

that there are cases in which a justice of the peace is not required to pay the fines collected by him into the treasury of the county.

This reasoning was, we think, sound at the time said opinion was written. Since then, however, section 4270 G. C. has been amended (H. B. 294, 108 O. L., Part II, p. 1208), and in place of the unqualified provision that "all fines, penalties and forfeitures collected by him in state cases shall be by him paid over to the county treasurer monthly," we have this qualified statement: "*Except as otherwise provided by law, all fines and forfeitures collected by him in state cases together with all fees and expenses collected, which have been advanced out of the county treasury, shall be by him paid over to the county treasury on the first business day of each month.*"

Respectfully,
JOHN G. PRICE,
Attorney-General.

1742.

STATE HIGHWAY COMMISSIONER—WITHOUT AUTHORITY TO
ENTER INTO LEASE TO MAINTAIN ADVERTISING SIGNS ALONG
PUBLIC HIGHWAYS AS CONSIDERATION FOR FURNISHING
WARNING SIGNALS.

The State Highway Commissioner is without authority to enter into a lease which provides in substance for the right to maintain advertising signs along the public highways as a consideration for the furnishing of warning signals.

COLUMBUS, OHIO, December 29, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

DEAR SIR:—You have recently addressed this department as follows:

"Attached please find lease submitted by the American Gas Accumulator Company. This matter has been submitted to the advisory board, and the advisory board as well as myself were favorably impressed with the plan.

We feel that this company can render a great service to the public providing there are no legal objections to our granting requests contained in the lease. Would be pleased to know about what protection the company would have providing we were to give lease. Am calling this matter to your attention with request that you advise me as to our authority, also as to what protection the company would have in case such lease was executed."

The draft of proposed lease which you submit with your letter relates to the placing upon highways of danger signals, depending for their warning character upon a

"flashing light which will also illuminate words of caution specifying the danger to be guarded against."

The nature of the proposed lease is shown by the following excerpts from the draft submitted:

"This contract made this ----day of -----, A. D. 1920, between the American Gas Accumulator Company a corporation under the laws of New Jersey, party of the first part, hereinafter called the lessor, and the State of Ohio, by the state highway department of the State of Ohio, for the state and for itself, party of the second part, hereinafter called the lessee:—

WITNESSETH:

* * * * *

1. That the lessor lease and let to the lessee signal devices known as the A. G. A. highway danger signals of the type shown in attached prints numbers EX-131 and 567-A, which signal devices may from time to time be installed as hereinafter provided in paragraph 3, for the term of twenty years from this date, in consideration of the covenants and undertakings of the lessee herein, to be kept and performed.

2. In consideration of the foregoing lease and of the installation of signal devices, by lessor, as hereinafter provided, lessee agrees to pay for the use of each device as follows:

Lessor is hereby granted the right to use each signal device for advertising purposes and to have the right to lease such signal devices for advertising purposes. And so long as lessee grants such right to lessor, no actual cash remuneration shall be paid by lessee to lessor for the use of such signal devices. Such use to cover a period of twenty years, provided, however, that lessee may, at its election, upon three years notice in writing, pay a yearly rental for each of said signal devices, of one hundred (\$100) dollars a year for said period, payable annually in advance of each year after lessor shall make such election.

3. It is mutually agreed further that lessee shall designate throughout the state, along main travelled highways and thoroughfares, at least one hundred (100) signal locations in each calendar year after January 1, 1921, at which it desires signal devices to be installed, such locations to be so grouped as to be economical of installation and maintenance and suitable for advertising. Lessee shall furnish lessor with road maps upon which locations shall be designated and, when requested by lessor, will designate such locations by a stake.

* * * * *

5. That lessee, during such period as rental is paid in space for advertising, to the lessor, shall not remove nor permit to be removed, such signal devices, unless a place of installation be provided of substantially the same value of the lessor, for said safety signal devices and lessee shall re-install any such signal devices on its new location or shall reimburse lessor for the cost of said work. It is understood, however, that lessee's liability under this clause shall not exceed fifty (\$50.00) dollars per re-installation.

* * * * *

8. Lessee further agrees that insofar as it has power to grant such right lessor shall have the exclusive right to furnish warning devices and signals to bear advertising upon these highways where this standard signaling by lessor is in progress.

9. It is mutually agreed that no advertising matter shall be permitted

on the highway right of way within 150 yards of signal devices installed by lessor, except that permitted lessor under this contract.

* * * * *

11. It is mutually agreed that lessor shall place at his expense, guide signs on the side of his signal devices next to the road. It is further agreed that lessor may also indicate on the road side of signal devices matters of historical interest in the neighborhood, that he may call attention to the fact that the advertiser on the signal is paying for its maintenance, and that he designate his agent or service station or both together with directions for reporting faulty operation or damage of signal devices.

* * * * *

13. Subject to conditions of this contract lessee agrees to designate places at which signal installation is desired, and lessor to install, as soon as possible thereafter at such places, A. G. A. highway danger signals. It is agreed that this process will continue until the state highways are provided with such signal devices throughout."

It is quite plain from the foregoing that the primary consideration moving to lessor in return for its service in furnishing signal devices, is the right given it to maintain advertising signs on the signal devices. Has the state highway commissioner authority to grant the right of maintaining advertising signs along highways? Clearly not; for there is no statute giving him such authority, either expressly or by implication.

Moreover, it is to be observed that except in very rare instances, the fee in land used as a highway is in the abutting owners,—the right of the public consisting only of an easement for the purposes of travel and the exercise of such privileges as constructing sewers, drains and pipe lines for public use. Hence, it would appear that the right or title of the public in its highways is not of such extent or nature as that it may be diminished or encumbered through a grant to a purely private enterprise such as the maintenance of advertising signs. In other words, it is for the abutting owner to say what private enterprises not inconsistent or interfering with the use of the highway as such, may be carried on within its boundaries.

For the reasons noted, you are advised in specific answer to your inquiry that you are without authority to enter into the proposed lease, and that your signing it would confer no rights upon the company.

Respectfully,
JOHN C. PRICE,
Attorney-General.

1743.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN GUERNSEY, MADISON, AND HOLMES COUNTIES, OHIO.

COLUMBUS, OHIO, December 29, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*