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## TOWNSHIP TRUSTEES—MOTOR VEHICLE FUEL TAX PROCEEDS NOT AVAILABLE FOR PAYMENT OF LEASE ON STONE CRUSHER.

## SYLLABUS:

*Payment for the leasing by township trustees of stone crushers to be used in preparing material for the maintenance of township roads, cannot be made out of the township's share of the proceeds of the motor vehicle fuel tax.*

COLUMBUS, OHIO, June 6, 1934.

HON. CHARLES S. LEASURE, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication in which you ask the following question:

“May a board of Township Trustees rent or lease stone crushers for the purpose of using them in manufacturing material for the purpose of surfacing township roads and to pay for the rental or leasing of said equipment out of the township's portion of gasoline tax money?”

Section 3373, General Code, authorizes township trustees to purchase or lease machinery and tools for the maintenance and repair of roads and culverts and provides that payments therefor shall be paid from the township road fund, which is a different fund than the gasoline tax fund. Opinions of the Attorney General for 1929, Volume II, page 1147.

Townships are entitled to share in the proceeds of only that motor vehicle fuel tax which is levied by virtue of section 5541, General Code. Section 5541-8, General Code, reads in part as follows:

“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.”

This sentence standing alone would probably authorize the use of such funds for machinery and tools to be used exclusively to prepare materials for the maintenance of roads. *State, ex rel., vs. Columbus*, 21 O. A. 1. However, this sentence is followed by the following provisos:

“Provided, however, that no part of said funds shall be used for any purpose except to pay in whole or part the contract price of any such work done by contract or to pay the cost of labor in constructing, widening and reconstructing such roads and highways and the cost of materials forming a part of said improvement; provided further that no portion of such funds shall be used for the purchase of road machinery or equipment; and, provided further that all such improvement of roads shall be under the supervision and direction of the county surveyor as provided in section 3298-15k of the General Code; and provided further

that no obligation against such funds shall be incurred unless and until plans and specifications for such improvement, approved by the county surveyor, shall be on file in the office of the township clerk; and provided further that all contracts for material and for work done by contract shall be approved by the county surveyor before being signed by the township trustees and all disbursements of such funds shall be upon vouchers of the township trustees approved by the county surveyor."

These provisions state that no part of these funds shall be used for any purpose except those that are set forth therein, and the leasing of machinery and tools is not contained in any of said exceptions. It is further expressly provided that no portion of said funds shall be used for the purchase of road machinery or equipment. The word "purchase" may or may not include the word "lease". There seems to be no good reason why these funds should be permitted to be used for leasing equipment but not for buying it, and I am inclined to think that the word "purchase" as used in this statute includes leasing. In the case of *Galloway vs. Road Improvement District*, 143 Ark. 338, it was held that the authority to purchase road building machinery includes the right to lease it as the greater includes the lesser.

The following was held in the case of *Hackett vs. School District*, 150 Pa. 220:

"The legal meaning of the word purchase includes all modes of acquisition except that by descent. A lessee is a purchaser as truly as he who becomes grantee in fee. The difference is in the estate acquired."

Even if the word "purchase" should be construed in its stricter sense, the fact that there is an express provision against using any of said funds for the purchase of equipment could not, in view of the other provisions of the statute, be construed as granting the right to use such funds for the leasing of equipment. A reading of this statute, in my opinion, evidences the intent that the funds distributed to township<sub>s</sub> should not be used for things which do not go into and form a part of the improvement. It was evidently the intention of the legislature that equipment should be paid for out of the township road fund as provided by section 3373, General Code.

I am of the opinion, therefore, that payment for the leasing by township trustees of stone crushers, to be used in preparing material for the maintenance of township roads, cannot be made out of the township's share of the proceeds of the motor vehicle fuel tax.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*