

steam system of heating, accept such bid for steam heating, would be to effectively avoid the provisions of the law requiring competitive bidding and would open a way of easy evasion of the statute. Under the circumstances, since the board desires steam heating, all bids now submitted should be rejected. The board should then re-advertise for bids for steam heating.

In view of the foregoing, I am of the opinion that when a board of education has advertised for bids for heating and ventilating a school building, which advertisement states that bids are to be in accordance with the plans and specifications of the architect on file with the clerk of the board, which plans and specifications call for a hot air system of heating, such board of education has no authority, pursuant to such advertisement, to contract for the installation of a steam system of heating for such school building.

Respectfully,
GILBERT BETTMAN,
Attorney General.

606.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENT IN
FAYETTE COUNTY.

COLUMBUS, OHIO, July 9, 1929.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

607.

TAX AND TAXATION—GASOLINE TAX IMPOSED BY HOUSE BILL
NO. 335, 88TH GENERAL ASSEMBLY—TOWNSHIP'S SHARE.

SYLLABUS:

1. *Under the provisions of House Bill No. 335, enacted by the 88th General Assembly, township trustees shall first use the money derived from the gasoline tax for the purpose of constructing, widening and reconstructing unimproved dirt roads of the county system within the township.*

2. *If there be no unimproved dirt roads of the county highway system within the township, the township trustees may use such funds for the purpose of constructing, widening and reconstructing such township roads as they may designate. In the improvement of such township roads, the township trustees may widen a hard-surface road by grading a surface to be used as a double track adjacent to such hard surface.*

COLUMBUS, OHIO, July 10, 1929.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your recent communication reads:

“Where a township road was originally built as a double track, and the

dirt road on said grade has receded below the level of the stone, can the Gasoline Fund apportioned to the township be used by the trustees for labor in grading said dirt way back to its original level?"

Gasoline tax for the use of township roads arises by reason of the provisions of House Bill No. 335, as enacted by the 88th General Assembly of Ohio. Section 5541-1 of the General Code, which is a part of said act, provides in part:

"For the purpose of providing revenue for supplying the state's share of the cost of constructing, widening and reconstructing the state highways of this state, and also for supplying the state's share of the cost of eliminating railway grade crossings upon such highways, and also for enabling the several counties, townships and municipal corporations of the state to properly construct, widen, reconstruct and maintain their public highways, roads and streets, and supplementing revenue already available for such purposes, there is hereby levied and imposed on the sale and use of each gallon of motor vehicle fuel sold or used by any dealer, as herein defined, within the State of Ohio, an excise tax of two cents, which tax shall be in addition to the tax imposed by G. C., Sec. 5527; subject, however, to the specific exemptions set forth in said G. C., Sec. 5527. * * * * ."

Section 5541-7, General Code, also a part of said act, among other things provides that balances of the taxes collected under the provisions of the act, after the credits made to the rotary fund as provided for therein, shall be credited to a fund to be known as the highway construction fund and shall be used solely for the purposes enumerated in Section 5541-1, hereinbefore referred to. The section provides that no disbursements shall be made except in pursuance of specific appropriations made by the General Assembly.

Section 5541-8, General Code, which is also a part of said act, in part provides:

"When appropriated by the General Assembly such highway construction fund shall be appropriated and expended in the following manner and subject to the following conditions:

* * * * *

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. 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; * * * * .”

Analyzing the provisions of the sections hereinbefore quoted and referred to, there appears to be clear authority for using such funds for widening, reconstructing and maintaining public highways, roads and streets. However, after mentioning the broad power in the purpose clause of said act, Section 5541-8, General Code, specifically limits said power in certain respects. While such moneys are paid to townships for the sole purpose of constructing, widening and reconstructing the public roads within such township, said section contains a proviso that such moneys shall be used by the township trustees for the purpose of constructing, widening and reconstructing unimproved roads of the secondary system or county system of highways if there be such. If there are no such unimproved dirt roads of the secondary system within such township, then the funds may be used for constructing, widening and reconstructing such township roads as the township trustees shall designate. From the foregoing, it is believed that if there are no unimproved dirt roads of the county secondary system within the township to which you refer, then the township trustees may use such funds for the improvement of township roads and in such improvement the trustees may widen any road irrespective of the type of improvement.

Based upon the foregoing and in specific answer to your inquiry, you are advised that:

(1) Under the provisions of House Bill No. 335, enacted by the 88th General Assembly, township trustees shall first use the money derived from the gasoline tax for the purpose of constructing, widening and reconstructing unimproved dirt roads of the county system within the township.

(2) If there be no unimproved dirt roads of the county highway system within the township, the township trustees may use such funds for the purpose of constructing, widening and reconstructing such township roads as they may designate. In the improvement of such township roads, the township trustees may widen a hard-surface road by grading a surface to be used as a double track adjacent to such hard surface.

Respectfully,

GILBERT BETTMAN,
Attorney General.

608.

COUNTY COMMISSIONERS—APPROPRIATION FROM GENERAL FUND
TO MEET EXPENSES INCURRED IN DEFENDING CIVIL SUIT
AUTHORIZED.

SYLLABUS:

County commissioners may make an appropriation from the general fund of the county to pay the expense incurred by the prosecuting attorney in making an investigation and preparing a defense for the county commissioners in a civil suit brought against them in their official capacity.

COLUMBUS, OHIO, July 11, 1929.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

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

“Last year, 1928, the funds in the possession of this office under provision