

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract.

There has been further submitted a contract bond upon which the Hartford Accident and Indemnity Company appears as surety sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
EDWARD C. TURNER,
Attorney General.

353.

BOARDS OF EDUCATION—NOT EXEMPT FROM OPERATION OF GASOLINE EXCISE TAX LAW—NOT ENTITLED TO REFUND.

SYLLABUS:

Boards of education and political subdivisions of the state of Ohio are not exempt from the operation of the gasoline excise tax law (Sections 5526, et seq., of the General Code); nor are they entitled to a refund of the amount of such tax in the event that they purchase motor vehicle fuel from a dealer for use in the propulsion of motor vehicles owned or operated by such boards of education in whole or in part upon the public highways.

COLUMBUS, OHIO, April 20, 1927.

HON. VERNON M. RIEGEL, *Director of Education, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication which reads as follows:

“Boards of education in Ohio are not required to pay a license fee in order to secure tags for school busses which they may own or for automobiles used for any other legitimate board of education purposes. Your opinion is desired upon the question of whether or not such boards may be exempted from payment of the gasoline tax for gasoline consumed in cars thus owned and used for legitimate school purposes.”

In Part Second, Title II, Chapter 21, of the General Code relating to registration of motor vehicles it is provided in Section 6295 as follows:

“* * * Publicly owned and operated motor vehicles used exclusively for public purposes shall be registered as provided in this chapter, without charge of any kind; but this provision shall not be construed as exempting the operation of such vehicles from any other provision of this chapter and the penal laws relating thereto. * * *”

This provision of law was considered in a former opinion rendered by this de-

partment which was addressed to the secretary of state. It was therein held that school busses which were publicly owned and used exclusively for a public purpose were not such vehicles as required their owner to pay a charge under the law for their registration. Opinions of the Attorney General for 1920, Vol. I, page 121. The statute is very clear in its provisions for the exempting of "publicly owned and operated motor vehicles used exclusively for public purposes" from the payment of any charges for the registration of such vehicles under the motor vehicle license tax law.

However, the ruling of the attorney general above referred to has no bearing on the question of the payment of the gasoline excise tax as provided for in Sections 5526, et seq., of the General Code.

It will be noted that provision is made in the gasoline excise tax law for the imposing of a tax on the sale or use of each gallon of motor vehicle fuel sold or used by any dealer within the state of Ohio. The imposition and collection of this tax is subject to certain specific exemptions (Section 5527, General Code) and provision is made for the refunder of the tax when the motor vehicle fuel is used for some purpose other than the propulsion of motor vehicles operated or intended to be operated in whole or in part upon the highways of the state (Section 5534, General Code), but none of these provisions for refunder would operate to affect the tax on gasoline used for the operation of motor vehicles owned by boards of education, simply because they were owned by the board of education, if they were operated or intended to be operated in whole or in part upon the highways of the state.

This entire question was considered in an opinion of this department addressed to the Bureau of Inspection and Supervision of Public Offices, under date of March 4, 1925, and found in Opinions of the Attorney General for 1925 at page 261, with which opinion I am in full accord. While that opinion does not specifically consider the applicability of the law as it relates to motor vehicles owned and operated by the board of education, its principles relate and apply to all political subdivisions of the state.

In answer to your question, it is my opinion that boards of education are not exempted from payment of the gasoline excise tax, (Sections 5526, et seq., of the General Code) for gasoline consumed in cars owned by their respective school districts and operated by such boards of education, or their agents, for legitimate school purposes in whole or in part upon the public highways.

Respectfully,

EDWARD C. TURNER,
Attorney General.

354.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND IN HANOVER TOWNSHIP, COLUMBIANA COUNTY, OHIO.

COLUMBUS, OHIO, April 20, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I have examined the abstract of title purporting to cover Tract No. 11, Guilford Lake Park, consisting of 23.73 acres, more or less, owned by Lucina A. Gardner and others, and located in the Northeast quarter of section 2, Hanover township, Columbiana county, Ohio.

The abstract was prepared by McMillan & Kelso, abstracters, Lisbon, Ohio, April 24, 1926, and was continued by said abstracters to November 3, 1926. The abstract as submitted pertains to the following premises located in the Northeast