

The early history of the title of outlet numbered nine (9) in the Village of Oxford, of which the above described tracts are a part, is set out in Opinion No. 1047 of this office directed to you under date of October 17, 1929, and no discussion of the same will be made in this opinion. It is sufficient to note that upon examination of the abstract of title submitted I find that said Don Shera has a good and merchantable freehold title by perpetual leasehold to the above described property, free and clear of all encumbrances except the taxes for the last half of the year 1929, and except any land rents that may be due and payable, it appearing that the same have been paid up to the date of the certification of said abstract, to wit: March 20, 1930.

Upon examination of the warranty deed tendered by said Don Shera I find that the same has been properly executed and acknowledged by him and that the same is in form sufficient to convey his said freehold interest to the president and trustees of Miami University subject to the reservation that the grantor, his successors and assigns shall have the right to haul fuel over the above described sixty-three (63) foot tract of land for use on the premises adjacent thereto and immediately south thereof. In said deed there is a warranty against all encumbrances excepting only claims of Miami University.

Encumbrance estimate No. 47, which has been submitted as part of the files relating to the purchase of the above described property, has been executed in the manner required by law, and the same shows that there is a sufficient balance in the proper appropriation account to pay the purchase price of said property, to wit: the sum of four thousand dollars (\$4,000.00).

I am herewith returning, with my approval, said abstract of title, warranty deed and encumbrance estimate.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

1773.

MERGER—TOWNSHIP WITH MUNICIPALITY—LATTER ONLY ENTITLED TO FORMER'S GAS TAX PROCEEDS DUE AT TIME OF ABSORPTION.

SYLLABUS:

When the corporate limits of a city or village become identical with those of a township, such city or village is not entitled to such township's share of the motor vehicle fuel tax except such sum which may be due and payable out of the gasoline tax fund to the township at the time when the corporate limits become identical.

COLUMBUS, OHIO, April 12, 1930.

Bureau of Inspection and Supervision of Public Offices, State House, Columbus, Ohio.

GENTLEMEN:—I beg to acknowledge your letter of recent date which reads as follows:

“The pertinent part of Section 3512, G. C., reads:—

‘When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices,

regulating the disposition of their fees, their compensation, clerks and other officers and employees.'

Section 5541-8 G. C., as amended in House Bill No. 335, 113 O. L., provides in part that ten per cent of an excise tax on the sale of motor vehicle fuel shall be appropriated for and divided in equal proportions among the several townships within the state, etc.

Question: When the corporate limits of a city or village become identical with those of a township, and all township offices are abolished and the duties thereof are assumed by municipal officers, is such municipality entitled to the above mentioned ten per cent of the motor vehicle fuel tax in addition to its proportion as a municipality?"

The State and the various political subdivisions of Ohio receive a proportionate share of the gasoline tax. The portion of the gasoline tax which is allotted to the townships of the State is provided for in Section 5541-8, General Code, and, as amended in House Bill Number 335 by the 88th General Assembly, reads, in part, as follows:

"Ten 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, widening and reconstructing the public roads and highways within such township. Provided, however, that such funds shall be used by the township trustees for the purpose of constructing, widening and reconstructing unimproved dirt roads of the secondary or county system of highways within the township, unless there be no unimproved dirt roads of the secondary or county system of highways within such township, in which event such funds may be used for constructing, widening and reconstructing such township roads as the township trustees shall designate."

Your communication raises the question whether such portion payable to a township may be paid to a city or a village when the corporate limits of such a city or village become identical with that of a township. Section 3512 of the General Code, a portion of which is quoted in your letter, reads as follows:

"When the corporate limits of a city or village become identical with those of a township, all township offices shall be abolished, and the duties thereof shall thereafter be performed by the corresponding officers of the city or village, except that justices of the peace and constables shall continue the exercise of their functions under municipal ordinances providing offices, regulating the disposition of their fees, their compensation, clerks and other officers and employes. Such justices and constables shall be elected at municipal elections. All property, moneys, credits, books, records and documents of such township shall be delivered to the council of such city or village. All rights, interests or claims in favor of or against the township may be enforced by or against the corporation."

The Supreme Court of Ohio has had occasion to interpret the extent and the effect of a merger under Section 3512 of the General Code, quoted *supra*. In *McGill*

vs. *State*, 34 O. S. 228, the court in construing Section 3512, General Code, stated as follows:

“The act preserved the corporate existence of such township for the sole purpose of electing justices of the peace and constables, evidently to meet the constitutional requirements that justices of the peace shall be elected by townships but that for all other purposes the township organization in this class of cities and villages was abolished.”

It would seem reasonable, from the above interpretation, to conclude that the effect of Section 3512 of the General Code is not to abolish the township as a territorial subdivision of the State nor as an agency of civil government, but rather it is the abolition of the township offices. Reasoning from this interpretation, it by no means follows that any functions that might be properly termed township functions are abolished when the territorial limits of the township and the municipality become coextensive; however, since the offices are abolished, it is doubtful whether the provisions in Section 5541-8, General Code, can be carried out.

Some doubt arises as to the meaning of the last sentence contained in Section 3512, which sentence reads as follows:

“All rights, interests or claims in favor of or against the township may be enforced by or against the corporation.”

It may well be argued that the above sentence would entitle a city or a village to that share which is payable to a township under Section 5541-8. However, I am inclined to the view that the rights, interests and claims as contemplated by Section 3512 are only such as existed at the time of the merger and not such rights, interests and claims as would accrue thereafter. The Supreme Court in the case of *Barth vs. State*, 107 O. S. 154 in interpreting the distribution of fines under the Crabbe Act, stated in the course of its opinion as follows:

“When the boundaries of a city have been enlarged to include an entire township, any claim which the township would have had to fines and forfeitures under the state prohibition law but for the merger now inures to the city.”

Further support for my conclusion may be gained by reading Section 3509 which relates to the effect of surrender of corporate rights, and which reads, in part, as follows:

“The surrender of corporate rights as herein provided for shall not affect rights accrued or liabilities incurred by such city or the power to settle claims, dispose of property or levy and collect taxes to discharge liabilities incurred, but shall remain in force and effect as also the corporate character of such municipal corporation in respect thereto as though no surrender has been made.”

You will note that all of the rights and liabilities referred to in the above quoted section are only such as have accrued at the time of the surrender of the corporate rights.

The gasoline tax fund is in the nature of a trust fund and continues to retain such character when in the hands of various political subdivisions. In conformity with the basic principles for which the gasoline tax was levied the Legislature has placed definite and restrictive provisions as to the purposes for which the gasoline tax fund may be used.

When the limits of a city or an incorporated village become identical with the limits of any township, that city or village assumes the burden of caring for the streets and highways out of the share of the gasoline tax fund which is allotted to municipal corporations as provided in Section 5541-8.

In an opinion of this office found in the Opinions of the Attorney General for 1925, p. 400, the then Attorney General, in discussing Section 6971 which relates to an appropriation by the General Assembly out of the general revenue fund of the State for the use annually in each township, held as follows:

"That part of the appropriation which would be available for the use in the townships of a county, but for which no application is made, may not be divided among the counties making application."

In view of the above considerations and in specific answer to your inquiry, I am of the opinion that when the corporate limits of a city or village become identical with those of a township, such city or village is not entitled to such township's share of the motor vehicle fuel tax except such sum which may be due and payable out of the gasoline tax fund to the township at the time when the corporate limits become identical.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1774.

MERGER—TOWNSHIP WITH CITY—PROPER PERSON TO ISSUE
HUNTER'S AND TRAPPER'S LICENSES DETERMINED.

SYLLABUS:

1. *When a township becomes coterminous with a non-charter city, the city auditor becomes the proper person to issue a hunter's and trapper's license.*
2. *When a township becomes coterminous with a charter city, the fiscal officer of the city, determined by reference to the charter provisions, may issue a hunter's and trapper's license.*

COLUMBUS, OHIO, April 12, 1930.

HON. JOHN W. THOMPSON, *Commissioner, Division of Conservation, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—I am in receipt of a communication over the signature of Carl L. Van Voorhis, Assistant Commissioner, requesting my opinion on the following inquiry:

"We have had requests from the auditors or clerks of certain cities for the privilege of issuing hunter's and trapper's licenses. Section 1432 G. C. reads in part as follows:

'Hopper issued. Hunter's and trapper's license shall be issued by the clerk of the Common Pleas Court, village and township clerks,' etc.

The above mentioned auditors and clerks claim that their city limits are identical or coterminous with the township lines in which the said city is located.

Section 3512 G. C. reads in part as follows:

'When the corporate limits of a city or village become identical with