

65.

APPROVAL, BONDS, VILLAGE OF NEW BREMEN, AUGLAIZE COUNTY,
\$8,480.00.

COLUMBUS, OHIO, February 10, 1927.

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

66.

COUNTY COMMISSIONERS—AUTHORIZED TO VACATE PUBLIC ROADS
EXTENDING THROUGH STATE LANDS—NOT AUTHORIZED TO
CONDEMN STATE LANDS FOR PURPOSE OF PUBLIC ROADS—
AUTHORITY OF LEGISLATURE TO DISPOSE OF PORTION OF
STATE LANDS.

SYLLABUS:

1. *County commissioners are authorized to vacate public roads extending through lands belonging to the state; but they are not authorized to condemn state lands for the purpose of establishing public roads thereon.*

2. *The legislature may authorize the disposal of a portion of state lands for the purpose of establishing a public road thereon.*

COLUMBUS, OHIO, February 11, 1927.

HON. HERBERT B. BRIGGS, *State Architect and Engineer, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you enclose a blue print of the Apple Creek site for Institution for the Feeble Minded in northern Ohio.

You state that the commissioners of Wayne county are considering:

"1. The abandonment of a diagonal road located within the boundaries of and dividing one side of the above site into two parts.

2. The location of a new road on two of the boundary lines of the above site to be used as a public thoroughfare in place of the abandoned road."

You then state that "the abandonment of the present road and the location of the new one will be in the best interest of the state provided the land of the abandoned road automatically becomes the property of the state, conditioned on the state granting the right of way for the new road."

You then inquire as follows:

"1. Whether the Wayne county commissioners, notwithstanding the fact that these roads are county roads, have jurisdiction, namely, have the commissioners power to locate a road on state property?

2. Whether action by the General Assembly can be resorted to to accomplish the same abandonment and relocation?"

In reply you are advised that the county commissioners have jurisdiction to vacate the diagonal road passing said farm. Section 6860 of the General Code, in regard to the location, alteration and vacation of roads, provides as follows:

"The county commissioners shall have power to locate, establish, alter, widen, straighten, vacate or change the direction of roads as hereinafter provided. This power extends to all roads within the county, except the intercounty and main market roads."

It seems evident, therefore, that in answer to your first question, the county commissioners of Wayne county have authority to vacate the road in question.

In order to establish and construct the new road, however, authority must be obtained from the state to take over the possession of the state lands necessary for locating said road. The county commissioners ordinarily are authorized to condemn land in order to establish roads. However, in this instance the lands belong to the state, and the county commissioners are not authorized to condemn state lands for road purposes.

In 20 Corpus Juris, page 620, it is stated that:

"The generally accepted doctrine is that lands owned by the state cannot be taken for a public use under a general power to condemn land. There must be express statutory authority or the authority must arise from necessary implication, especially when land is in actual use by the state for a public purpose, and is sought to be condemned for another, and inconsistent use."

There is no express statutory authority by which county commissioners may condemn state lands for road purposes.

In your second question you inquire whether action by the General Assembly can be resorted to in this case. You are advised that the legislature would have authority to permit the disposal of the strip of land necessary for the location of the new road, and it is suggested that in order to carry out the proposed establishing and locating of the new road across the state's land that the necessary procedure be taken to have the legislature grant the necessary authority.

Respectfully,
EDWARD C. TURNER,
Attorney General.

67.

APPROVAL, BONDS, VILLAGE OF COALTON, JACKSON COUNTY,
\$5,000.00.

COLUMBUS, OHIO, February 11, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.