

the board for the conducting of a private school therein, so long as such use does not interfere with the primary use of the building for which it was constructed, upon request and the payment of the proper janitor fees, subject to such regulations as may be adopted by the board.

2. The fact that the private school is to be conducted by a member of the board and a tuition fee charged does not, in my opinion, make any difference.

Respectfully,

GILBERT BETTMAN,
Attorney General

2013.

APPROVAL, LEASE EXECUTED BY SOPHIA M. ALTMAIER, TO SPACE IN REAR OF HARTMAN HOTEL BUILDING AND 142 EAST MAIN STREET, COLUMBUS, OHIO, FOR USE OF DEPARTMENT OF PUBLIC WORKS FOR AUTOMOBILE PARKING PURPOSES.

COLUMBUS, OHIO, June 23, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date resubmitting for my examination and approval a certain lease and copies thereof, executed by one Sophia C. Altmaier, whereby she leases to A. T. Connar, Superintendent of Public Works, as Director of Public Works, for the use and benefit of the Department of Public Works, certain space in the rear of the Hartman Hotel Building and her place of business at 142 East Main Street, Columbus, Ohio, for automobile parking purposes.

An examination of the lease submitted shows that said lease has been corrected with respect to the matters pointed out in former opinion No. 2002 of this office, which caused the lease to be disapproved upon its first submission to this office. Said lease is, therefore, accordingly approved as to legality and form.

Encumbrance estimate, No. 369, submitted with said lease and the copies thereof, has been re-examined and found to be in proper form. Said encumbrance estimate shows that there is sufficient balance in the proper appropriation account to pay the rental for three and one-half months. Said encumbrance estimate is likewise returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2014.

TOWNSHIP ROAD CONSTRUCTION—GASOLINE TAX PROCEEDS APPLICABLE FOR SEWERS AND DRAINS.

SYLLABUS:

A township may use funds from its portion of the gasoline tax to pay the cost of such sewers and drains in connection with the construction of township roads, as are necessary for the drainage of such roads, as provided by Section 5541-8, General Code.

COLUMBUS, OHIO, June 23, 1930.

HON. CHARLES O. CHAPMAN, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—I wish to acknowledge receipt of your recent communication which reads as follows:

“The language of that portion of Section 5541-8 of the General Code of Ohio which prescribes for what purposes the townships’ share of the highway construction fund derived from a portion of the gasoline tax shall be used reads as follows:

‘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 such improvement;’

Does the term ‘materials forming a part of said improvement’ properly include the cost of sewers and drains necessary to such improvements?”

The syllabus of Opinion No. 494, under date of June 8, 1929, Opinions of the Attorney General for 1929, Vol. I, page 737, is as follows:

“A city may expend funds which it receives under the provisions of Sections 5537 and 6309-2 of the General Code, as amended by the 88th General Assembly in House Bill No. 104, for the purpose of constructing local storm water drains which are installed as a part of the street construction for the purpose of draining such street.”

Section 5537, General Code (113 O. L. 279), which was construed in that opinion, provides, in part, as follows:

“Thirty per cent of such gasoline tax excise fund shall be paid on vouchers and warrants drawn by the Auditor of State to the municipal corporations within the state in proportion to the total number of motor vehicles registered within the municipalities of Ohio during the preceding calendar year from each such municipal corporation as shown by the official records of the Secretary of State, and shall be used by such municipal corporations for the sole purpose of maintaining, repairing, constructing and repaving the public streets and roads within such corporation, provided however that not more than fifty per cent of the total funds available during any year from such source, including the unexpended balance of such funds from any previous year, shall be used by any such municipal corporation in such construction and repaving, which shall be done by contract let after the taking of competitive bids as provided by law, or in the manner provided in the charter of any such municipal corporation.”

Section 6309-2 of the General Code (113 O. L. 280), a part of which was also construed in said opinion, provides:

“Fifty per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. The portion of such money due the municipal corporations shall be paid into the treasuries of such municipal corporations on the first business day of each month, and

the remainder retained in the county treasury. In the treasuries of such counties, such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways, and for no other purpose, and shall not be subject to transfer to any other fund. 'Maintenance and repair' as used in this section, includes all work done upon any public road or highway in which the existing foundations thereof are used as a sub-surface of the improvement thereof, in whole or in substantial part; and in the treasuries of such municipal corporations, such moneys shall constitute a fund which shall be used for the maintenance, repair, construction and repaving of public streets, and for no other purpose and shall not be subject to transfer to any other fund, provided however that as to such municipal corporations, not more than fifty per cent of the total funds available during any year from such source including the unexpended balance of such funds from any previous year, shall be used in such construction and repaving which shall be done by contract let after the taking of competitive bids as provided by law, or in the manner provided in the charter of any such municipal corporation."

The language of Section 5541-8, General Code, as amended in 113 O. L. 71, upon which you base your inquiry, is practically identical with the provisions of Sections 5537 and 6309-2 of the General Code, quoted *supra*.

In view of the similarity of the language of the statutes therein construed in my former opinion, to the language of part of Section 5541-8, General Code, applicable to townships, I believe that this former opinion is dispositive of your question.

In specific answer to your inquiry, I am of the opinion that a township may use funds from its portion of the gasoline tax to pay the cost of such sewers and drains in connection with the construction of township roads, as are necessary for the drainage of such roads, as provided by Section 5541-8, General Code, *supra*.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2015.

APPROVAL, ABSTRACT OF TITLE TO LAND OF CHARLES A. HAMMOND IN BENTON TOWNSHIP, HOCKING COUNTY, OHIO.

COLUMBUS, OHIO, June 23, 1930.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination an abstract of title, warranty deed, encumbrance estimate No. 133 and Controlling Board certificate of release relating to a certain tract of land in Benton Township, Hocking County, Ohio, which is owned of record by one Charles A. Hammond and which is more particularly described as follows:

"Being the south half of the northwest quarter and the north half of the southwest quarter of section 5, township 11, range 18, Benton township, Hocking County, Ohio. Excepting therefrom 4 acres more or less above the rocks in the southwest corner of the north half of the southwest quarter of the above described tract."