

respect to deposits of state universities. Like in the Sneed case, supra, there is no authority in Ohio to the effect that such power is necessary in the conduct of the business of deposit banking; but, on the contrary, we have a Common Pleas Court decision in Ohio to the opposite effect.

In view of the foregoing, I am constrained to conclude that the General Assembly has not conferred upon banks organized and existing under the laws of Ohio the power to pledge assets to secure deposits of public funds generally, but having made specific provision for certain specified deposits, the measure of authority so conferred would probably be held to be the limit of such authority.

It is very probable that in the enactment of the banking laws prescribing the powers of state banks as well as in the enactment of the Uniform Depository Act, a situation such as that with which I am here confronted involving the deposit by state universities of substantial sums was not presented or considered by the General Assembly. The remedy, however, to correct this situation lies with the legislature.

In conclusion, I may say that your Treasurer should, of course, endeavor in so far as is possible to protect deposits of this nature by attempting to secure the hypothecation of collateral in the absence of an express adjudication of this question of power hereinabove discussed by a court of competent jurisdiction in this state.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2900.

DEPARTMENT OF HIGHWAYS—INTERPRETATION AND APPLICATION OF PHRASES “TOTAL ESTIMATED COST OF OPERATION” AND “ESTIMATED TO COST”—WHERE ANOTHER AGENCY FURNISHES LABOR, MATERIALS AND EQUIPMENT ON PROJECT OVER WHICH STATE HIGHWAY DEPARTMENT HAS NO DIRECT CONTROL—STATUS—SECTION 1197 G. C.

SYLLABUS:

The reference to “total estimated cost of operation” and “estimated to cost” in Section 1197, General Code, is only directed to operations carried on by the Department of Highways; that where work is per-

formed and materials and equipment are furnished by another agency on a particular project, if the Department of Highways does not have full control of the said work, i. e., if the work is performed by workers over whom the departmental officials have no control, and materials and equipment furnished in the procuring of which the Department of Highways played no part, the estimated expense of such work and materials is not to be included within the "total estimated cost of operation" and "estimated to cost not more than" as those phrases are used in Section 1197, General Code.

COLUMBUS, OHIO, August 31, 1938.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:

I am in receipt of your recent request for my opinion upon the question whether the three thousand dollars per mile and five hundred dollars per bridge limitation contained in Section 1197, General Code, refers to monies expended by the state or to total monies expended in connection with the projects by the state and all others.

By your letter I am informed that the WPA authority has offered to provide labor, material and supervisory forces in connection with some of the proposed activities of your Department. In some of these cases the total cost to the state and to the WPA would be in excess of three thousand dollars per mile and five hundred dollars per bridge, but the cost to the state alone would be less than those amounts. For example, it is proposed that the WPA would expend on a certain project an amount equal to twenty-five hundred dollars per mile for labor, materials, equipment and supervisory forces, and the amount the Department of Highways would expend would be eight hundred dollars per mile.

I am further informed that the WPA authorities have the sole right to determine who shall be employed by them, and that the WPA labor is under the direct supervision of WPA foremen and supervisors, the Department of Highway engineers merely serving as general overseers for the purpose of ascertaining that the work on the state highways is performed in accordance with the standards maintained by the Department; furthermore, that where materials or equipment are to be furnished by the WPA, such materials and equipment are purchased or otherwise secured by the WPA independent of any action by the Department of Highways.

Your question is whether the part of these projects to be carried on by the state may be performed by the Maintenance Division of your Department by force account. The entire question depends

upon the interpretation of Section 1197 of the General Code, the pertinent part of which reads as follows:

“Before undertaking the construction, improvement, maintenance or repair of a state highway, or a bridge or culvert thereon, the director of highways shall make, or cause to be made, an estimate of the cost of such work, which estimate shall include labor, material, freight, fuel, use of equipment and all other items of cost and expense. In constructing, improving, maintaining and repairing state highways, and the bridges and culverts thereon, the director shall proceed by contract let to the lowest competent and responsible bidder, after advertising as provided in §28* of this act. The above provision relating to the performance of work by contract shall apply to all construction and reconstruction, except *in the case of a bridge or culvert estimated to cost not more than five hundred dollars*. Where the work contemplated is the construction of a bridge or culvert estimated to cost not more than five hundred dollars, the director may proceed by employing labor, purchasing materials and furnishing equipment. *The director may also proceed with maintenance or repair work by employing labor, purchasing materials and furnishing equipment, provided the total estimated cost of the completed operation, or series of connected operations, does not exceed three thousand dollars per mile of highway.* * * *

“§28’ is G. C. §1206.”

(Italics the writer’s.)

The answer to your question depends upon the interpretation of the phrases “the total estimated cost of contemplated operation,” and “estimated to cost not more than.” The purpose of the Legislature in enacting such a section was manifestly to prescribe that all *large* Department of Highways projects should be performed by private contractors after competitive bidding, but that where the work to be performed (including, of course, material to be furnished) by the Department of Highways is not considerable, it should be carried on through the Maintenance Division by force account. The next step is to determine which projects are large and which small. The statutory test is whether they involve a total estimated cost of three thousand dollars per mile and five hundred dollars per bridge, and if this test is applied with the aforesaid purpose of the legislation in mind, I am of the opinion that only those parts of the projects which are to be performed by the state should be considered.

A contrary conclusion might result in requiring legal advertising and competitive bidding for the expenditure of amounts which would be less than the incidental cost to the state and prospective bidder, to-wit, all the cost of advertising, preparation of detailed plans and estimates, preparation and printing of invitations-to-bid and proposals, securing and posting of bonds, etc. It is readily perceived that such an interpretation would give to the statute ridiculous consequences, as above described. It is therefore to be avoided under the general rule of statutory construction which is stated in 37 O. J. 353, as follows:

“Accordingly, it is the duty of the courts, if the language of a statute fairly permits, or unless restrained by the clear language of the statute, so as to construe it as to avoid unreasonable, absurd or ridiculous consequences.”

It is therefore my opinion that the reference to “total estimated cost of operation” and “estimated to cost” in Section 1197, General Code, is only directed to operations carried on by the Department of Highways; that where work is performed and materials and equipment are furnished by another agency on a particular project, if the Department of Highways does not have full control of the said work, i. e., if the work is performed by workers over whom the departmental officials have no control, and materials and equipment furnished in the procuring of which the Department of Highways played no part, the estimated expense of such work and materials is not to be included within the “total estimated cost of operation” and “estimated to cost not more than” as those phrases are used in Section 1197, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.