

of bonds a certificate of the resolution providing therefor shall be filed with the county auditor and that "thereafter the county auditor without further action by the tax levying authority of the subdivision shall include said annual levies in the appropriate annual budgets submitted by him to the budget commission as provided in Section 5649-3c, General Code."

I assume that in this instance the provision of the Constitution above referred to and the provisions of Section 5649-1b, supra, have been complied with and the duty of the county auditor with reference thereto has been fully performed and that by subsequent action of the County Board of Education the transfer of territory from the Brushcreek District to the Marshall District has been made. When this has been done and the indebtedness apportioned pursuant to the provisions of Section 4692, supra, no new or additional order of the Board of Education is necessary to authorize the levy of taxes for the payment of the bonds.

The duties of the county auditor are purely clerical and he should follow the provisions of Section 5649-3c, supra, and include annual levies for the redemption of these bonds in accordance with the order of the County Board of Education making the equitable division of the indebtedness of these two districts in the appropriate annual budget submitted by him to the budget commissioner.

The principles involved in the determination of the question which you have propounded have been considered by this department in a number of former opinions. I would particularly refer you to the Opinions of the Attorney General for 1915, Volume II, at page 1970, where will be found an opinion which covers practically the same questions which you have asked.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

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191.

APPROVAL, BONDS OF BEACH CITY VILLAGE SCHOOL DISTRICT,  
STARK COUNTY, OHIO—\$48,000.00.

COLUMBUS, OHIO, March 15, 1927.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

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192.

MOTOR VEHICLE FUEL TAX—BASIS OF DISTRIBUTION.

SYLLABUS:

*There is no provision of law fixing a basis upon which any municipality may be paid its proportionate share of the motor vehicle fuel tax other than the provisions of Section 5537 of the General Code of Ohio, which provides that municipalities shall be paid their share of such tax in proportion to the total number of motor vehicles*

*registered within such municipality during the preceding calendar year from each such municipality as shown by the official records of the secretary of state.*

COLUMBUS, OHIO, March 15, 1927.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

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

“In making the distribution of gasoline tax, the law requires that such portion of the tax as is to be distributed among the municipalities of the state shall be apportioned on a basis of the automobile population of said municipality as shown by the registration of the preceding calendar year.

The Secretary of State has not been able up to this time to furnish us with the automobile registration for 1926.

Will we be justified in making the distribution, for which we are ready, on the basis of 1925 and make the balance of the year on the 1926 registration?

In support of such procedure we might say that no municipality will lose any money, even though there is an increase in the number of automobiles. It would simply delay the surplus amount, if any in each case.

Your opinion on this will be appreciated.”

The gasoline tax to which you refer is the tax on motor vehicle fuel which is collected by virtue of the authority granted by the provisions of Sections 5529, 5530 and 5531 of the General Code of Ohio, which read as follows:

Sec. 5529. “Each dealer, as defined in this act, who shall engage within the state of Ohio in the sale or use of motor vehicle fuel, as herein defined, in his own name, in the name of others, or in the name of his representatives or agents, shall, not later than the fifteenth day of each calendar month, file with the tax commission of Ohio a statement under oath, of all such motor vehicle fuel sold or used by him or them in the state of Ohio during the preceding calendar month. Such statement shall include a separate statement of the amount of motor vehicle fuel upon which the excise tax is not required to be paid by this act. Such statement shall be sworn to by such dealer, if an individual; or by the general or managing agent or chief accountant, if a corporation.

The time intervening between the date when this act takes effect and the first day of the following calendar month or the time intervening between the time when anyone shall become a dealer within this state and the first day of the following calendar month, shall, for the purposes of this section, be regarded as a calendar month and the statement relating to such period shall be filed as herein provided.”

Sec. 5530. “On the twentieth day of each calendar month the tax commission shall transmit to the auditor of state a statement showing:

(a) The names of all dealers who have filed the statement provided for in Section 4 of this act during the same calendar month.

(b) The number of gallons of motor vehicle fuel the sale or use of which is subject to the tax herein levied as shown by the reports of such dealers or as determined by investigation of the tax commission.

(c) The names of any dealers whom the tax commission finds to have improperly reported the quantity of fuel so used or sold during any preceding calendar month, together with the number of gallons of such fuel found by the commission to have been omitted, if any.

(d) Such other information as the commission may deem necessary.

Upon receipt of such statement from the tax commission the auditor of state shall compute the tax due from each such dealer at the rate of two cents per gallon. A penalty of 15 per cent shall be added to the tax so computed on the basis of items found by the commission to have been omitted from the reports of any dealer. Between the twenty-fifth and last day of said calendar month the Auditor of State shall transmit to the Treasurer of State a copy of such statement showing the amounts due from such dealers.

The Auditor of State shall send to each dealer against whom findings have been made by the tax commission as herein provided a notice of the amounts due on such findings."

Sec. 5531. "On or before the last day of each calendar month each dealer shall pay to the Treasurer of State the excise tax due on the sale or use of motor vehicle fuel sold or used by him in the preceding calendar month, together with any tax penalty on omitted amounts as certified to him during such calendar month. Such payment shall be accompanied by a copy of the statement filed with the Tax Commission of Ohio."

This tax, when collected, is to be distributed as provided in Section 5537 of the General Code, the provisions of which so far as pertinent to your inquiry, are as follows:

"Upon receipt of taxes herein provided for the Treasurer of State shall place the first \$50,000.00 collected in a special fund to be known as the gasoline tax rotary fund. Thereafter as required by the depletion thereof he shall place to the credit of said rotary fund an amount sufficient to make the total of said fund at the time of each such credit amount to \$50,000.00. The balance of taxes collected under the provisions of this act, after the credits to said rotary fund, shall be credited to a fund to be known as the gasoline tax excise fund.

Thirty per cent of such gasoline tax excise 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 used by such municipal corporations for the sole purpose of maintaining and repairing the public streets and roads within such corporation. \* \* \* "

It will be noted by the provisions of the sections set out above, that the collection of this tax is made on the last day of each calendar month, when each "dealer" shall pay to the treasurer the tax due on the sale or use of motor vehicle fuel sold or used by him in the preceding calendar month. When so collected, after satisfying the requirements of law with reference to the rotary fund thirty per centum of the balance of the tax is to 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 the state during the preceding calendar year as shown by the official records of the Secretary of State.

Until such official records are available, no payments can legally be made to the municipalities.

If, however, without any specific authority therefor advancements are made from these funds to the various municipalities, pending the determining of the exact basis upon which payments should be made to the municipalities, it should be borne in

mind that a public officer who advances public funds without legal authority therefor is personally responsible for any loss occasioned by reason thereof.

Should the auditor feel justified in making such advancements before proper records are available and proper adjustments made in accordance with the statute, he might take as a basis for doing so the number of motor vehicles registered for the year 1925 or any other basis that might in his judgment be proper. In so doing, however, he should maintain such coefficient of safety as would preclude the possibility of making an over-payment to any municipality as it is of course possible that some municipalities might not have as many motor vehicles registered in proportion to the total number in the state in any one year as it had in the previous year.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

193.

TRANSFER OF AUTOMOBILE LICENSE—MUST APPLY WITHIN 30 DAYS  
AND PAY CERTAIN FEES.

*SYLLABUS:*

*Under the provisions of Section 6294-1, General Code, the owner of an automobile properly in possession of a license for the current year is entitled to make application for the registration of another motor vehicle within thirty days after the transfer of ownership, and upon the payment of a fee of one dollar together with the proper and additional tax thereon, if any, he is entitled to receive a new registration certificate good for the remainder of the current year.*

COLUMBUS, OHIO, March 16, 1927.

HON. CARL Z. GARLAND, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion on the following state of facts:

“On December 15, 1926, A owns a Ford automobile and is operating the same properly on a 1926 license; December 15th A purchases a 1927 license for his automobile; December 20, 1926, A trades his automobile for a new Ford but does not have either the 1926 or 1927 license transferred to the second car until January 3, 1927, on which date he calls at the auditor's office of this county and makes a request to have his 1927 license, which he purchased for his first automobile transferred to his new Ford. Would it not have been proper that the transfer should be made as requested?”

Under the provisions of Section 6291, General Code, an annual license tax is declared to be levied upon the operation of motor vehicles on the public roads or highways of this state for the purpose of enforcing and paying the expense of administering the law relative to the registration and operation of such vehicles and of maintaining and repairing the public roads, highways and streets. Said tax is levied at the rates specified in this chapter and is required to be paid to and collected by the deputy commissioner at the time of making application for registration.