

repair funds cannot be expended for new constructions. This fact strengthens the position that it was the intent of the legislature to limit the expenditure of this fund for materials and labor in the maintenance and repair of roads and streets, the foundation of which are already in existence.

* * * * *

From a practical standpoint, it seems inconceivable that a county or municipality would use such equipment as you describe exclusively in connection with the maintenance or repair of highways. Undoubtedly, such equipment would be used for construction of new highways and other purposes. Therefore, it will be seen that if by the most liberal construction the position were taken that by implication such equipment could be purchased, its use would necessarily be limited strictly to the maintenance and repair of highways. Such a construction does not seem tenable."

It is my opinion that in view of the holding of the court in the case of *State ex rel. Crabbe, Atty. Gen., vs. City of Columbus, et al.*, supra, the above quoted opinion of this department dated July 24, 1920, and reported at page 820 of Vol. 1 of the Opinions of the Attorney General of that year, must be modified to the extent of saying that by virtue of the general authority contained in Section 7200, supra, county commissioners may lawfully expend that portion of the gasoline tax funds allotted to the county by virtue of the provisions of Section 5537, supra, for the purpose of purchasing machinery, tools or the other equipment to be used *solely* for the purpose of maintaining and repairing the county system of roads and highways provided for in Section 6966 and related sections of the General Code.

I am further of the opinion, however, that no part of the gasoline tax funds apportioned to a county by virtue of Section 5537, General Code, may be expended by the county commissioners for the purpose of purchasing machinery, tools or other equipment to be used in the construction of roads in the county, or to be used in the maintenance and repair of roads, other than the roads in the county system of roads and highways designated in accordance with the provisions of Section 6966 and related sections of the General Code.

Respectfully,

EDWARD C. TURNER,

Attorney General.

275.

STATE TREASURY—MONEY PAID INTO TREASURY BY MISTAKE.

SYLLABUS:

Money paid into the state treasury by mistake cannot be refunded to the person entitled thereto until the legislature has made a specific appropriation therefor.

COLUMBUS, OHIO, April 4, 1927.

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

DEAR SIR:—This will acknowledge receipt of your communication in which you request my opinion in answer to the following question:

"In the event that fines are deposited in the State Treasury through

clerical error, and this fact is established beyond dispute, may I draw my warrant in refundment of such moneys without a specific appropriation made for such purposes?"

I understand this question arises because a remitting officer in sending fines to the state treasurer remitted more than the state was entitled to receive and that this amount was deposited in the treasury of the state.

Article II, Section 22 of the Constitution of Ohio reads as follows:

"No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years."

In pursuance of this provision of the Constitution, laws have been enacted providing for biennial appropriations to be made by the General Assembly for the various purposes for which appropriations are made and warrants drawn by the auditor of state on the state treasury.

In addition to this the legislature from time to time passes what is known as the "Sundry Appropriation Bill" which appropriates from the state treasury moneys to pay, among others, such obligations as the one in question.

If the remitting officer in this case remitted more than the state was entitled to have in depositing the fines, and that fact is established beyond dispute, as you state in your letter, the person undoubtedly is entitled to be reimbursed, but by virtue of the above mentioned constitutional provision the people have vested the legislature with the power and authority to determine that fact.

The language of this provision is plain and unambiguous and must be followed.

It is therefore my opinion that money paid into the state treasury by mistake cannot be refunded to the person entitled thereto until the legislature has made a specific appropriation therefor.

Respectfully,
EDWARD C. TURNER,
Attorney General.

276.

COUNTY COMMISSIONERS—AUTHORITY TO CONTRACT WITH MUNICIPALITY FOR WATER SUPPLY.

SYLLABUS:

The county commissioners of any county may contract with a municipality upon such terms as may be agreed upon, for the supplying of water to sewer districts outside the municipality or for the joint use with a municipality of water works systems and may contract with such municipality to convey to it any completed water mains which have been constructed for the use of any such sewer district when the territory included in such sewer district is annexed to the municipality.

COLUMBUS, OHIO, April 5, 1927.

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

GENTLEMEN:—I am in receipt of your communication of recent date in which you submit a copy of a certain ordinance which has been passed by the city commissioners of the city of Lima, authorizing the city manager to enter into a contract with