

laborers and teams are to be employed by the county highway superintendent, the employment first being authorized by the county commissioners."

I agree with the conclusions of my predecessors in office in the opinions cited herein, and specifically answering your question, I am of the opinion that in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account, the county surveyor may when authorized by the county commissioners, employ such laborers and teams as may be necessary, and for the reasons stated, I am further of the opinion that the word "laborers" as used in Section 7198, General Code, should be liberally construed to effect the purpose intended, and includes such foremen, laborers, engineers, mechanics and other persons as may be necessary efficiently to accomplish the road work in question.

Respectfully,

EDWARD C. TURNER,
Attorney General.

272.

LEGISLATURE—NO AUTHORITY TO APPROPRIATE STATE INSURANCE FUND—NOT OBLIGATED TO BEAR EXPENSE OF ADMINISTRATION OF INSURANCE FUND—MAY AUTHORIZE INDUSTRIAL COMMISSION TO EXPEND STATE INSURANCE FUND—PREMIUM FOR INSURANCE OF STATE EMPLOYEES.

SYLLABUS:

1. *Legislature may not appropriate any part of the interest accruing on the state insurance fund.*
2. *No obligation upon the state to bear all or any part of the expenses of administration of the state insurance fund.*
3. *Legislature may authorize Industrial Commission of Ohio to expend any part of the interest received from state insurance fund in defraying actual and necessary expenses of administration of the fund.*
4. *Premium for insurance of state employees may not be paid out of interest accruing on state insurance fund.*

COLUMBUS, OHIO, April 4, 1927.

HON. EARLE STEWART, *Chairman General Division, Finance Committee, Ohio House of Representatives, Columbus, Ohio.*

DEAR MR. STEWART:—I beg to acknowledge receipt of your request for my opinion as follows:

"The General Division of the House Finance Committee desires your opinion as to whether or not the items in the Executive Budget of Ohio for 1927 and 1928 appearing on page 92, the first ten items on page 93 and the first item on page 186 of same can be authorized by the legislature to be paid one-half from the General Revenue Fund of the State of Ohio, and one-half from the interest received from the State Insurance Fund in the control of Department of Industrial Relations."

If you mean to ask whether or not the legislature can make an appropriation out

of the interest received on the state insurance fund, then my answer is, no. My reason for this answer is that the interest on the state insurance fund follows the fund and does not belong to the state of Ohio and therefore is not subject to your appropriation.

If by your question you desire to know whether or not you may authorize the Industrial Commission of Ohio to expend any part of the interest received from the state insurance fund in defraying the actual and necessary expenses of the administration of the fund, then my answer would be, yes.

I am of the opinion that there is neither a legal nor a moral obligation upon the state of Ohio to bear all or any part of the expenses of the administration of the state insurance fund.

Said fund was created under the authority granted in Section 35, Article II, of the Constitution of Ohio, and in so far as applicable to the question before us, provides as follows:

“For the purpose of providing compensation to workmen and their dependents for death, injuries or occupational disease, occasioned in the course of such workmen’s employment, laws may be passed establishing a state fund to be created by compulsory contribution thereto by employers, and administered by the state, determining the terms and conditions upon which payments shall be made therefrom * * *.”

It is fundamental that an administrator of any kind is entitled to be reimbursed out of the funds which he handles for all actual and necessary expenses incurred in the administration of the trust.

The fact that for the past thirteen years the state of Ohio has borne all of the expenses of administering this fund does not, in my opinion, estop the state in any way from discontinuing the payment of such expenses nor does it furnish an administrative interpretation of the constitutional provision. While what has been done in the past might furnish an administrative interpretation of the law as enacted, it would in no wise prevent the legislature from altering the law so long as no constitutional provision was violated.

The fact that in 1923, Section 35 of Article II of the Ohio Constitution was amended so as to authorize the use of part of the funds (not to exceed one per cent thereof in any year) to be expended for the investigation and prevention of industrial accidents and diseases does not, in my opinion, affect the question under consideration. That simply allowed something to be done which could not have been done without the amendment. I am therefore of the opinion that the doctrine of *inclusio unius est exclusio alterius* has no application here.

Taking up the items in the budget to which you refer:

The item on page 186, Maintenance: H. Fixed Charges and Contributions, H 7 Insurance—Insurance State Employees, can not be taken by the state from the state insurance fund or from the interest thereon. If the state desires to continue the insurance of its employees, the legislature must make the appropriation from the state’s own funds to the state insurance fund.

As to the other items, it will be a question of fact whether or not they have to do with the administration of the state insurance fund. To the extent that these matters do have to do with the administration of the state insurance fund, the legislature may by appropriate law authorize the Industrial Commission of Ohio to pay such expenses of administering the fund from the interest received from the fund.

The policy of the enactment of such legislation rests solely with the legislature. However, should the legislature decide to enact such legislation, it is proper for me to point out that the present actuarial figures pertaining to the state insurance fund are doubtless based upon the assumption that all of the interest on said fund will accrue to the principal. If the legislature should decide to authorize the use of a part of said

interest for the payment of expenses of administration, an investigation should first be made to ascertain the percentage limit which actuarial experience shows may be safely used for expenses without disturbing the entire structure.

Respectfully,

EDWARD C. TURNER,
Attorney General.

273.

GASOLINE TAX—AN EXCISE TAX—DEFINITION OF EXCISE TAX—
GASOLINE TAX CONSTITUTIONAL.

SYLLABUS:

1. *An excise tax is placed upon the enjoyment of some particular privilege. It must be measured according to the reasonable value of the enjoyment of that privilege.*
2. *Proposed gasoline excise tax bill to provide revenues for supplying state's share of cost of construction and reconstruction of highways and abolishing railway grade crossings thereon probably constitutional.*

COLUMBUS, OHIO, April 4, 1927.

HON. DALLAS SULLIVAN, *Chairman, Committee on Highways, Ohio House of Representatives, Columbus, Ohio.*

DEAR MR. SULLIVAN:—I beg to acknowledge receipt of your letter of March 28th, reading as follows:

"The Committee on Highways of the House of Representatives, in cooperation with other committees of the House, has found it necessary to prepare a bill imposing an additional cent of tax on motor vehicle fuel, for the purpose of providing the state's share of the cost of highway construction. I am aware that from the standpoint of a lawyer, the best way to accomplish this purpose would probably be to amend the present law by increasing the rate and changing the provisions with respect to purpose and distribution. Certain extrinsic facts and conditions, however, demand a different course.

In the first place, the members of the committees have been repeatedly advised by persons claiming to represent organized motorists that any effort to increase the tax on motor vehicle fuel will be fought in the courts. For this reason, our members desire to let the present law stand without amendment and superimpose the additional tax, so that it may be assured that the present tax will not be involved in litigation that might arise.

It is possible the above purpose might be served by careful attention to the form of an amendment to the present law increasing the rate, but there are reasons based on expediency, but nevertheless sound and compelling, for imposing the additional tax in a separate measure, and allowing the present law to stand without direct amendment. We have prepared a bill along the above line and I am attaching a copy of the same and respectfully request your opinion as to whether the same is in workable form and will, if enacted, accomplish the purpose indicated. The proposed bill is prepared with reference to the present law, and you will note that in case the bill should be enacted into law, the tax imposed will be computed upon the basis of reports from dealers filed under the present law. The last two sections of the bill are designed to take care of the probable fractional month following the taking effect of