

the Banking Act of 1933 (Glass-Steagall Act), a member bank of the Federal Reserve System cannot pay interest upon such deposit.

2. Where payment of interest is required under a depository contract entered into by a municipal corporation pursuant to an ordinance of council, in conformity with the municipal depository statutes (sections 4295, 4296), the payment of interest is required under State law within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933.

3. The fact that section 4295 of the General Code does not prescribe a minimum rate of interest which a depository bank must pay upon municipal deposits, does not prevent that section from being a State law requiring the payment of interest within the meaning of the proviso contained in section 11 (b) of the Banking Act of 1933.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1385.

GASOLINE TAX—TOWNSHIP TRUSTEES AUTHORIZED TO USE FUNDS FOR CONSTRUCTION OF ABUTMENTS FOR BRIDGE UPON PUBLIC HIGHWAY.

SYLLABUS:

Township trustees may legally expend gasoline tax funds for the construction of abutments for a bridge upon a public road or highway within the township.

COLUMBUS, OHIO, August 11, 1933.

HON. FREDERICK C. MYERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—This acknowledges receipt of your request for my opinion, which reads as follows:

“The Trustees of Newport Township, in Washington County, propose to spend between \$200.00 and \$300.00 of Gasoline Tax Funds to build abutments for a bridge in said Township, the County Commissioners agreeing to build the superstructure.

I have advised the Trustees as to the legality of this expenditure and the project is being held up pending your opinion in the matter.

Please advise me whether or not Gasoline Tax Funds in the hands of the Trustees can be legally expended for this purpose. I will appreciate your opinion at an early date.”

The primary duty of building bridges on county or township roads rests with the county commissioners. Section 2421, General Code, reads in part as follows:

“The commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in

cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property therein."

However, it has been held that township trustees may also assist in the construction of bridges upon township roads. In an opinion found in the Opinions of the Attorney General for 1925, page 389, it was held, as disclosed by the syllabus:

"In performing the mandatory duty of keeping township roads in good repair, imposed by the provisions of sections 3370 and 7464 of the General Code, township trustees may appropriate and use township road funds in the construction and maintenance of bridges and culverts on township roads within their respective jurisdictions.

Opinion found in volume 2, page 1813 of the opinions of the attorney general for 1917, modified."

This opinion was approved in a later opinion found in Opinions of the Attorney General for 1928, Vol. I, page 292. The seventh and eighth branches of the syllabus of that opinion are as follows:

"7. By the terms of Section 7464, General Code, as amended in House Bill No. 67, passed by the 87th General Assembly (Norton-Edwards Act) and Sections 2421, 7557 and 7467, General Code, it is the duty of county commissioners to maintain and keep in repair all bridges on county roads.

8. It is also the duty of county commissioners to maintain and keep in repair bridges on township roads, although township trustees are authorized to appropriate and use township road funds in the maintenance and repair of bridges within their jurisdiction. (Opinion No. 668, rendered under date of September 28, 1917, Opinions, Attorney General, 1917, Vol. II, page 1813, as modified by Opinion No. 2557, rendered under date of June 10, 1925, Opinions, Attorney General, 1925, page 389 approved and followed)."

In an opinion reported in Opinions of the Attorney General for 1929, Vol. I, page 702, it was held, as disclosed by the syllabus:

"1. It is the mandatory duty of county commissioners to maintain and keep in repair bridges and culverts on township roads. However, township trustees are authorized to expend moneys for such maintenance and repair or to co-operate with county commissioners in such undertakings if they so desire.

2. The discretion to determine the nature of the improvement and the part of the county system to be improved from funds which are the proceeds of the township's share of the proceeds of the two cents gasoline tax, as provided in House Bill No. 335 (Sullivan-Bostwick Act), is in the township trustees, unless such trustees see fit to relinquish this privilege to the county commissioners."

Your question relates to the power of township trustees to build abutments for a bridge and to pay for the same out of the gasoline tax funds received by

the township. Section 5541, General Code, provides for what is commonly known as the second two-cent gasoline tax. This section reads in part as follows:

“For the purpose of providing revenue for supplying the state’s share of the cost of constructing, widening and reconstructing the state highways of this state, and also for supplying the state’s share of the cost of eliminating railway grade crossings upon such highways, and also for enabling the several counties, townships and municipal corporations of the state properly to construct, widen, reconstruct and maintain their public highways, roads and streets, and for paying the costs and expenses of the tax commission incident to the administration of the motor vehicle fuel laws, and supplementing revenue already available for such purposes, an excise tax is hereby imposed on all dealers in motor vehicle fuel, upon the use, distribution, or sale within the state by them of motor vehicle fuel, at the rate of two cents (2c) per gallon so used, distributed or sold, subject to the specific exemptions therein set forth, * * * .”

Section 5541-8, General Code, provides the method of distributing this tax to the various subdivisions. This section provides in part as follows:

“ * * *

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* * *

Seventeen and one-half per cent of said highway construction fund shall be appropriated for and divided in equal proportions among the several townships within the state, and shall be paid on vouchers and warrants drawn by the auditor of state to the county treasurer of each county for the total amount payable to the townships within each of the several counties. Upon receipt of said vouchers and warrants each county treasurer shall pay to each township within the county its equal proportional share of said funds which shall be expended by each township for the sole purpose of constructing, maintaining, widening and reconstructing the public roads and highways within such township.

* * * The trustees of any township are hereby authorized at their discretion to pass a resolution permitting the county commissioners to expend such township’s share of said funds, or any portion thereof, for the improvement of such roads within said township as may be designated in said resolution.”

The legislature, at the special session held in May, 1932, and by the enactment of Amended Senate Bill No. 62 of the 90th General Assembly, amended section 5541 in certain respects but these amendments are immaterial to the present inquiry.

This office in several opinions of previous Attorneys General has held that the words “highways” and “public roads” include bridges and that the gasoline tax may be properly expended for the purpose of maintaining and repairing bridges on public roads and highways. See Opinions of the Attorney General for 1928, Vol. II, page 1235; Opinions of the Attorney General for 1929, Vol. I, page 150. In an opinion to be found in Opinions of the Attorney General for 1932, Vol. I, page 16, being Opinion No. 3918, it was held, as disclosed by the third branch of the syllabus:

"The proceeds of the gasoline tax levied under the provisions of Section 5541, General Code, and expended under the authority of Section 5541-8, General Code, may be used for the construction of new bridges upon public roads and highways in the county system of highways."

In the present situation, the township trustees propose to build the abutments. The abutments are as much a part of the bridge as the superstructure. They are as necessary as the actual road surface over which the vehicular traffic passes. An abutment is defined in 1 Corpus Juris 377, as "a part of a bridge, consisting of that mass of stone or solid work at the end of the bridge by which the extreme arches or timbers are sustained". The Supreme Court of Vermont in the case of *Bardwell vs. Jamaica*, 15 Vt. 438, held, as disclosed by the first branch of the syllabus:

"An abutment to a bridge, as matter of description, is part of the bridge; and when a declaration alleged an injury to have been occasioned by the insufficiency of a bridge, and the proof was, that the defect and insufficiency was in the abutment—*Held* that this was not such a variance as to be ground for reversing the judgment."

The court at page 442 said:

"The abutment, in the sense in which the term is, ordinarily, used, is a part of the bridge. The abutment has such an immediate connexion with the other parts of the bridge, that, in speaking of a bridge, in connexion with the use for which bridges are erected, we can no more exclude the abutment from our minds than the flooring, or the framework, of the bridge."

To the same effect, see the case of *Freeholders of Sussex vs. Strader*, 18 N. J. L. 108.

In view of the above and in specific answer to your question, it is my opinion that township trustees may legally expend gasoline tax funds for the construction of abutments for a bridge upon a public road or highway within the township.

Respectfully,

JOHN W. BRICKER,
Attorney General.

1386.

APPROVAL, LEASE TO CANAL LANDS IN OXFORD TOWNSHIP,
COSHOCKTON COUNTY, OHIO, FOR RIGHT TO OCCUPY AND USE
FOR COTTAGE SITE AND AGRICULTURAL PURPOSES—C. E.
WALKENSPAU.

COLUMBUS, OHIO, August 11, 1933.

HON. T. S. BRINDLE, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval, a certain Canal Land Lease in tripli-