

"The Hughes Act was intended as a comprehensive health code, introducing some new features in health administration and making radical changes in the former laws; the state no longer dealt with municipalities, as such, directly, but created municipal health districts whose boundary lines were the same as the municipalities. This is evidenced by the first sentence of Section 1261-16, which shows the division of the state and the purposes for the division, in this language:

'For the purpose of local health administration, the state shall be divided into health districts.'

* * * * The question then is, was it the intention to abolish the municipal boards of health? Technically it would seem that such was the intention. The new board is not a municipal board, but a municipal district board. There can now be no such body known as the municipal board of health. * * * "

The conclusion of the Attorney General was reached after a consideration of the statutes hereinbefore mentioned and Section 3 of Article XVIII of the Ohio Constitution.

Without further discussion and in specific answer to your inquiry, it is my opinion that an ordinance passed by a municipality to the effect that any appointee receiving pay from the city must be a bona fide resident of the city, has no application to appointees of city health districts.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1491.

TAXES—MOTOR VEHICLE LICENSE AND GASOLINE—MUNICIPALITY'S PROCEEDS APPLICABLE FOR SALARIES AND EXPENSES OF ENGINEERS SUPERVISING STREET CONSTRUCTION.

SYLLABUS:

The salary and expenses of a group of engineers employed by a city for the sole purpose of preparing plans, specifications, and supervising the construction of street paving generally, may properly be paid from the proceeds of the motor vehicle and gasoline taxes.

COLUMBUS, OHIO, February 5, 1930.

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

GENTLEMEN:—This will acknowledge the receipt of your recent communication, which reads as follows:

"May the salaries and the expenses of a group of engineers employed by a city for the sole purpose of preparing plans, specifications and supervising the construction of street paving, be paid from the city's portion of the gasoline tax and motor vehicle license tax receipts, the total amount being less than the amount of such funds which may be expended for street construction and repaving?"

In view of the provisions of Section 5 Article XII of the Ohio Constitution,

to the effect that no tax may be levied except in pursuance of the provisions of law, and that the same shall be applied to the purposes for which the levy is made, your question necessitates a consideration of the statutes to determine the purposes for which the levies about which you inquire are made.

Section 6309-2 of the General Code, which relates to the distribution of the revenues arising from the motor vehicle tax, provides that the portion distributed to municipalities "shall constitute a fund which shall be used for the maintenance, repair, construction and repaving of public streets, and for no other purpose, and shall not be subject to transfer to any other fund." The section further provides that not more than fifty per cent of the total funds available during any year shall be used in such construction and repaving.

Section 5537, which relates to the distribution of the so-called first gasoline tax, provides that the portion of the tax distributed to municipalities "shall be used by such municipal corporation for the sole purpose of maintaining, repairing, constructing and repaving the public streets and roads within such corporation." The section then further contains the same limitation with reference to the expenditure of not more than fifty per cent of the total funds available during any one year for construction and repaving.

Section 5541-8, which relates to the distribution of the so-called second gasoline tax, provides that the portion of said tax distributed to municipalities shall be expended by each municipal corporation for the sole purpose of constructing, maintaining, widening and reconstructing public streets and roads within such municipal corporation.

In my Opinion No. 865, issued to your bureau under date of September 13, 1929, it was held, as disclosed by the syllabus, that:

"The salary of a city superintendent of streets, who performs general duties with reference to streets and sewers, may not legally be paid from the motor vehicle license and gasoline tax receipts, in whole or in part."

In my said opinion consideration was given to an opinion of the Attorney General, found in Opinions of the Attorney General for 1924, page 254, in which it was held that expenses of providing engineering for the special purpose of maintenance and repair, under the provisions of Section 6309-2, may legally be paid out of such maintenance and repair fund. Of course, at the time said opinion was rendered Section 6309-2 only authorized the use of said fund for maintenance and repair. Since said opinion was rendered, however, the language of the section has been broadened so as to authorize its use for construction and repaving as well as maintenance and repair, with limitations as to the amount that may be expended for such construction and repaving in any one year. In the same opinion of the Attorney General last referred to, it was held that part of the general expenses of the engineering department of a city, whose functions include the maintenance and repair of streets, may not be legally paid from the municipality's share of such license tax.

In my former opinion, as well as the opinion of my predecessor, to which I have referred, the case of *Longworth vs. Cincinnati*, 34 O. S. 101, was considered. In that case it was held:

"Where the surveying and engineering of such improvement were performed by the chief engineer of the city and his assistants, who were officers appointed for a definite period, at a fixed salary, which the law required to be paid out of the general fund of the city, the reasonable cost to the city, of such surveying and engineering, cannot be ascertained and

assessed upon the abutting property, as a necessary expenditure for the improvement.

If a superintendent of such an improvement is necessary, and one is employed by the city for that particular improvement, the amount paid by the city, for his services may properly be included in the assessment."

From the foregoing, it appears that where an engineer is employed for general services which employment requires services which do not come within the scope of the objects of the gasoline tax, he could not be paid from the tax funds to which you refer.

However, in the case you mention, the employment is for the purpose of constructing and repaving streets, which is clearly within the purpose for which the gasoline and motor vehicle license taxes are levied. It has been repeatedly held that machinery and equipment may be purchased with such funds for the purpose of maintenance. Likewise, it has been held that persons may be employed for such purpose and payment may be made therefor from said fund. It is obvious that engineering services in connection with street improvements are one of the basic requirements. Just as the services of an architect are essential in connection with the construction of a public building, the services of an engineer are imperative in connection with street improvements. In short, there would seem to be no logical distinction as a matter of law, between providing a maintenance department from such tax funds and providing for a construction and repaving service.

In specific answer to your inquiry it is my opinion that the salary and expenses of a group of engineers employed by a city for the sole purpose of preparing plans, specifications, and supervising the construction of street paving generally may properly be paid from the proceeds of the motor vehicle and gasoline taxes.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1492.

APPROVAL, BOND FOR THE FAITHFUL PERFORMANCE OF HIS
DUTIES AS RESIDENT DEPUTY—E. R. McCULLOUGH.

COLUMBUS, OHIO, February 5, 1930.

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

DEAR SIR:—You have submitted for my approval a bond in the penal sum of five thousand dollars, upon which the name of E. R. McCullough appears as principal and the name of Great American Indemnity Company appears as surety. Said bond is conditioned for the faithful performance of the duties of the principal as resident deputy assigned to Tuscarawas County.

Finding said bond in proper legal form, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.