

gasoline and motor vehicle license taxes may not properly be used for the purpose of constructing and repairing sidewalks.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2890.

TOWNSHIP ROAD—MAINTENANCE AND REPAIR FUND—NO PORTION
MAY BE PAID TO A MUNICIPALITY SITUATED IN WHOLE OR IN
PART WITHIN SUCH TOWNSHIP.

SYLLABUS:

No part of the money in the road maintenance and repair fund of a township may be paid to a municipality situated either in whole or in part within such township, notwithstanding the fact that a portion of such money has theretofore been transferred under Section 5625-13c, General Code, to the township road maintenance and repair fund from another fund raised by taxes levied upon all the property within the township, including the property within such municipality.

COLUMBUS, OHIO, January 30, 1931.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“In 1917, the Township Trustees of Orwell Township issued bonds for the construction of a part of the Cleveland-Meadville Road, I. C. H. No. 15. Said road was constructed and part of it was in Orwell Township and part in the Village of Orwell, which is also in Orwell Township.

In order to pay the bonds as they fall due, a levy was made on all the taxable property in the township, including, of course, the Village, which levy ran for a period of ten years, the last money being raised in 1926, in accordance with said levy. In 1928, all the bonded indebtedness for said road had been fully paid, and, in fact, there was no bonded indebtedness at that time of said township for any other bonds, all outstanding obligations having been paid, of every kind and description.

At that time, there remained in the Bond an Interest Fund the sum of \$4,693.72, which had been raised by the tax levy above mentioned, and which was left over after all the bonds had been paid. In January of this year the Trustees of the township filed a petition in Common Pleas Court asking for a transfer of said money from the Bond and Interest Fund to the Township Road Maintenance and Repair Fund, by authority of General Code Section 5625-13c, there being no Sinking Fund in said township to which said money could be transferred. Upon hearing of the application, the Court ordered said money transferred, and it was so transferred by the Trustees and is now in the Township Road Maintenance and Repair Fund.

The Village of Orwell, which is located in Orwell Township, discovered that the transfer had been made, and is now demanding a part of this money due to the fact that the levy was made over the whole township. The trans-

fer, however, was made strictly in accordance with the statute, and I have advised the Trustees not to turn over any of the money to the Village, at least until they are compelled to through an action brought in court, or in accordance with an Opinion rendered through your office.

It also occurred to me that if money had been transferred to the General Fund, in all probability the Village could have no complaint, inasmuch as it would then be for the benefit of the entire township, and not for the roads outside of the Village.

I would appreciate your opinion concerning the disposition of these funds, inasmuch as the same are being held awaiting a reply from you."

Section 5625-13, under which the transfer in question was made, provides insofar as pertinent as follows:

"No transfers shall be made from one fund of a subdivision to any other fund, by order of the court or otherwise, except as hereinafter provided:

* * * * *

c. The unexpected balance in the sinking fund or bond retirement fund of a subdivision, after all indebtedness, interest and other obligations for the payment of which such fund exists have been paid and retired, shall be transferred in the case of the sinking fund to the bond retirement fund and in the case of the bond retirement fund to the sinking fund; provided that if such transfer is impossible by reason of the non-existence of the fund herein designated to receive the transfer, such unexpended balance, with the approval of the court of common pleas of the county wherein such subdivision is located, may be transferred to any other fund of the subdivision.

* * * * *

The township road maintenance and repair fund, to which the transfer in question was made, is not customarily made up of the proceeds of a general tax upon all the property in the township, but of the proceeds of a tax "upon all the taxable property of the township outside of any incorporated village or city, or part thereof therein situated." Section 3298-18, General Code.

In providing that the court of common pleas must first approve a transfer of money from the bond retirement fund to another fund of the subdivision before such transfer may be made, the legislature was undoubtedly cognizant of the fact that equities may be involved in such a transfer and therefore placed the responsibility of considering and passing upon such equities upon the court. There are probably numerous instances when a proposed transfer may require a consideration of such matters. As an illustration there may be remaining in the bond retirement fund money raised by general taxation in a township which may, with the approval of the court of common pleas, be transferred to a special fund for the improvement of a certain road in one corner of the township. The taxpayers in the portion of the township not directly benefited by the improvement of such road would be similarly affected as those within the municipality in the case you present. All such circumstances should undoubtedly be considered by the court in approving the transfer under this section of the Budget Law. In the instant case, it is to be presumed that all these considerations were weighed by the court in approving the transfer before it was made. In any event, the transfer has now been consummated, and money in the township road maintenance and repair fund, which is a continuing fund, may not be paid to a municipality within the township unless there is authority therefor. I do not find such authority. On the contrary, Section 5625-10, General Code, provides that "Money paid into any fund shall be used only for the purposes for which such fund is established."

It is my opinion, therefore, in specific answer to your question, that no part of the money in the road maintenance and repair fund of a township may be paid to a municipality situated either in whole or in part within such township, notwithstanding the fact that a portion of such money has theretofore been transferred under Section 5625-13c, General Code, to the township road maintenance and repair fund from another fund raised by taxes levied upon all the property within the township, including the property within such municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2891.

APPROVAL, ABSTRACT OF TITLE TO LAND OF LAFAYETTE TAYLOR AND VOLNEY S. TAYLOR, IN REARDON TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, January 31, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—There has lately been submitted for my examination and approval, an abstract of title, warranty deed, encumbrance estimate No. 796, and other files pertaining to a tract of land owned of record by Lafayette Taylor and Volney S. Taylor, in Reardon Township, Scioto County, Ohio, which tract of land is more particularly described as follows:

“Beginning at a corner to Survey No. 15839; thence with one line thereof N. 29 E. 244 poles to a stone, corner to Lot 112 and also corner to Pre-emption Claim 88, thence with one line of said claim N. 32 degrees 44' W. 129 2/10 poles to a stone being the South-east corner of a tract of land sold off said Lot No. 112 to one Wm. Hackworth, then with said Hackworth's South line S. 64 degrees W. 125 poles to a stone, thence S. 73 degrees E. 74 poles to corner of Lot No. 113 and Survey No. 15838; thence with the line of Survey S. 46 degrees E. 39 poles; thence S. 53 degrees W. 41 poles; thence S. 27 degrees W. 10 poles to a chestnut oak; thence N. 77 degrees W. 55 poles to a white oak and dogwood; thence S. 1 degree W. 70 poles to two white oaks; thence S. 34 degrees E. 148 poles to the place of beginning, containing 220 acres more or less and being 89 acres more or less in Lot 112 and 131 acres more or less in Lot 113.”

Upon examination of said abstract of title, I find that said Lafayette Taylor and Volney S. Taylor have a good indefeasible fee simple title to the above described property, subject only to the minor objections here noted. It appears that a judgment was taken in the Municipal Court of Portsmouth, Ohio, against said Volney S. Taylor in and for the sum of \$95.08. The abstract does not disclose the name of the judgment creditors nor the further disposition of the case in which said judgment was taken. Nor does said abstract show whether by transcript filed in the Common Pleas Court or otherwise, said judgment was ever made a lien upon the property of Volney S. Taylor in said county. In this situation, it is suggested that before the transaction relating to the purchase of said property is closed, further information should be ob-