

1175.

CIGARETTE TAX—HOW DISTRIBUTED WHEN VILLAGE PROVIDING  
THE TAX MONEY IS PART OF A TOWNSHIP.

*SYLLABUS:*

*Under the provisions of Section 5901, General Code, when a village is part of a township, the cigarette tax paid on account of business conducted in such village should be distributed, one-eighth to the poor fund of the county and one-eighth to the poor fund of the township except in cases where such county has no poor fund, in which event such two-eighths of the tax so paid should be credited to the poor fund of the township.*

COLUMBUS, OHIO, November 9, 1929.

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

GENTLEMEN:—Your letter of recent date is as follows:

“You are respectfully requested to furnish this department with your written opinion upon the following:

Section 5901 of the General Code provides for the distribution of that part of the cigarette tax collected which is not distributed to the state. In the first part of the section it is provided that when the business is conducted in a municipal corporation one-eighth of the money paid shall be paid into the treasury of such corporation. In the latter part of the section it is provided that where such money is paid on account of such business being conducted in the township outside of a city one-eighth shall be credited to the poor fund of the county and one-eighth to the poor fund of the township.

Question: Where a municipal corporation is a part of a township and the tax is collected in such municipal corporation, which would be in a township outside of a city, is the one-eighth in such instance payable to the township or to the municipal corporation?”

Section 5900, General Code, provides that three-fourths of the cigarette tax money shall be paid to the State. Section 5901, General Code, to which your inquiry refers, provides for the distribution of the remaining one-fourth of this money. The section is as follows:

“One-eighth of the money paid into the county treasury on account of such business in a municipal corporation shall be paid, upon the warrant of the county auditor, into the treasury of such corporation to the credit of the police fund, or in a corporation having no police fund to the credit of the general revenue fund. The remaining one-eighth thereof shall be credited to the poor fund of such county; but in counties having no county infirmary it shall be credited to the infirmary fund or poor fund of the township, or city in which it was collected. In counties where such money is paid on account of such business conducted in a township outside of a city, one-eighth shall be credited to the poor fund of the county and one-eighth to the poor fund of the township; but in counties not having a poor fund, the last named two-eighths shall be credited to the poor fund of the township.”

While your question refers to the case where a municipal corporation is part

of a township, I assume that your reference is to a case where a village is part of a township since you state that the tax is collected in such municipal corporation which is in a township outside of a city. Municipal corporations are classified into cities and villages under Section 1, Article XVIII of the Ohio Constitution. The sole question for determination, therefore, is whether or not the provision in the last sentence of Section 5901, *supra*, for the distribution of such money when it is "paid on account of such business conducted in a township outside of a city" is applicable to the case where such money is paid on account of such business conducted in a township outside of a city but within a village which is part of such township. In other words, is the word "city", as used, applicable to a city as defined in the Constitution or is it used in the broader sense as applicable to any municipal corporation? Prior to amendment by the 86th General Assembly, this section was as follows:

"One-eighth of the money paid into the county treasury on account of such business in a municipal corporation shall be paid, upon the warrant of the county auditor, into the treasury of such corporation to the credit of the police fund, or in a corporation having no police fund, to the credit of the general revenue fund. The remaining one-eighth thereof shall be credited to the poor fund of such county; but in counties having no county infirmary, it shall be credited to the infirmary fund or poor fund of the township, village or city in which it was collected. In counties where such money is paid on account of such business conducted in a township outside of a municipal corporation, the last named two-eighths shall be credited to the infirmary fund or the poor fund of such township."

It is evident that under the provisions of this section prior to amendment by the 86th General Assembly, one-eighth of such money paid on account of business conducted in a village would, under all circumstances, be payable to the village. Although the 86th General Assembly did not amend the first sentence of the statute, the second and third sentences were amended with a definite view of distinguishing cities from villages, I am of the view that the striking out of the word "village" in the second sentence, and the change of the term "municipal corporation" to "city" in the third sentence is clearly indicative of a legislative intent that where such money is paid on account of business conducted in a village which is part of a township, one-eighth shall be credited to the poor fund of the county and one-eighth to the poor fund of the township except that in counties not having a poor fund these two-eighths shall be credited to the poor fund of the township. I realize that such an interpretation of the last sentence of this section under consideration is inconsistent with the first sentence thereof. The term "municipal corporation" in this first sentence includes both cities and villages. It must follow, therefore, that the first sentence of the section has no reference to villages where a village is a part of a township.

These views are strengthened by a consideration of the fact that it is contemplated that this money shall be credited to the poor fund. Villages do not ordinarily have a poor fund, it being the duty of cities and townships, under Section 3476, General Code, to afford public support or relief to all persons therein who are in a condition requiring it. This last named section has been considered by my predecessor in several opinions, holding that it is the duty of the township trustees to provide poor relief for those within the township outside of a city and the duty of the city officials to provide such relief for those residing in a city. Opinions of the Attorney General, 1927, Vol. III, p 1824; 1928, Vol I pp. 13,

80, 438. There is no reference in any of these opinions to any obligation upon the part of a village to provide a poor fund, and while a village may, if it should desire, provide such a fund under the Budget Law, there is apparently no obligation so to do, it being contemplated generally that the poor relief of those residing in a village shall be provided by the township in which such village is situated.

It appearing that the fundamental purpose of the section is to provide that this money shall be used for poor relief, my construction of the section, giving effect to the last sentence thereof rather than the first sentence, which as above noted is in conflict, is in keeping with the rule of statutory construction laid down in the case of *Industrial Commission vs. Hilshorst*, 117 O.S., 337. The second branch of the syllabus is as follows:

“Where different provisions of an act are in irreconcilable conflict, that provision which is most in harmony with the fundamental purpose of the statute must prevail.”

Specifically answering your question, I am of the opinion that under the provisions of Section 5901, General Code, when a village is part of a township, the cigarette tax paid on account of business conducted in such village should be distributed, one-eighth to the poor fund of the county and one-eighth to the poor fund of the township except in cases where such county has no poor fund in which event such two-eighths of the tax so paid should be credited to the poor fund of the township.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

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1176.

APPROVAL, BONDS OF BRECKSVILLE VILLAGE SCHOOL DISTRICT,  
CUYAHOGA COUNTY—\$319,000.00.

COLUMBUS, OHIO, November 9, 1929.

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

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1177.

APPROVAL, BONDS OF CITY OF DENNISON, TUSCARAWAS COUNTY  
\$20,632.28.

COLUMBUS, OHIO, November 12, 1929.

*Industrial Commission of Ohio, Columbus, Ohio.*