

It appears that the first eleven pages of the revised specifications have been adopted in substantial conformity with suggestions made by the government of the United States through its Bureau of Public Roads, it being the desire of the Federal Government that in granting federal aid each state shall adopt standard specifications in so far as the same are not in conflict with local state laws.

The data submitted by the Federal Government for consideration by the State of Ohio in a large measure had been adopted by the American Association of State Highway Officials as a tentative, standardized text entitled "General Requirements and Covenants."

Inasmuch as many of the terms used in the specifications are those which are commonly and acceptably used in engineering practice, the engineers in charge of the work of revising said specifications, in the Department of Highways and Public Works, were called upon for the purpose of interpreting certain of said terms.

It has been deemed advisable to make numerous additions and corrections to these specifications and where additions or corrections have been made, the same have been accomplished by the making of pencil notations appearing in the body of the specifications. In Section 9-2 under the heading "Scope of Payment" where the words following the word "in" and preceding the word "consequence" were not legible, these words have been rewritten and attached to said specifications under the said paragraph heading.

If the specifications, contract and bond forms are printed in accordance with the additions and corrections noted, and are then resubmitted to me, I will approve them.

I am returning herewith the revised specifications, contract and bond forms to you for such additions and corrections as are noted therein.

Respectfully,

EDWARD C. TURNER.

*Attorney General.*

452.

APPROVAL, NOTES OF MECCA TOWNSHIP RURAL SCHOOL DISTRICT, TRUMBULL COUNTY—\$8,500.00, AND NELSONVILLE CITY SCHOOL DISTRICT, ATHENS COUNTY—\$24,000.00.

COLUMBUS, OHIO, May 5, 1927.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

453.

TRANSFER OF FUNDS—TAX FUNDS PRODUCED UNDER SECTION 1222, GENERAL CODE, CANNOT BE TRANSFERRED—SURPLUS TO GO TO SINKING FUND—WHEN THERE IS A SURPLUS.

*SYLLABUS:*

1. *Funds produced by a tax levy, made by county commissioners or township trustees upon all the taxable property of a township, under the provisions of the third*

paragraph of Section 1222, General Code, are the proceeds of a special levy and special tax as those terms are respectively used in Sections 2296 and 5654, General Code, and cannot be transferred, and when there is in the treasury of any township a surplus of the proceeds from such a tax levy, which cannot be used or which is not needed for the purpose for which the tax was levied, by virtue of the provisions of Section 5654, supra, all of such surplus shall be transferred immediately by the proper officers, to the sinking fund of the township.

2. As long as there are any roads in a township which may be constructed or repaired under the provisions of any of the sections of the General Code contained in Chapter 18, Division II, Title III (Sections 1178 to 1231-10, inclusive), it cannot be said that there is a surplus of the proceeds of a special tax levied under the provisions of the third paragraph of Section 1222, General Code, or that such funds cannot be used or are not needed for the purpose for which the tax was levied.

COLUMBUS, OHIO, May 5, 1927.

HON. JOHN K. SAWYERS, JR., *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date which reads as follows:

“An unusual situation has arisen with regard to a fund raised by authority of Section 1222 of the General Code. This fund was raised by virtue of a tax levied by the township trustees under the provisions set out in the third paragraph of said Section 1222.

The fund raised by taxes amounted to the sum of \$9,000.00. The road, a state road, as completed cost \$5,000.00, leaving a balance in the fund in the sum of \$4,000.00. It is the desire of the township to use this sum in the construction of a county system road and I have been applied to to transfer the \$4,000.00 for that purpose.

The practical situation is that, strange to say, the state road did not cost nearly as much as it was anticipated it would. Therefore, a fund of \$4,000.00 is tied up for years unless it can be transferred to some other fund. Of course, it draws 2% but it is desired to use this money on county roads as the state road project is completed.

I am aware of the fact that the last clause of the first paragraph of Section 1222 of the General Code expressly prohibits the transfer of funds raised as indicated in such paragraph. The question is, does such prohibition extend to funds raised under the third paragraph of said Section 1222?”

You inquire as to whether or not the limitation placed upon funds raised by the levy of taxes by county commissioners upon all the taxable property in the county authorized in the first paragraph of Section 1222 of the General Code applies to funds derived from a tax levy by the county commissioners or township trustees upon all the property in the township under the third paragraph of said section.

Section 1222 of the General Code provides in part as follows:

“For the purpose of providing a fund for the payment of the county's proportion of the cost and expense of the construction, improvement, maintenance and repair of highways and of bridges in municipalities under the provisions of this chapter, the county commissioners are hereby authorized to levy a tax, not exceeding one and one-half mills, upon all the taxable property of the county. Such levy shall be in addition to all other levies authorized by law for county purposes, but subject, however, to the extent of one-half mill thereof, to the limitation upon the combined maximum rate for all

taxes now in force. The remaining one mill of said levy so authorized shall be in addition to all other levies made for any purpose or purposes, and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws. The proceeds of such levy shall be used solely for the purpose of paying the county's proportion of the cost and expense of constructing, improving, maintaining and repairing inter-county highways and main market roads or parts thereof in cooperation with the state highway department or the federal government or both; and the funds produced by such levy shall not be subject to transfer to any other fund, either by order of court or otherwise.

\* \* \* \* \*

*For the purpose of providing a fund for the payment of the proportion of the cost and expense to be paid by the interested township or townships for the construction, improvement, maintenance or repair of highways under the provisions of this chapter, the county commissioners or the township trustees are authorized to levy a tax not exceeding two mills upon all taxable property of the township in which such road improvement or some part thereof is situated. Such levy shall be in addition to all other levies authorized by law for township purposes and shall be outside the limitation of two mills for general township purposes, and subject only to the limitation upon the combined maximum rate for all taxes now in force. Where the improvement is made upon the application of the county commissioners said county commissioners shall levy the tax and where the improvement is made upon the application of the township trustees said township trustees shall levy the tax. \* \* \**

Your letter states that there is a balance remaining in the funds raised by taxation under authority granted in the third paragraph of Section 1222, supra, after a part of the funds so raised have been expended to pay the township's proportion of the cost of the construction or improvement of a "state road."

It will be noted that the money raised by virtue of the special levy under the third paragraph of Section 1222, supra, is for the purpose of providing a fund

*"for the payment of the proportion of the cost and expense to be paid by the interested township or townships for the construction, improvement, maintenance or repair of highways under the provisions of this chapter."*

The code sections of the chapter (Ch. 18, Div. II, Tit. III, entitled State Highway Department) starting with Section 1178, General Code, pertain to the state highway department and the construction, improvement, maintenance and repair of inter-county highways and main market roads under supervision of said department.

Were it not for the express provision contained in the last sentence of the first paragraph of the section under consideration to the effect that the funds, resulting from the tax of one and one-half mills levied by the county commissioners for the purposes specified in the section upon all the taxable property of the county, should "not be subject to transfer to any other fund, either by order of court or otherwise," your question would present no difficulty whatever.

Sections 2296 to 2302 of the General Code, inclusive, contain authority for the transfer of certain public funds and the method by which such funds may be transferred. Section 2296 reads as follows:

*"The county commissioners, township trustees, the board of education of a school district, or the council, or other board having the legislative power of a municipality, may transfer public funds, except the proceeds or balances*

*of special levies, loans or bond issues, under their supervision, from one fund to another, or to a new fund created under their respective supervision, in the manner hereafter provided, which shall be in addition to all other procedure now provided by law.*" (Italics the writer's).

Section 5654, General Code, provides as follows :

"The proceeds of a special tax, loan or bond issue shall not be used for any other purpose than that for which the same was levied, issued or made, except as herein provided. When there is in the treasury of any city, village, county, township or school district a surplus of the proceeds of a special tax or of the proceeds of a loan or bond issue which cannot be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund."

In view of the plain provisions of the two sections of the code last above quoted, the necessity for including the limitation contained in the last sentence of the first paragraph of Section 1222, *supra*, is not apparent. Clearly are the levies authorized by both the first and third paragraphs of this section special levies or special taxes. Not only are such levies for the special purposes specifically provided in the section, but a portion of the one and one-half mill levy authorized by the first paragraph, and all of the two mill levy permitted by the third paragraph are in addition to all other levies and "subject only to the limitation upon the *combined maximum rate* for all taxes now in force."

With reference to funds produced by a levy made under the provisions of the last paragraph of Section 1222, *supra*, in an opinion dated June 16, 1922, Opinions, Attorney General, 1922, Vol. I, p. 522, this department held as follows :

"Funds accruing from a levy made by township trustees under Section 1222, G. C., may not be used when the township trustees themselves propose to do a part of the work of improving an inter-county highway or main market road by original construction, leaving the remainder of the improvement to be done by the state, or by the state and county in cooperation."

In the opinion it was held as follows :

"Section 1223, among other things, authorizes the issuing of bonds by the county commissioners in anticipation of the collection of the tax named in Section 1222 when application for state aid is made by the county commissioners and when the levy of the taxes is made by the county commissioners. Said Section 1223 also contains the following provision :

' \* \* \* Where such construction, improvement or repair is made upon the application of the township trustees, such township trustees are hereby authorized to sell the bonds of the interested township in any amount not greater than the estimated compensation, damages, cost and expense of such construction, improvement or repair, and under like conditions hereinbefore prescribed for county commissioners. \* \* \* '

The outstanding feature of the provisions above quoted from Section 1222 is that the tax levy is authorized on account of improvements, etc., 'under

the provisions of this chapter.' The chapter thus referred to is composed of Sections 1178 to 1231-7 G. C., relating to the state highway department (now a part of the Department of Highways and Public Works).

\* \* \* \* \*

It has already been pointed out that by the express provisions of Section 1222 the levy authorized by that section is for construction, etc., 'under the provisions of this chapter.' The following out of the provisions of the chapter indicated involves an application by either the county commissioners or township trustees (Section 1191 and 1192 G. C.) for state aid. When such application is made, the improvement work is carried out by the Department of Highways and Public Works and not by county or township (Sections 1195, et seq.). Moreover, it is noted that Section 1222, G. C., in referring to a levy made by the county commissioners provides that 'the funds produced by such levy shall not be subject to transfer to any other fund, either by order of the court or otherwise.' While this provision is not carried into the paragraph above quoted relating specifically to a levy made by township trustees under Section 1222, clearly the latter levy is within the scope and purpose of the provision against transfer to any other fund. Certainly, neither the spirit nor letter of the last paragraph of Section 1222 would be complied with by the deliberate making of a levy under that paragraph with the intention of ultimately seeking the transfer of the proceeds to another fund which might be used in a manner different from a fund raised under Section 1222. This point becomes the clearer when it is borne in mind that the levy made by township trustees under favor of the last paragraph of Section 1222 is free from all tax limitations; whereas, certain other funds may only be raised within certain tax limitations. It is therefore the view of this department that the accruals of the levy mentioned in the last paragraph of said Section 1222 may be used by township trustees only where proceedings are carried out in accord with the chapter of which that section is a part."

From what has been said it seems clear that funds produced by a tax levy, made by county commissioners or township trustees upon all the taxable property of a township, under the provisions of the third paragraph of Section 1222, General Code, are the proceeds of a special levy and special tax as those terms are respectively used in Sections 2296 and 5654, General Code, and cannot be transferred, and that, when there is in the treasury of any township a surplus of the proceeds from such a tax levy, which cannot be used or which is not needed for the purpose for which the tax was derived, by virtue of the provisions of Section 5654, supra, all of such surplus shall be transferred immediately by the proper officers, to the sinking fund of the township.

In the application of Section 5654, supra, to the facts stated in your letter it must be remembered that the funds raised by the levy under consideration were for the purpose generally of *providing a fund* for the payment of the township's proportion of the cost and expense of the "construction, improvement, maintenance or repair" of state highways, under the supervision and with the cooperation of the State Highway Department, and *not* for the construction or improvement of any particular state aid project. As long, therefore, as there are any roads in the township which may be constructed or repaired under the provisions of any of the sections of the General Code contained in Chapter 18, Division II, Title III, supra, (Sections 1178 to 1231-10, inclusive) it cannot be said that there is a surplus of the proceeds of the special tax levied under the provisions of the third paragraph of Section 1222, General Code, under consideration, or that such funds cannot be used or are not needed for the purpose for which the tax was levied.

Specifically answering your question, I am of the opinion that, for the reasons

above set forth, funds produced by a tax levy, made by township trustees upon all the taxable property of the township, under the provisions of the third paragraph of Section 1222, General Code, cannot be transferred and used in the construction of a county system road.

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

454.

OHIO UNIVERSITY—PROPOSED CONTRACT FOR AUDITORIUM APPROVED.

*SYLLABUS:*

*Proposed entering into of contract for construction of auditorium at the Ohio University at estimated cost of approximately \$285,000, to be paid from funds in the sum of \$160,000 appropriated by the 86th. General Assembly and in the sum of \$130,000 donated through the efforts of the alumni of the university, which latter sum is to be placed in the hands and under the exclusive control of the Auditor of State, good and sufficient security for such sum being given to the auditor by the banks in which said sum is on deposit, approved.*

COLUMBUS, OHIO, May 5, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent request for my opinion upon the following:

“The 86th General Assembly, 1925, in Am. H. B. 517, appropriated \$160,000 for an Auditorium at Ohio University, Athens. Prior to this appropriation the Alumni of the University raised, through subscription, an approximate net amount of \$130,000 to be used in the construction of the same building.

These funds approximating \$290,000 were intended to be and are to be used for the construction of the Auditorium, which, when complete, will become the property of the State.

A large proportion of the subscribed funds are on deposit in Athens banks or are in Government bonds, and the remainder of them are secured by subscription notes. The deposited funds and bonds are drawing approximately 4 per cent. interest per annum.

Drawings and specifications have been prepared for the construction work. Bids thereon were received April 2nd, 1927, which show a total construction cost, including architectural services, of approximately \$285,000.

An opinion is asked on the following questions:

(1) Can legal contracts be entered into on which payments may be made from both the appropriated and the subscribed funds?

Note: It is desired to make the payments during the first part of the