

I am therefore of the opinion that, even though under the method of book-keeping used by banking institutions in Ohio, reserves for contingencies and reserves for bills payable are an inconsistency, and should not be reflected on the books of the company, yet where the superintendent of banks orders a bank either to decrease the valuation of its assets to the extent of a sum specified or to set up a reserve to the extent of the sum by which such assets should be depreciated, such reserve must be taken into consideration in computing the book value of the shares of the bank.

Specifically answering your inquiries it is my opinion:

1. The words "taxable deposits" as used in the so-called "Intangible Tax Law" include certificates of deposit, whether negotiable or non-negotiable, certified checks, accounts deposited with a bank for a particular purpose, such as escrow, sinking fund, bond and coupon accounts and deposits created by deposit of checks on other banks against which the depositor has the right to draw.

2. The term "taxable deposits" as used in the so-called "Intangible Tax Law" does not include checks endorsed to a bank for collection, or those in which the title to the check does not pass to the bank, and against which the depositor does not have the right to draw, or sums of money deposited by the bank with its own checking department against which dividend checks have been drawn but have not yet been presented for payment on tax listing day.

3. When a bank maintains its accounting records as required by section 710-111, General Code, such corporation in determining the book value of its shares, may not deduct from the capital and surplus reserves for taxes, whether due and payable, but when it has set up a reserve at the direction of the Superintendent of Banks, who had directed that a certain sum be either deducted from its assets or a reserve be set up equal to such sum, such item of reserve should be considered and deducted from the value of the bank's investment assets in determining the book value of the shares of the bank for the purposes of taxation.

Respectfully,

GILBERT BETTMAN,

Attorney General.

4677.

DIRECTOR OF HIGHWAYS—MAY LEASE EQUIPMENT FOR ROAD REPAIRS FROM MOTOR VEHICLES AND GASOLINE TAX FUNDS—EXCEPTION REGARDING REMOVAL OF SNOW—COMPETITIVE BIDDING NOT REQUIRED.

SYLLABUS:

The director of highways has the authority to lease equipment necessary for the maintenance of state highways and the cost thereof may be paid out of the funds derived by the state highway department from the registration of motor vehicles and from the gasoline excise tax levied by virtue of section 5527, General

Such director, in leasing such equipment, is not required to comply with sections 1226-1 and 1226-2, General Code, which relate to competitive bidding.

Such director has no authority to lease equipment necessary for the removal of snow from the state highways.

COLUMBUS, OHIO, October 8, 1932.

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

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“We respectfully request your opinion on the following questions concerning the Department of Highways:

1. Does the Director of Highways have authority to lease or rent equipment? If so, is this authority limited to certain funds?
2. Do the competitive bid provisions of Sec. 1226-1 and 1226-2 apply to the rent or lease of equipment?

Authority to purchase or lease equipment necessary for maintenance of state highways is given to the director of highways by section 1211, General Code. This section reads as follows:

“The funds derived by the state highway department from the registration of automobiles shall be used for the reconstruction, widening, repairing, resurfacing and maintaining of the state system of highways. The director may use such part of said funds as may be necessary in establishing a system of patrol or gang maintenance on the state system of highways and for that purpose may employ such patrolmen, laborers and other persons and teams and purchase or lease such oilers, trucks, machinery, tools, material and other equipment and supplies as may be necessary.”

Section 1224-1a, General Code, gives to the director the authority only to purchase equipment which is necessary in the removal of snow from the state highways. The power to purchase does not include the power to lease. In Opinions of the Attorney General for 1928, Vol IV, page 2898, the following is said:

“I have found no authority which would justify the conclusion that the word ‘purchase’ ever includes the words ‘lease’ or ‘rent’. From a study of the definitions given for the word ‘purchase’ by lexicographers and by courts, no other conclusion is possible than that, where authority is given to purchase, it implies the acquisition of the property in, or title to, the thing purchased.”

Of course, this is not done when the property is leased. See also Opinions of the Attorney General for 1928, Vol. IV, page 2978.

I am therefore of the opinion that the director of highways has the authority to lease equipment necessary for the maintenance of the state highways but not equipment necessary for the removal of snow therefrom.

Section 1211, General Code, provides, among other things, that for the purpose of leasing equipment necessary for maintenance the director may use such part of the funds derived by the state highway department from the registration of automobiles as may be necessary therefor. With reference to these funds, section 6300-2, General Code, provides in part as follows:

"Fifty per centum of all taxes collected under the provisions of this chapter shall be paid by the county auditor, monthly, to the commissioner of motor vehicles who shall pay the same into the state treasury to the credit of the 'state maintenance and repair fund.'"

Section 5537, General Code, provides that the state's share of the funds derived from the gasoline excise tax under authority of section 5527 "shall be apportioned to and expended by the department of highways of the state of Ohio for the purpose of maintaining, repairing, and keeping in passable condition for travel the roads and highways of the state now or hereafter required by law to be maintained by the department of highways of this state."

It has been held in the case of *State, ex rel., vs. Columbus*, 21 O. A. 1, and in several opinions of the Attorney General commencing with the one in Vol. I, page 154, of the Opinions of the Attorney General for 1927, that the money derived from the gasoline excise tax may be used in the purchase of necessary road equipment to be used exclusively toward the maintenance and repair of roads, and the same reasoning would apply in case of the leasing of equipment. The state's share of the additional gasoline and excise tax levied by virtue of section 5541-1, General Code, can be used only for the purpose of constructing, widening and reconstructing highways and of paying the state's share of grade crossing eliminations, and therefore cannot be used by the highway department to purchase or lease equipment for maintenance purposes.

I am therefore of the opinion that the rental cost of equipment necessary for the maintenance of state highways, which is leased by the director, may be paid for out of funds derived by the state highway department from the registration of motor vehicles and from the gasoline excise tax levied by virtue of section 5527, General Code.

The provisions of sections 1226-1 and 1226-2, General Code, requiring competitive bidding apply to the exchange and purchase of equipment and since, as hereinbefore pointed out the term "purchase" does not include the term "lease", these provisions cannot apply where the director leases equipment.

I am therefore of the view that the director in leasing equipment to be used for road maintenance is not required to comply with sections 1226-1 and 1226-2, General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

4678.

INDIGENT PERSON—PERMANENTLY DISABLED THROUGH TUBERCULOSIS—COUNTY MAY RENDER RELIEF IN HOME.

SYLLABUS:

A county may, under proper circumstances, afford relief in the home to a person permanently disabled through tuberculosis.

COLUMBUS, OHIO, October 10, 1932.

HON. SCOTT GRAVES, *Prosecuting Attorney, Port Clinton, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows: