed with the other sections of the General Code therein cited, specifically or impliedly empowering township trustees to transfer funds from the township general fund to the township road fund.

Accordingly, based on the prohibition contained in Section 5623-13, General Code, quoted *supra*, I would be forced to conclude that the township trustees have no authority to transfer funds from the township general fund to the township road fund, were it not for the provisions of Section 5348-11, General Code, as amended by the 88th General Assembly (113 O. L. 85).

Section 5348-11, General Code, cited above, provides:

"Fifty per centum of the gross amount of any taxes levied and paid under the provisions of this subdivision 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, in 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."

(Italics the writer's.)

The part italicised was included in the amendment above referred to and raises a question of statutory construction of no little difficulty. The authority contained in that amendment is in clear conflict with Section 5625-13, General Code, *supra*, which expressly prohibits the transfer of any funds except in accordance with said section. Said amendment to Section 5348-11, General Code, *supra*, was passed March 27, 1929, approximately two weeks prior to the passage of amended Section 5625-13, General Code, (113 O. L. 673) *supra*.

The rule of construction applicable to conflicting legislation as here appears is contained in Sutherland on Statutory Construction, Vol. II, page 661, section 346, as follows:

"Where there is an act or provision which is general, and applicable actually or potentially to a multitude of subjects, and there is also another act or provision which is particular and applicable to one of these subjects, and inconsistent with the general act, they are not necessarily so inconsistent that both cannot stand, though contained in the same act, or though the general law were an independent enactment. The general act would operate according to its terms on all the subjects embraced therein, except the particular one which is the subject of the special act. That would be deemed an exception, unless the terms of the later general law manifested an intention to exclude the exception. If the general and special provisions are in the same act, or passed on the same day in separate acts, or at the same session of the Legislature, the presumption is stronger that both are intended to operate."

In consonance with the discussion in the foregoing excerpt and applying it to the specific question here under consideration, I am of the opinion that the amendment to Section 5348-11, *supra*, engrafts an exception upon the prohibition laid down by Section 5625-13, General Code, *supra*.

The question of the extent of the operation of the amendment, in view of the language in which it is couched, is of no less difficulty than the one above discussed. Whether the phrase in said amendment "in the event that there has already been credited" governs only the situation intended to be remedied as it then existed, or refers to similar situations, if and when they do exist in the future, is a question about which there may well be considerable doubt. It may be assumed that said legislation was inspired by the fact that townships throughout the state had received large sums as their portion of inheritance taxes which had been collected in the townships and which had been placed in the general funds thereof. Previous to the passage of the amendment there was no authority for the transfer of such funds from the township general fund to the township road fund. We may further assume that such townships had need of considerable sums of money for road purposes and were more than adequately supplied with funds for the purposes of the general fund. Section 5348-11, General Code, supra, was amended by the 88th General Assembly with an obvious intent to broaden the power to dispose of the funds apportioned to the townships and municipal corporations from the inheritance taxes. It is remedial legislation and should be liberally interpreted to give effect to the legislative intent.

Sutherland on Statutory Construction, section 583, page 1074 (Vol. II), is authority for the proposition that remedial legislation is passed not only to remedy defects in the common law but also in statutory law, and for that purpose it is to be liberally construed to supply the omission and remedy the defect which was the apparent cause for the passage of the legislation. As that author states:

"And it is the duty of judges so to construe the act as to suppress the mischief and advance the remedy. This injunction is simply to carry out the intention of the lawmaker, which is the cardinal aim with reference to all statutes. The intention in statutes which are for this purpose recognized as remedial or enacted pro bono publico is more liberally inferred, and to a greater extent dominates the letter, than is admissible in dealing with those which must be strictly construed."

Basing my conclusion on the foregoing authority cited, and for reasons I have stated, I am of the opinion that the amendment to Section 5348-11, General Code, supra, grants a continuing authority to the board of township trustees to transfer the township's portion of the inheritance taxes in the township general fund to the township road fund.

I have considered a possible objection to such interpretation of Section 5348-11, General Code, supra, which might be controlling if reasonable administrative precautions would not obviate the same. Inheritance tax receipts of the township placed in the township general fund could become so inextricably confused with other revenues therein as to make it impossible to determine what funds in the township general fund would be within the scope of the transfer power granted by the above section of the General Code. It is obvious that no substitution of funds received by the township from other revenue sources for money spent out of inheritance tax revenues for general fund purposes could enlarge the powers of the township trustees to transfer funds pursuant to Section 5348-11, General Code, supra. To do so would not only not be within the letter and spirit of this section but would be a palpable violation of the explicit prohibition of Section 5625-13, General Code, hereinbefore quoted. In order that there be no question as to what part of the township general fund may be transferred to the township road fund, a distinct account should be kept of inheritance tax receipts of the township apportioned to the township general fund and all expenditures therefrom for general fund purposes should be duly entered as debits in said account. Analogous bookkeeping methods were suggested governing the administration of the funds received by counties from the taxes levied on gasoline

under Section 5541-8, General Code, and from taxes levied on motor vehicles under Section 6309-2, General Code, in my opinion No. 302, addressed to Hon. R. D. Williams, Prosecuting Attorney, Athens, Ohio, under date of April 13, 1929. I pointed out in that opinion that the bookkeeping suggestions therein made would make easier the application of the necessary interpretation of the legislative enactments considered. This opinion was quoted and followed in my opinion No. 802, to the Bureau of Inspection and Supervision of Public Offices, of August 27, 1929. In the last mentioned opinion I stated that proceeds of the gasoline tax apportioned to the township under Section 5541-8, General Code, should be kept in a separate fund, inasmuch as the Legislature had confined its use to certain specified township road purposes not excluded in the statutes governing the use of the township road fund.

In specific answer to your inquiry, I am of the opinion that the board of township trustees have no power to transfer funds from the township general fund to the township road fund except funds in the township general fund received by the township as its portion of inheritance taxes which may be transferred to the township road fund under authority of Section 5348-11 of the General Code of Ohio.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1830.

REALTY—OWNED BY COUNTY AND USED BY AGRICULTURAL SOCIETY FOR FAIRS—CONDITIONS UNDER WHICH COMMISSIONERS MAY SELL PART OF SUCH REALTY—SOCIETY'S CONSENT UNNECESSARY—PROCEEDS PAYABLE INTO COUNTY TREASURY.

SYLLABUS:

1. *Where lands are owned by the county and used by an agricultural society for the purpose of holding annual exhibitions the county commissioners, under the provisions of Section 9900-1 of the General Code, may sell any part thereof, if said property is greater in size than is necessary for the purposes and uses to which it is devoted.*

2. *Under such circumstances it is not necessary that the agricultural society give its formal consent to such a proceeding. However, the desires of the society may have a bearing upon the question of fact as to whether such land is necessary for its purposes.*

3. *Under such circumstances when the title is vested in the county the proceeds from such a sale should be paid into the county treasury.*

COLUMBUS, OHIO, May 6, 1930.

HON. C. E. MOYER, *Prosecuting Attorney, Sandusky, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“The County Commissioners of this county are contemplating selling a small strip of land from the Fair Grounds, under authority of Section 9900-1, G. C., in which said premises is under the control of an Agricultural Society and used by it as a site on which to hold annual exhibitions, and in which the title thereof is in the county.

The question now arises as to whether or not said Commissioners may sell said strip of land, without the consent of the Agricultural Society and as