

"No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied."

The Supreme Court in the case of *State, ex rel. vs. Edmondson, supra*, had under consideration an act of the General Assembly which required the expenditure of public funds raised by taxation under a previous act for a purpose other than that provided in the act levying the tax. On this point the court said at pp. 363 and 364:

"In the consideration of this provision we are confronted with the plain mandate in Section 5 of Article XII of the Constitution that 'No tax shall be levied, except in pursuance of law; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.' The taxes in the county treasuries, which were paid under the levies provided for in the act of 1908, can manifestly be applied only to the objects distinctly stated in the law providing for their levy." To the same effect is *State, ex rel. vs. Zangerle*, 103 O. S. 566.

It follows, in view of Section 5 of Article XII of the Constitution, *supra*, that Sections 5527 and 5541 of the General Code must be amended in order that a portion of the proceeds of the motor vehicle fuel tax may be available for poor relief.

With respect to the constitutionality of an amendment whereby a portion of the motor vehicle fuel tax may be available for a purpose other than the general construction, maintenance and repair of roads, Opinion No. 3314, rendered June 10, 1931, is directly in point. I attach a copy of this opinion hereto. It is authority for the conclusion that the law providing for the levy of an excise tax upon motor vehicle fuel which provides that a portion of the proceeds of such tax shall be used for purposes other than general construction, repair and maintenance of roads, is not violative of any constitutional provision.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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4144.

APPROVAL, ABSTRACT OF TITLE TO LAND OF FRANCES McFARLAND BONHAM IN VILLAGE OF OXFORD, OHIO.

COLUMBUS, OHIO, March 14, 1932.

MR. W. P. ROUDEBUSH, *Secretary, Board of Trustees of Miami University, Oxford, Ohio.*

DEAR SIR:—I am in receipt of your request for my examination of the title of a tract of land in Outlot No. 8 in the village of Oxford, Ohio, which Miami University contemplates buying from one Frances McFarland Bonham.

The abstract reveals that said Frances McFarland Bonham is the owner, with respect to said land, of a lease for ninety-nine years, renewable forever, granted in 1810 by Miami University, the owner of the fee simple title, to one Merrikin Bond, one of said Bonham's predecessors in the chain of title. Said leasehold estate is subject to a mortgage made in 1914 by Frances McFarland Bonham to the Oxford Loan and Building Association (see p. 36 of abstract). The abstracter's certificate (p. 38, abstract) indicates that said mortgage is for five thousand dollars.

The certificate of the abstracter, dated January 26, 1932, states that "All taxes payable have been paid to date". This statement is somewhat ambiguous inasmuch as it does not clearly disclose whether all of the taxes for the year 1931, which, of course, are now a lien upon said property, have been paid. From said statement, it is inferable that the second installment of the 1931 taxes, payable in June, 1932, have not yet been paid. It would be well to ask the abstracter to clarify said statement.

The proposed deed by said Frances McFarland Bonham is executed in a proper manner, with the release of dower, to convey to the president and trustees of Miami University the interest which said grantor owns in said property.

Encumbrance estimate No. 1574 indicates that there remains in the proper appropriation account a sufficient balance to cover the purchase price of this land.

At your request, I am forwarding the original copy of this opinion, together with the encumbrance estimate and the abstract, to Hon. Joseph T. Tracy, Auditor of State.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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4145.

APPROVAL, RIGHT TO IMPROVE BY THE CONSTRUCTION OF BUILDINGS, FENCES AND PENS, LAND IN MILAN TOWNSHIP, ERIE COUNTY, OHIO.

COLUMBUS, OHIO, March 14, 1932.

HON. I. S. GUTHERY, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of a communication from your department over the signature of the conservation commissioner requesting my opinion with respect to the authority of the division of conservation to improve by the construction of buildings, fences and pens thereon two certain tracts of land amounting in the aggregate to about twenty-five acres, located in Milan Township, Erie County, Ohio.

The tracts of land above referred to were recently acquired by the conservation council as a gift for the purpose of establishing thereon a refuge for the propagation of certain species of small animals; and pursuant to the requirements of section 1435-1, General Code, the deed conveying these tracts of land was executed to the State of Ohio. The deed conveying said tracts of land to the state contains the following condition in the habendum clause thereof: