

it appears that the laws relating to the status of surety companies and the 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,

JOHN W. BRICKER,
Attorney General.

5125.

TOWNSHIP TRUSTEES—UNDER SECTION 5541-8, G. C., MAY RECEIVE COMPENSATION IN CONNECTION WITH ROAD IMPROVEMENT WHEN—O. A. G. 1930, VOL. II, P. 1300, AFFIRMED—ANNUAL REPORT OF ATTORNEY GENERAL FOR 1912, VOL. I, P. 284, OVERRULED.

SYLLABUS:

Township trustees may receive compensation at the rate of \$2.50 per day for their services in connection with the improvement of roads with funds arising from the provisions of Section 5541-8, General Code, so long as such compensation does not exceed the limitation of \$250.00 set forth in Section 3294, General Code.

Opinion reported in Annual Report of the Attorney General for 1912, Vol. I, pages 283, 284, overruled in so far as it held that the per diem authorized by Section 3294, General Code, to be paid to township trustees as therein set forth is payable solely from the general fund.

Opinion reported in Opinions of the Attorney General for 1930, Vol. II, page 1300, affirmed.

COLUMBUS, OHIO, January 30, 1936.

HON. D. H. JACKMAN, *Prosecuting Attorney, London, Ohio.*

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

"I am in receipt of an inquiry from the township trustees of Oak Run Township in which they inquire whether one of their members could take charge of a group of men and work them in repairing and maintaining township highways.

The real question is in regard to the trustee in charge being paid from the gasoline tax fund.

Your 1931 opinion number 2903 approves of a trustee working on the highway and being paid but in no case can he receive more than statutory allowance of \$250. If this can be paid or

a part of it paid from the gasoline fund it will relieve the general fund to that extent.

I will appreciate your advice in connection with this question."

The opinion of this office to which you refer reported in Opinions of the Attorney General for 1931, Vol. I, page 158, held as set forth in the first branch of the syllabus:

"A township trustee in charge of township road maintenance and repair may, under Section 3370, General Code, drive a tractor or grader on such roads and receive \$2.50 per day for each day of service in the discharge of such duties, but the total compensation of such township trustee, to be paid from the treasury, shall not exceed the \$250.00 yearly limitation imposed by Sections 3294 and 3372, General Code."

Section 3294, General Code, authorizing the payment of \$2.50 for each day of service performed by township trustees in the business of the township, expressly provides that such payment shall be made "from the township treasury". The provision contained in such section that this per diem shall be paid "from the township treasury" was construed by this office in an opinion appearing in Annual Report of the Attorney General for 1912, Vol. I, pages 283, 284, as meaning that such per diem must be paid from the general fund of the township.

It is perfectly obvious that the townships' share of gasoline tax funds distributable to the townships pursuant to the provisions of Section 5541-8, General Code, is payable not into the general fund but into the township road fund. The revenue derived from the gasoline excise tax is revenue derived from a source other than the general property tax which the law provides shall be used for a particular purpose and under Section 5625-10, General Code, such revenue must be paid into a special fund for such purpose. This section further provides that "Money paid into any fund shall be used only for the purpose for which such fund was established." Sections 5625-13a, et seq., General Code, as enacted in 1933 (115 O. L. 251), authorize transfers of such moneys to the general fund under the circumstances therein set forth. The amendment of Section 5625-13a by the 91st General Assembly (116 O. L. 46), however, expressly excepted from the provisions contained in that and following sections with respect to transfers "the proceeds or balances of funds derived from any excise tax levied by law for a specified purpose or purposes". Consequently, it would follow that even though township trustees were entitled to the \$2.50 per day compensation authorized by Section 3294, General Code, when working on township roads which may be improved by pro-

ceeds of the gasoline tax distributable to the townships, that such compensation could not be paid from the township road fund. Such a conclusion must follow the construction placed upon the phrase "township treasury" as adopted by this office in the 1912 opinion, *supra*.

Upon consideration, it appears to me that there is serious question as to whether or not this construction of the phrase "township treasury" as being limited to meaning the general fund of the township only, is justified and entirely tenable. In the broader sense, the township treasury, like the state treasury, is made up of a number of funds.

Whatever rules of statutory construction might be considered in passing upon the 1912 opinion, *supra*, it is noted that my immediate predecessor in office, in effect, though not expressly, overruled this opinion in so far as it is applicable to the question here under consideration. In an opinion appearing in Opinions of the Attorney General for 1930, Vol. II, page 1012, it was held as set forth in the syllabus:

"A township trustee, in the performance of his duties in connection with the improvement of roads by the use of the gasoline tax moneys provided for under Section 5541-8 of the General Code, is engaged in the business of the township and may not receive compensation for such services in excess of the limitations provided in Section 3294 of the General Code." At page 1013, the following language is used:

"Section 3294 of the General Code, which fixes the compensation of township trustees, expressly provides that each trustee may not be paid in excess of two hundred and fifty dollars annually for his services in connection with the business of the township. While it has frequently been held that this section only relates to moneys to be expended from the township treasury, and would not inhibit such an officer from receiving compensation from some other source, it is a limitation as to the amount he may receive from the township treasury for his duties as township trustee. If such a trustee were to receive funds from the source you mention (the gasoline fund), it is obvious that he would be receiving it from the township treasury."

This opinion was affirmed in a later opinion appearing in that same volume, page 1300, the syllabus of which is as follows:

"Township trustees may receive compensation at the rate of \$2.50 per day for their services in connection with the improvement of roads with funds arising from the provisions of Section 5541-8, General Code, so long as such compensation

does not exceed the limitation of \$250.00 set forth in Section 3294, General Code.”

As hereinabove stated, in neither of the foregoing opinions of my predecessor was any reference made to the opinion rendered in 1912 to the effect that the per diem authorized by Section 3294, General Code, must be paid from the general fund. It is my judgment, however, that the construction placed upon the term “township treasury” in the 1912 opinion is too narrow and unwarranted and that the opinions of my immediate predecessor are correct. The 1912 opinion, *supra*, is accordingly overruled in so far as it held that the per diem authorized by Section 3294, General Code, to be paid to township trustees as therein set forth is payable solely from the general fund.

It is my opinion, in specific answer to your inquiry, that township trustees may receive compensation at the rate of \$2.50 per day for their services in connection with the improvement of roads with funds arising from the provisions of Section 5541-8, General Code, so long as such compensation does not exceed the limitation of \$250.00 set forth in Section 3294, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

5126.

TOWNSHIP TRUSTEES—UNDER SECTION 3294, G. C., ENTITLED TO COMPENSATION FOR ATTENDANCE AT ANNUAL MEETING OF STATE ASSOCIATION, WHEN.

SYLLABUS:

In the absence of an apparent abuse of discretion or the evidence of bad faith in a particular case, it cannot be said as a matter of law that it is unlawful for township trustees after determining the need and propriety of attending the annual meeting of the State Association of Township Trustees and Clerks held in Columbus, for the purpose of discussing matters pertaining to the duties of township trustees in carrying out their powers with respect to the performing of their official duties as trustees, to credit themselves with the time expended in attending such a meeting as being “service in the business of the township” for which they are entitled to per diem compensation in accordance with Section 3294, General Code.