

This provision is ambiguous in that it may be interpreted to authorize the removal of a member of the board of directors by a three-fifths vote of the members of said board or a three-fifths vote of the members or policyholders of said company. This provision should be redrafted to provide for the removal of members of the board of directors by proper action taken by at least a majority of the company's members who shall also have the power to elect a successor. §§8623-55, -56, General Code.

The fourth section of said proposed articles designates three of the incorporators as trustees to act until the first annual meeting or other meeting called for the election of trustees. This provision seems also to have been borrowed from the sections of the General Code governing corporations not for profit which cannot apply to The Mid Continent Mutual Indemnity Company. See Section 8623-106, General Code. Until the board of directors are elected, it is apparently the intent of the legislature that the incorporators shall act for the corporation. Section 9607-3, General Code.

I note that the name of the notary public who received the acknowledgment of the signers of said proposed articles of incorporation neither appears in the imprint of his notarial seal nor is it typed, printed or stamped near the signature of such notary public. Section 123, General Code.

By reason of the foregoing, I am compelled to return the proposed articles of incorporation of The Mid Continent Mutual Indemnity Company, Cleveland, Ohio, unapproved.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3758.

APPROVAL, BONDS OF SPRINGFIELD TOWNSHIP, MAHONING COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, November 13, 1931.

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

3759.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CONTRACT FOR INDUSTRIAL SURVEY AND STUDY OF FLOOD CONDITIONS.

SYLLABUS:

Legality of contract with county commissioners discussed.

COLUMBUS, OHIO, November 13, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

"We are enclosing herewith copy of a form of contract sought to be entered into by the Commissioners of Sandusky County, as well as other counties, with Cur-Fis Service, Inc., an Ohio Corporation.

The copy of contract seems to be self-explanatory as to the purpose of the same.

You are respectfully requested to furnish this department your written opinion as to the authority of the board of county commissioners of a county to enter into such a contract."

In the body of the contract, which is attached to your inquiry, the service company promises and agrees:

1. To make an industrial survey of the County of Sandusky, Ohio, in accordance with a method established and followed by the said CUR-FIS SERVICE, INC.

2. To make a freight tonnage survey of the County of Sandusky, including an analysis of present traffic and probable future traffic involving said County.

3. To make a comprehensive study of flood conditions existing in said County, and propose remedial and correctional measures for flood control and conservation as a prelude to permanent improvement.

4. To embody all findings in a typewritten report, a copy of which is to remain in the hands of the Party of the First Part and additional copies to be given to the proper authorities in Washington."

In passing on the question of the authority of a board of county commissioners to contract for such services as are here contemplated, it must be borne in mind that public officers have only such powers as are expressly conferred by law, and such as are necessary to effectuate those powers expressly granted.

It therefore follows that if the county commissioners are authorized to enter into the contract here presented, authority to do so must be conferred by law, and, second, authority must be given to pay for the same from county funds, for, as stated in the case of *State ex rel. Menning*, 95 O. S. 97, at page 99:

"The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county."

In regard to the first article of the agreement, namely, "to make an industrial survey of the County of Sandusky, Ohio," in accordance with the method established and followed by the said service company, a reading of the pertinent sections of the General Code, discloses no provisions which would authorize the board of county commissioners to have an industrial survey of the county made, nor do they disclose any authority for the payment of the same.

As to the second branch of the agreement, namely, the making of a freight

tonnage survey of Sandusky County, including an analysis of present and probable future traffic conditions involving said county, there appears to be no authority in the General Code, authorizing the county commissioners to make such survey or to pay for the same.

As to the third branch of the agreement, namely, the making of a comprehensive study of flood conditions existing in said county, and proposing remedial and correctional measures for flood control and conservation as a prelude to permanent improvement, there is no authority vested in the county commissioners to have such a survey made, nor does any section of the Code give the county commissioners authority to pay for the same. On the contrary, Section 6828-2, et seq., which is known as the Conservancy Act, specifically provides that the court of common pleas of any county, upon the existence of certain conditions, may establish conservancy districts which may be entirely within, or partly within and partly without the county in which the court is located, for all, or any of the following purposes:

- “(a) of preventing floods;
- “(b) of regulating stream channels by changing, widening and deepening the same;
- “(c) of reclaiming or filling wet and overflowing lands;
- “(d) of providing for irrigation where it may be needed;
- “(e) of regulating the flow of streams;
- “(f) of diverting, or in whole or in part eliminating water courses; and incident to such purposes and to enable their accomplishment, to straighten, widen, deepen, change, divert, or change the course or terminus of, any natural or artificial water course; to build reservoirs, canals, levees, walls, embankments, bridges or dams; to maintain, operate, and repair any of the construction herein named; and to do all other things necessary for the fulfillment of the purposes of this act.”

It should be noted that the various contracts necessary for the carrying out of the powers and duties of the board of the conservancy district, are to be made by said board and not by the commissioners of the county or counties in which such district lies.

As to the fourth article of the agreement, it should be noted that it depends upon the legality of the three preceding articles, and therefore need not be discussed.

It may perhaps be argued that Section 2411, General Code, which reads:

“When the services of an engineer are required with respect to roads, turnpikes, ditches, or bridges, or with respect to any other matter, and when, on account of the amount of work to be performed, the board deems it necessary, upon the written request of the county surveyor, the board may employ a competent engineer and as many assistant engineers, rodmen and inspectors as may be needed, and shall furnish suitable offices, necessary books, stationary, instruments and implements for the proper performance of the duties imposed on them by such board.”

authorizes the appointment of engineers in the instant situation. There is no doubt, however, but that the purpose for the employment of such engineers must

be one which the county commissioners have the power to effectuate, and since as has been stated above, county commissioners have no such power, such payment can not be authorized. Nor do I believe that Section 6443, General Code, relative to single county ditches, authorizes a contract of this nature. Said sections reads as follows:

“The board of county commissioners, at a regular or called session, upon the filing of a petition as provided in this chapter (G. C. §§ 6442 to 6508) by any owner of any land, when the commissioners find that the granting of the petition and the construction of the improvement is necessary to drain any land, or to prevent the overflow of any land in the county, and further find that the construction of the improvement will be conducive to the public welfare, and further find that the cost of the proposed improvement will be less than the benefits conferred by the construction of the proposed improvement, may cause to be located, constructed, reconstructed, straightened, deepened, widened, boxed, tiled, filled, walled, or arched, any ditch, drain, or watercourse, or construct any levee, or straighten, deepen or widen any river, creek, or run, or vacate any ditch, by proceeding as provided in chapters 1 and 2 of title III of the General Code of Ohio.”

The clear scope of the above section relates to the action to be taken upon petition of the landowners for the draining or preventing the overflow of land, and would not apply to a survey to be made to propose remedial or correctional measures for flood control as a prelude to permanent improvement.

It should be noted that the legislature has made specific provisions in Sections 2503-1 et seq. General Code, for the county commissioners to aid in the construction of a canal or waterway of substantially definite route which is authorized to be constructed by or under the authority, management and control of the government of the United States, or of the State of Ohio, either separately or jointly or in cooperation with any state or states. Under the doctrine of the expression “the one excludes the others” it follows that since the legislature has specifically authorized the county commissioners to contribute to canal construction in definite instances, the power of the county to contribute under circumstances other than those enumerated is negated.

It therefore follows that the board of county commissioners in question is without authority to contract for the services enumerated in the proposed agreement, and I am therefore of the opinion that the said contract can not be entered into by the county.

Respectfully,
GILBERT BETTMAN,
Attorney General.