

the encumbrance estimate carries the signature of Mr. J. C. Kennedy, Consulting Engineer of the Department of Finance who, apparently from the files submitted to me, has made a check of the acreage in the several tracts of land described by metes and bounds in the deed tendered to the State of Ohio, and I will assume for the purposes of this opinion that said deed conveys to the State of Ohio all of the land that the State is buying and paying for. In any event, if any further question is made by you with respect to this matter, the same should be taken up with Mr. Kennedy.

I have examined the warranty deed tendered by said Ada R. Brand and find that the same has been properly executed and acknowledged by her and her husband, George F. Brand, and that the form of said deed is such that it conveys the above described property to the State of Ohio, free and clear of the inchoate dower rights of said George F. Brand in and to said property, and free and clear of all encumbrances whatsoever.

Encumbrance estimate No. 790, which has been submitted as a part of the files relating to the purchase of this property, has been properly executed and the same shows that there is a sufficient balance in the appropriation account to pay the purchase price of this property. It is likewise noted that under date of June 9, 1930, the Board of Control approved the purchase of this property and released the money necessary to pay the purchase price of the same.

Subject only to the exceptions above noted, I am herewith returning with my approval said abstract of title, and I likewise herewith return duly approved said warranty deed, encumbrance estimate and Controlling Board certificate. With the files just mentioned, you will also find herewith enclosed a copy of the action under which this property was purchased and the figures showing the check made by Mr. Kennedy with respect to the description and acreage of the several tracts of land above described.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

2562.

MUNICIPAL CEMETERIES—MOTOR VEHICLE LICENSE AND GASOLINE TAXES—MUNICIPALITY'S PORTION APPLICABLE FOR REPAIR OF DRIVEWAYS IN SUCH CEMETERY.

SYLLABUS:

The municipality's portion of the motor vehicle license tax and the gasoline tax may be lawfully used for the repair of driveways in municipal cemeteries.

COLUMBUS, OHIO, November 21, 1930.

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

GENTLEMEN:—Acknowledgment is made of your communication which reads:

“Under date of July 15, 1930, Opinion No. 2090, was rendered to this department, in which it was held:

“The municipality's portion of the motor vehicle license tax and the gasoline tax may lawfully be used in connection with the construction, reconstruction, maintenance and repair of driveways in public parks under

the reservations contained in the sections governing the expenditure of such funds, provided such driveways are intended for use in substantially the same manner as a public street and are open to vehicular traffic.'

The question has now arisen as to whether the gasoline or auto license tax may be used for the repair of roads in the cemeteries. As the same reasoning would apply in the case of cemeteries, that is, such roads are intended for use in substantially the same manner as a public street, and are open to vehicular traffic, may the municipality's portion of the motor vehicle license tax and the gasoline tax be lawfully used for the repair of driveways in municipal cemeteries?"

In my opinion No. 2090, to which you refer, the provisions of the various tax laws were specifically given consideration, and therefore, it is believed unnecessary to make a detailed discussion of the provisions thereof herein. The following is quoted from the body of the opinion:

"The fundamental purpose for the imposition of these taxes was to create funds to provide for the cost of constructing and maintaining proper public facilities for vehicular traffic. This need may be accomplished as fully in many instances by parkways as by the improvement of what are technically regarded as public streets.

It is a fact which cannot be overlooked that many of our park driveways are of more importance from the standpoint of traffic than is the ordinary street. To hold that a dead-end street, serving substantially no convenience except that of owners of property abutting directly thereon, may be improved by the use of these tax funds, while denying the right to use these funds in the improvement of an important driveway in a public park, would in my opinion be absurd."

By analogy, it is believed that the opinion to which you refer, is dispositive of the inquiry which you present. In other words, if a driveway in a public park may be improved by using the funds under consideration, it certainly follows that driveways in cemeteries which are used by the public may likewise be repaired by the use of said funds. In fact, it would seem impossible to make any logical distinction between the two classes of driveways, except of course, it could well be argued that a driveway used by the public in a cemetery would be more important than the driveways within a park.

Without further discussion, it is my opinion that the municipality's portion of the motor vehicle license tax and the gasoline tax may be lawfully used for the repair of driveways in municipal cemeteries.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2563.

APPROVAL, BONDS OF MORROW COUNTY, OHIO—\$3,381.00.

COLUMBUS, OHIO, November 21, 1930.

Industrial Commission of Ohio, Columbus, Ohio.