

structed as one improvement, the cost of culverts located where the water-course crosses a street at points other than the intersections of streets is a part of the entire cost and assessable.

5. Your fifth question is predicated upon an affirmative answer to question number four and accordingly need not be answered.

6. It follows, in view of the foregoing, that should a culvert be constructed as a separate improvement, its cost may be assessed unless it should be located at the intersection of two streets or the intersection of two water-courses.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4683.

MUNICIPALITY — MAY NOT USE MOTOR VEHICLE OR GASOLINE TAX FOR STREET LIGHTING SYSTEM OR FOR SUPPLYING ELECTRICAL ENERGY THEREFOR.

SYLLABUS:

A municipality may not use any part of its portion of funds arising from the motor vehicle license fees or the gasoline excise tax to pay for the repair or reconstruction of its street lighting system or the supplying of electrical energy therefor.

COLUMBUS, OHIO, October 11, 1932.

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

GENTLEMEN:—I acknowledge receipt of your communication which reads as follows:

“Owing to decreased tax duplicates and delinquent taxes municipalities generally are having difficulty in raising sufficient revenue to meet the ordinary expenses of government payable from the general fund, one of several items of which is the cost of street lighting, but in many instances large balances exist in the motor vehicle license and gasoline tax street repair fund. Consequently, we are called upon to answer numerous inquiries as to whether these latter funds may be used to pay the cost of street lighting.

Because of the wording contained in Sec. 6309-2, 5537 and 5541-8 of the General Code, all of which were amended in 114 O. L., this Department has always held against such use of said funds, but we are unable to find any opinions of your office wherein this question has been considered.

We are therefore asking that you kindly render this Department your written opinion on the following questions:

Question 1. May a municipality use any part of their portion of motor vehicle license fees and gasoline taxes for paying for electrical energy consumed for street lighting purposes:

Question 2. May a municipality use such funds for the repair and reconstruction of their street lighting system?

Section 5537, General Code, provides that the municipality's share of the gasoline excise tax levied by virtue of section 5527 shall be used "for the sole purpose of maintaining, repairing, constructing and repaving the public streets and roads within such corporation."

Section 5541-8, General Code, provides that the municipality's share of the gasoline excise tax levied by virtue of section 5541 shall be used "for the sole purpose of constructing, maintaining, widening, reconstructing, cleaning and clearing the public streets and roads within such corporation, and for the purchase and maintenance of traffic lights."

Section 6509-2 General Code, provides that the municipality's share of a motor vehicle license tax shall be used solely "for the maintenance, repair, construction and repaving of public streets." This section further provides that '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 subsurface of the improvement thereof, in whole or in substantial part." Amended Senate Bill No. 3, passed at the first special session of the 89th General Assembly also authorizes the expenditure prior to March 1, 1933, of funds arising from the gasoline and motor vehicle taxes for poor relief purposes with the approval of the State Relief Commission.

Your inquiry raises the question as to whether the repair and reconstruction of a street lighting system or the supplying of electrical energy therefor constitutes a part of the construction, repair or maintenance of a street.

As stated in former opinions from this office, the fundamental purpose of these statutes is to benefit the users of motor vehicles and to defray certain expenses occasioned by the operation of motor vehicles. Of course, we have had street lighting long before the advent of the motor vehicle and long before there was any substantial volume of vehicular traffic. At the beginning of the fifteenth century citizens of London were required to hang out candles between certain hours at night to light the streets. McQuillin Municipal Corporations, section 40. Indeed, Reid in his work, the Municipalities of the Roman Empire, Chapter XIII, pages 463 and 464, writes of Ammianus speaking of Antioch as a city "where the brightness of the lights shining all through the night imitates the brilliancy of day."

In my opinion appearing in Opinions of the Attorney General for 1930, Vol. III, page 1929, I held that funds arising from motor vehicle and gasoline excise taxes cannot be used by municipalities for the purchase of street signs. In this opinion I said:

"Municipalities customarily place the name of streets and street corners regardless of whether the streets so marked be improved or maintained. These signs or name plates are not, like state highway markings, primarily for the convenience, benefit or safety of the motorists but rather are for the convenience of the municipality at large. In my view, the erection of street signs does not have any direct relation or bearing upon the matter of the construction or maintenance of a street, but is a distinct and separate municipal function the cost of which should be borne by the taxpayers at large rather than by the motorists."

The same reasoning applies to street lights. The public security has always

been the primary reason for lighting streets. Lanciani wrote of the great disorder and insecurity of persons and property which existed at night in Rome as a result of the absence of street lights. Lanciani—Ancient Rome, Chapter VIII, pages 207 and 208.

In the case of *Crawfordsville vs. Braden*, 130 Ind. 149, the court says:

“There can be little doubt that the power to light streets and public places of a city is one of the implied and inherent powers as being necessary to properly protect the lives and property of its inhabitants and as a check on immorality. * * * Wherever men herd together in villages, towns or cities, will be found more or less of the lawless and vicious, and crime and vice are plants which flourish best in the darkness.”

In the case of *Overall vs. Madisonville*, 125 Ky. 684, the following is said:

“It is found that light is not only essential to the safety of travelers to prevent their coming in contact with obstructions, but they perform a most valuable office in preventing crime. It is known that crime thrives best in darkness. A good light is the equivalent of a good policeman in preventing certain forms of crime.”

In the note appearing in 15 L. R. A. (N. S.) 711 where it is pointed out that by the weight of authority municipalities have the inherent right to light the streets, it says:

“This holding is largely upon the ground that the lighting of streets is not only a great public convenience and aid to business, but, also, and principally, because it is a most efficient aid in the prevention of many forms of crime and immorality.”

In my opinion appearing in Opinions of the Attorney General for 1930, Vol. 1, page 35, I held that the expenditure by a municipal corporation of such funds for traffic signals was unauthorized. Thereafter, section 5541-8 was amended to authorize the use of the tax levied under section 5541, General Code, for such purpose. I believe that if the legislature had intended to include the cost of street lighting it would have expressly said so. I am of the view that street lighting does not come within the purpose of these statutes, but rather that it is for the convenience and protection of the inhabitants of the municipality at large, the cost of which should not be borne solely by the motorists.

I am of the opinion, therefore, that a municipality may not use any part of its portion of funds arising from the motor vehicle license fees or the gasoline excise tax to pay for the repair or reconstruction of its street lighting system or the supplying of electrical energy therefor.

Respectfully,

GILBERT BETTMAN,
Attorney General.