

829.

## APPROVAL, BONDS OF CONCORD RURAL SCHOOL DISTRICT, MIAMI COUNTY—\$6,800.00.

COLUMBUS, OHIO, September 4, 1929.

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

830.

## GASOLINE TAX—TOWNSHIP'S PORTION—TRUSTEES MAY CONSTRUCT TWO OR MORE ROADS SIMULTANEOUSLY WITH SUCH FUNDS.

## SYLLABUS:

*So long as the township trustees expend the proceeds of the gasoline tax for the purpose of constructing, widening or reconstructing the roads mentioned in Section 5541-8, as amended by the 88th General Assembly, they are the sole judges as to the amount to be expended on a given road, the nature of the improvement and the extent thereof. Furthermore, within the limitations above mentioned there is nothing to prevent them from undertaking two or more projects at the same time if the funds are available therefor.*

COLUMBUS, OHIO, September 4, 1929.

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

DEAR SIR:—Acknowledgment is made of your communication, which reads:

“There seems to be some controversy in this county as to whether the township share of the gas tax (under the Sullivan-Bostwick Act, may be divided and used on several roads, or whether one specific project on the county system of roads in said township must be completed by the use of this money before another road project may be taken up and improved.

I would be glad to have the advice of your office upon this point.”

Section 5541-8 of the General Code, as amended by the 88th General Assembly in the Sullivan-Bostwick 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 recon-

structing 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 in 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; and provided further that all such improvement of roads shall be under the supervision and direction of the county surveyor as provided in G. C. Section 3298-15k; and provided further that no obligation against such funds shall be incurred unless and until plans and specifications for such improvement, approved by the county surveyor, shall be on file in the office of the township clerk; and provided further that all disbursements of such funds shall be upon vouchers of the township trustees approved by the county surveyor. The trustees of any township are hereby authorized at their discretion to pass a resolution permitting the county commissioners to expend such township's share of said funds, or any portion thereof, for the improvement of such roads within said township, as may be designated in said resolution."

In construing the above sections, I have heretofore indicated that it is solely in the discretion of the trustees as to what unimproved dirt roads of the county system they will improve; or, in the event there are no such roads, it is in the discretion of said trustees as to what other roads they will improve. Of course, any such undertaking must be for the purpose of constructing, widening or reconstructing such roads as contra-distinguished from maintenance and repair. Any such improvement must be done under the supervision of the county surveyor, although he has no power to determine what roads are to be improved.

The section authorizes the expenditure of such moneys on roads; and I have found nothing that would indicate that they may undertake only one improvement at one time. Of course, the trustees may not legally make expenditures in excess of the amount of money available for such purposes.

You are specifically advised, therefore, that so long as the township trustees expend the proceeds of the gasoline tax for the purpose of constructing, widening or reconstructing the roads mentioned in Section 5541-8, as amended by the 88th General Assembly, they are the sole judges as to the amount to be expended on a given road, the nature of the improvement and the extent thereof. Furthermore, within the limitations above mentioned there is nothing to prevent them from undertaking two or more projects at the same time if the funds are available therefor.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*