

OPINION NO. 94-019

Syllabus:

The cost of removing underground fuel storage tanks used to fuel equipment and vehicles of the county engineer's office is a "cost of operation of the office of county engineer," two-thirds of which "shall be paid out of the county's share of

the fund derived from the receipts from motor vehicle licenses, as distributed under [R.C. 4501.04], and from the county's share of the fund derived from the motor vehicle fuel tax as distributed under [R.C. 5735.27], " R.C. 315.12(A).

To: Russell V. Leffler, Huron County Prosecuting County, Norwalk, Ohio
By: Lee Fisher, Attorney General, April 15, 1994

Your predecessor asked whether motor vehicle license and fuel tax funds available to the county may be used for the removal of underground fuel storage tanks located at the county engineer's complex. As stated in the opinion request: "Approximately ten years ago the predecessor to the current Huron County Engineer installed two underground fuel storage tanks at his facilities in Norwalk, Ohio. The fuel tanks were to provide the fuel necessary to run equipment and vehicles at the Huron County Highway Department."

Restrictions on the Use of Motor Vehicle License and Fuel Tax Revenues

Article XII, §5a of the Ohio Constitution states:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

Art. XII, §5a thus limits the use of motor vehicle license and fuel tax revenues to the purposes enumerated therein. As interpreted in *Grandle v. Rhodes*, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph one): "Section 5a, Article XII of the Constitution of Ohio, closely restricts the expenditure of the fees and taxes received in relation to vehicles using the public highways to purposes *directly connected* with the construction, maintenance and repair of highways and the enforcement of traffic laws...."(Emphasis added.)

In providing for such fees and taxes subject to art. XII, §5a of the Ohio Constitution, the General Assembly has enacted numerous statutes governing the levying, collection, distribution, and use of motor vehicle license and fuel tax moneys. See, e.g., R.C. 4501.04 (distribution of motor vehicle tax to political subdivisions and permitted uses); R.C. 4503.02 (levy of annual motor vehicle license tax and permitted uses of revenue); R.C. 4504.02 (permitted uses of county motor vehicle license tax); R.C. 5735.05 (imposition and purposes of motor vehicle fuel excise tax); and R.C. 5735.27 (distribution and use of gasoline excise tax fund and highway operating fund). Thus, in addition to the limitations imposed by art. XII, §5a upon the use of motor vehicle license and fuel tax revenues, there may be statutory limitations upon the expenditure of such revenues. See generally *State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 106 N.E. 41 (1914) (where a statute limits the expenditure of public funds, the funds may not be spent for a purpose not specified in the statute).

Motor Vehicle License Tax Revenues

The purposes for which moneys paid to the counties from the annual motor vehicle license tax levied under R.C. 4503.02 may be used are set forth in R.C. 4501.04, which states in pertinent part:

The county portion of ... funds [paid to the district of registration] ... shall be used for the planning, maintenance, repair, construction, and repaving of public streets, and maintaining and repairing bridges and viaducts; the payment of principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under such chapter; *and for no other purpose.*

....
(C) Forty-seven per cent of all such moneys shall be for the use of the county ... for the planning, construction, reconstruction, improvement, maintenance, and repair of roads and highways; maintaining and repairing bridges and viaducts; and the payment of principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under such chapter. (Emphasis added.)

Additional funds may be available to the county from a county motor vehicle license tax, as prescribed by R.C. 4504.02, for the following purposes:

planning, constructing, improving, maintaining, and repairing public roads, highways, and streets; maintaining and repairing bridges and viaducts; paying the county's portion of the costs and expenses of cooperating with the department of transportation in the planning, improvement, and construction of state highways; paying the county's portion of the compensation, damages, cost, and expenses of planning, constructing, reconstructing, improving, maintaining, and repairing roads; paying any costs apportioned to the county under [R.C. 4907.47]; paying debt service charges on notes or bonds of the county issued for such purposes; paying all or part of the costs and expenses of municipal corporations in planning, constructing, reconstructing, improving, maintaining, and repairing highways, roads, and streets designated as necessary or conducive to the orderly and efficient flow of traffic within and through the county pursuant to [R.C. 4504.03]; purchasing, erecting, and maintaining street and traffic signs and markers; purchasing, erecting, and maintaining traffic lights and signals; and to supplement revenue already available for such purposes....

Motor Vehicle Fuel Tax Revenues

R.C. 5735.05 levies an excise tax on motor vehicle fuel for the purposes set forth therein. A portion of the motor vehicle fuel tax is distributed to the counties in accordance with R.C. 5735.27(A)(3), which states that such funds:

shall be used only for the purposes of planning, maintaining, and repairing the county system of public roads and highways within such county; the planning, construction, and repair of walks or paths along county roads in congested areas;

the planning, construction, and maintenance of suitable buildings for the housing of county road machinery; the payment of costs apportioned to the county under [R.C. 4907.47]; the payment of principal, interest, and charges on bonds and other obligations issued pursuant to [R.C. Chapter 133] for the purpose of acquiring or constructing roads, highways, bridges, or viaducts or acquiring or making other highway improvements for which the board of county commissioners may issue bonds under that chapter; and the purchase, installation, and maintenance of traffic signal lights.

R.C. 5735.27(A)(4) distributes to the counties additional sums to be used for certain of the specific purposes set forth in R.C. 5735.27(A)(3).

Partial Funding of County Engineer's Office

In addition to the above-mentioned statutes specifying the purposes for which a county may use its share of motor vehicle license and fuel tax revenues, R.C. 315.12 states in pertinent part:

(A) Two thirds of the *cost of operation* of the office of county engineer, including the salaries of all of the employees and the cost of the maintenance of such office as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of the county's share of the fund derived from the receipts from motor vehicle licenses, as distributed under [R.C. 4501.04], and from the county's share of the fund derived from the motor vehicle fuel tax as distributed under [R.C. 5735.27]. (Emphasis added.)

R.C. 315.12(A) thus provides that two-thirds of the "cost of operation" of the county engineer's office shall be paid from motor vehicle license and fuel tax revenues. *See Board of County Comm'rs v. Scioto County Budget Comm'n*, 17 Ohio St. 2d 39, 244 N.E.2d 888 (1969) (syllabus, paragraph four) (R.C. 325.12 "provides that *at least two-thirds* of the cost of operation of the office of the county engineer must be paid from motor vehicle license and fuel tax revenues, but that section does not require that any portion of the expense of operating the office, except the cost and expense of those items specifically described in [R.C. 315.11] be paid from the general revenue fund"). As stated in Op. No. 88-067 at 2-343: "the language of R.C. 315.12(A) appears to reflect a presumption on the part of the General Assembly that no less than two thirds of the costs of operating the office of county engineer are directly related to the statutorily-enumerated purposes for which state motor vehicle license tax and motor vehicle fuel excise tax revenues may be expended."

The underground fuel tanks described by your predecessor were installed by the county engineer in order to provide fuel for the equipment and vehicles used by the county engineer's office. Because the provision of fuel for these purposes is clearly a cost of operation of the county engineer's office, the cost of maintaining such tanks would also be related to such operation. It follows, therefore, that once the tanks are no longer needed, or if a reasonable determination is made that it would be more efficient to remove these particular tanks rather than undertaking to repair them, the cost of removing the tanks would also constitute an expense directly related to the operation of the engineer's office. *See generally* 1942 Op. Att'y Gen. No. 4728, p. 32 (syllabus, paragraph one) (the cost of operation referred to in G.C. 2872-2 (now R.C. 315.12) "embraces the cost of all services which the county engineer is required by law to perform, including the services of his office with respect to county ditch improvements"). The cost of removing the fuel tanks may, therefore, be included in the cost of operation of the office of the county engineer, two-thirds of which "shall be paid out of the county's share of the

fund derived from the receipts from motor vehicle licenses, as distributed under [R.C. 4501.04], and from the county's share of the fund derived from the motor vehicle fuel tax as distributed under [R.C. 5735.27], " R.C. 315.12(A).

Conclusion

It is, therefore, my opinion, and you are hereby advised that the cost of removing underground fuel storage tanks used to fuel equipment and vehicles of the county engineer's office is a "cost of operation of the office of county engineer," two-thirds of which "shall be paid out of the county's share of the fund derived from the receipts from motor vehicle licenses, as distributed under [R.C. 4501.04], and from the county's share of the fund derived from the motor vehicle fuel tax as distributed under [R.C. 5735.27], " R.C. 315.12(A).