

volving purchases of more than five hundred dollars except in those cases where purchases are made for immediate repair of roads and bridges destroyed by flood or other casualty.

It is obvious that the foregoing suggests a negative answer to both of the inquiries propounded.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

3397.

GASOLINE TAX—MUNICIPALITY'S PORTION RECEIVED UNDER SECTION 5541-8, G. C. APPLICABLE FOR PURCHASE OF STREET CLEANING AND SWEEPING EQUIPMENT.

SYLLABUS:

Funds distributed to municipalities under the provisions of Section 5541-8, of the General Code, as amended by the 89th General Assembly (H. B. No. 7) may be used for the purchase of street sweeping and street cleaning equipment.

COLUMBUS, OHIO, July 3, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"The present Legislature, in House Bill No. 7, effective August 2nd, 1931, amended Section 5541-8, G. C., to read in part as follows:

"Seven and one-half per cent of said highway construction 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 expended by each municipal corporation 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."

Question: After the effective date of amended Section 5541-8 G. C., may a municipality's share of the proceeds from the last two cent gasoline tax be used for the purchase of street sweeping and street cleaning equipment?"

Section 5541-8, General Code, from which you quote in your letter, before amendment provided among other things that five per cent of the highway construction fund which was distributed to municipalities should be used "for the sole purpose of constructing, maintaining, widening and reconstructing the public streets and roads within the corporation."

Without attempting to review the numerous opinions construing the language last above quoted, it may be stated that this office consistently held that such funds

could not be used for street cleaning purposes or for the installation of traffic lights. It therefore is clear that by reason of the addition of the language "cleaning and clearing" in connection with the enumeration of the purposes for which the fund under consideration may be used by municipalities with respect to streets, as set forth in the amendment, said fund may be used for the purpose of cleaning and clearing streets.

The question is now presented as to whether said funds may be used for the purchasing of machinery with which to accomplish the above purpose. With reference to your question it will be helpful to consider the case of *State ex rel. v. Columbus*, 21 O. A. 1, in which it was held that a sand dryer could be purchased by the municipality with the gasoline tax funds distributed to it under Section 5537, of the General Code, which then required that such funds be expended "for the sole purpose of maintaining and repairing public streets and roads within such corporation." By analogy it is believed that the Columbus case, above mentioned, is dispositive of the question you present. In that case the statute made no express provision relative to the purchase of machinery.

The act to which you refer after providing for the distribution of the fund for five distinct purposes, as a sixth purpose, distributes seventeen and one-half per cent of said highway construction fund to the townships of the state. Following the language authorizing the distribution to the townships said act contains a proviso which reads in part:

"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 said improvement; provided further that no portion of such funds shall be used for the purchase of road machinery or equipment; and, provided further that all such improvement of roads shall be under the supervision and direction of the county surveyor as provided in section 3298-15k of the General Code: * * "

An analysis of the act as a whole, clearly discloses that the proviso above mentioned only has application to the funds distributed to the townships.

By way of specific answer to the inquiry propounded, it is my opinion that funds distributed to municipalities under the provisions of Section 5541-8, of the General Code, as amended by the 89th General Assembly (H. B. No. 7) may be used for the purchase of street sweeping and street cleaning equipment.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3398.

OFFICES INCOMPATIBLE—TOWNSHIP CONSTABLE AND CITY FIRE MARSHAL.

SYLLABUS:

A duly elected township constable may not concurrently hold a position under the classified service of a city.