

448.

COUNTY COMMISSIONERS—PURCHASE OF ROAD MACHINERY—
MAKE OF EQUIPMENT NOT SUBJECT TO SURVEYOR'S APPROVAL.

SYLLABUS:

Under the provisions of Section 7200 of the General Code, county commissioners, in the purchase of road machinery, tools and equipment, may use their discretion as to the make thereof, even though such make does not meet the approval of the county surveyor.

COLUMBUS, OHIO, May 28, 1929.

HON. H. E. CULBERTSON, *Prosecuting Attorney, Ashland, Ohio.*

DEAR SIR:—Your recent communication reads:

"I am writing you to inquire, in the case of the purchase of trucks or road machinery out of the road fund by the county commissioners, whether or not this may be done if the county surveyor refuses to requisition for the amount on the ground that he does not agree with the board of county commissioners as to the make of equipment or trucks to be purchased."

Your inquiry necessitates consideration of Section 7200, General Code, which provides:

"The county commissioners may purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highways, bridges and culverts under their jurisdiction as they may deem necessary. The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business. All such machinery, tools, equipment and conveyances belonging to the county shall be under the care and custody of the county surveyor. All such machinery, tools, equipment and conveyances owned by the county shall be plainly and conspicuously marked as the property of the county. The county surveyor shall annually on the fifteenth day of November make, or cause to be made, a written inventory of all such machinery, tools, equipment and conveyances indicating each article and stating the value thereof and the estimated cost of all necessary repairs thereto and deliver the same to the county commissioners, who shall cause the same to be placed on file. At the same time he shall file with the county commissioners his written recommendations as to what machinery, tools, equipment and conveyances should be purchased for the use of the county during the ensuing year and the probable cost thereof.

The county commissioners shall provide a suitable place or places for housing and storing machinery, tools, equipment, materials and conveyances owned by the county, and may purchase the necessary material and construct, or enter into an agreement with a railroad company to construct, one switch or spur track from the right of way of such railroad company to land or storage house owned by the county. All expenditures authorized by the provisions of this section shall be paid out of any available road funds of the county."

In analyzing the provisions of the section above quoted, it is believed to be clear

that the section authorizes county commissioners, in their discretion, to purchase or lease machinery, tools and equipment without the approval of the county surveyor as to the make of the equipment. It is true that the section provides that when such equipment is purchased it shall be under the care and custody of the county surveyor. It also is clear that the county surveyor shall make annually a written inventory of all machinery and equipment owned by the county, and at the time of making such inventory he shall file with the commissioners a written recommendation as to what machinery, tools, equipment and conveyances should be purchased for the use of the county during the ensuing year and the probable cost thereof. However, this latter requirement is only a recommendation to the county commissioners, which said commissioners may follow or, in the final analysis, they may determine to exercise their own judgment and discretion as to the character of such purchase.

In view of the foregoing, you are specifically advised that it is my opinion that under the provisions of Section 7200 of the General Code, county commissioners, in the purchase of road machinery, tools and equipment may use their discretion as to the make thereof, even though such make does not meet the approval of the county surveyor.

Respectfully,
 GILBERT BETTMAN,
Attorney General.

449.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE ELCON ENGINEERING CO., COLUMBUS, OHIO, FOR COAL HANDLING EQUIPMENT, FOR WILBERFORCE UNIVERSITY, WILBERFORCE, OHIO, AT AN EXPENDITURE OF \$6,991.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, May 28, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Superintendent of Public Works, for and on behalf of the Board of Trustees, C. N. & I. Department, Wilberforce University, and the Elcon Engineering Company of Columbus, Ohio. This contract covers the construction and completion of contract for coal handling equipment, C. N. & I. Department, Wilberforce University, Wilberforce, Ohio, and calls for an expenditure of six thousand nine hundred and ninety-one dollars (\$6,991.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. There has further been submitted a contract bond upon which the Globe Indemnity Company appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the Workmen's Compensation Act have been complied with.

In this connection, it will be noted that the award was made prior to January 1,