

1868.

COUNTY—CANNOT LEGALLY SELL MATERIAL FOR ROAD REPAIR TO POLITICAL SUBDIVISIONS WITHIN COUNTY.

SYLLABUS:

*A county cannot legally sell material for road repair to political subdivisions within the said county. (Opinions of Attorney General, 1930, Vol. II, page 1471, approved and followed.)*

Columbus, Ohio, February 17, 1940.

Hon. Leo J. Scanlon, Prosecuting Attorney,  
Bucyrus, Ohio.

Dear Sir:

This will acknowledge your recent request for an opinion which reads as follows:

“A question has arisen in this County in connection with the right of the County to furnish at actual cost to political subdivisions within the County, material which is classed as bituminous plant mix, which is used for road repair.

It has been the practice for some time for the County to purchase the materials, which consists of crushed stone and bituminous material, which is mixed at the County Highway Garage in large quantities, and which mix is then used on County roads and sold at cost to townships within the County for road repair work.

I would like to have your opinion as to whether or not the County may legally sell at cost to political sub-divisions within the County this type of material.”

The terms “county” and “board of county commissioners” are often used as synonymous or interchangeable expressions and the statutes often so use them. The board is the representative or agent of the county and the commissioners are considered the principal executive officers of the county, having the management and control of its property and financial interests.

Under the law of Ohio, counties possess only such privileges as may be delegated to them by the legislature. It follows, as a necessary consequence, that the powers of county commissioners are statutory, both as to source and as to extent, and the county commissioners, being the creatures

of statute, have powers, and such only, as are conferred by statute and such incidental powers as are necessary to carry into effect the express powers granted.

In an opinion found in Opinions of the Attorney General for the year 1930, Vol. II, page 1471, the question there presented for an opinion is precisely parallel to the question involved in the present case. The syllabus of that opinion reads as follows:

“Neither the county commissioners nor the county surveyor may legally sell gravel from the county pits to township trustees or contractors.”

In the facts presented to the then Attorney General a county sought to sell gravel taken from pits owned by the county, to township trustees. In the course of the opinion it was held:

“While the county commissioners may purchase machinery and own and operate gravel plants in connection with the maintenance of county roads, there seems to be no authority to authorize such county commissioners to enter the field of commerce in connection with the sale of gravel which the county produces. Of course, as you state, such power might under certain conditions, seem desirable, yet such action, in my opinion, would be going beyond any power that now exists.”

Inasmuch as the statutes contain no provisions which either expressly or by implication would authorize the county commissioners to sell material for road repair to political subdivisions. I am inclined to the view that the opinion above mentioned constitutes a precedent precisely applicable to the present controversy and should not be departed from.

Therefore, without further discussion and in specific answer to your inquiry, I am of the opinion that the county cannot sell material for road repair to political subdivisions within the county.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.