

While Section 6310-11a, *supra*, does not specifically say that it shall be the duty of the clerk of courts to refuse to accept for filing the duplicate bill of sale if all other bills of sale or sworn statements are not presented or if presented are not properly executed and marked, yet from the provisions of this section and other sections of the bill of sale act it is clear that the clerk is without authority to receive a duplicate bill of sale unless it is so accompanied.

The provisions of the bill of sale act are clear and unambiguous. Ample provision is made therein for the issuance of bills of sale and sworn statements or the replacement of same, if lost or destroyed, at a nominal cost and the provisions of this act must be strictly complied with.

In answer to the inquiry submitted I make the following *resume* of the provisions of the sections of the General Code above referred to:

1. It is unlawful for a corporation, partnership, association, or person, to sell, convey, give away, transfer, exchange, purchase or obtain a "used motor vehicle" as defined in Section 6310-3, General Code, without having in his possession the bill of sale executed in duplicate, as provided in section 6310-5, General Code, and verified, as provided in section 6310-9, General Code, and one copy of all duly executed, verified and filed, bills of sale or certified copies thereof, back to and including the original bill of sale or back to and including the sworn statement, and without delivering the same to the corporation, partnership, association or person receiving or obtaining such "used motor vehicle."

2. It is unlawful for any corporation, partnership, association or person to whom title shall in any manner be passed to a "used motor vehicle" to receive or obtain said vehicle without obtaining the instruments enumerated in the paragraph above, and without presenting the same within three days immediately thereafter to the clerk of courts of the county in which passage of title was consummated.

3. The clerk of court is without authority to accept for filing the duplicate bill of sale of a used motor vehicle unless one copy of all other bills of sale back to and including the original bill of sale or back to and including the sworn statement or certified copies thereof are presented to him properly executed and marked.

Respectfully,
EDWARD C. TURNER,
Attorney General.

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COUNTY SURVEYOR—AUTHORITY UNDER SECTION 7198, GENERAL CODE—FORCE ACCOUNT WORK—DUTIES OF SURVEYOR AND COUNTY COMMISSIONERS.

SYLLABUS:

1. *A county surveyor is not authorized by the terms of Section 7198, General Code, or otherwise, to enter into a contract with a bridge company for the construction of a bridge in which the company is to employ all necessary labor, purchase and transport all material not furnished by the county, furnish the services of the various departments of such company, furnish a foreman, protect the county against all claims for infringement of any patent on any device or process used in the structure and guarantee the work for one year after completion, for which the company is to*

be paid a stated sum per day and be reimbursed for the salary and necessary expenses of the foreman and the actual amount of all expenditures, including materials and labor. Such an arrangement does not constitute the doing of work by force account, but is in effect a contract for the construction of the bridge.

2. *By the express terms of Section 7198, General Code, when it has been determined to construct, reconstruct, improve, maintain or repair a road, bridge or culvert by force account, the power and duty to employ the necessary laborers and teams, lease the necessary implements and tools and purchase such material as may be required are exclusively vested in the county surveyor, who as a condition precedent thereto must be authorized so to do by the county commissioners.*

3. *When a board of county commissioners has elected to construct, reconstruct, improve, maintain or repair a road, bridge or culvert by force account, they are not authorized by Section 6948-1, General Code, or otherwise, to employ a road foreman to take charge of the work, which by the terms of Sections 7184, 7192 and 7198, General Code, is exclusively in charge of the county surveyor, who is without authority to delegate his duties in the premises.*

COLUMBUS, OHIO, June 21, 1927.

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

GENTLEMEN:—I acknowledge receipt of your communication of recent date as follows:

"We respectfully request your written opinion upon the following matter:

We are enclosing herewith a form designated 'Order for Force Account Work'.

Question: In the event that the county commissioners pass a resolution authorizing the county surveyor to proceed to construct a bridge by force account, may such county surveyor enter into an arrangement with a bridge company, such as indicated in this form? Would such an arrangement constitute force account work as authorized by law?"

The form which you enclose is as follows:

"ORDER FOR FORCE ACCOUNT WORK

To _____ Bridge Company,

In accordance with the authority vested in me by a resolution of the board of county commissioners of _____ county, Ohio, approved the _____ day of _____, 192____, a certified copy of which resolution is hereto attached, you are hereby authorized to proceed, under my direction and control, with the construction of a bridge over _____ on the _____ road between _____ and _____ in _____ township, in said county, in accordance with plans and specifications, designed and prepared by _____.

Under direction and control of the undersigned you will purchase for said construction work all material except _____.

You are to employ all labor, except, that prison labor may be furnished by the said county; you will transport all material except as transportation may be furnished by the county.

It is understood that the terms on which you accept this employment are:

That you are to be paid by the said county for your services aforesaid, including the services of the various departments of your organization, the sum of _____ dollars per day, not to exceed _____ days and in addition thereto you are to be paid by the said county the salary and necessary expenses of the foreman of the said construction work; you are to be reimbursed the actual amount of all expenditures including materials and labor, subject to my approval.

*You will use your tools and equipment for which you will be allowed the sum of _____ dollars.

*You will use the tools and equipment of said county of _____.

You will furnish, bend and place the required reinforcing steel. You will also furnish a detailed working plan, and protect the county against all claims for infringements of any patent on any device or process used in the structure, for which you will be allowed the sum of _____ dollars.

By the acceptance of the duties imposed by this employment you will be required to guarantee the work performed in pursuance hereof for one year after completion against failure on account of any defects of design, workmanship and materials, and that the total cost of the bridge to the county shall not exceed my estimate of _____ dollars.

Settlement as aforesaid will be made by the county direct with the _____ Company, as follows: _____

County Surveyor.

_____ county, Ohio.

_____ day of _____, 192—.

*Draw lines through the one of these provisions not used."

You inquire as to the legality of entering into an arrangement such as that provided for in the form submitted, designated as an "ORDER FOR FORCE ACCOUNT WORK."

The section of the code authorizing the construction of a bridge by force account is Section 7198, General Code, which provides:

"The county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account."

In connection with this section your attention is directed to Sections 7184 and 7192, General Code, respectively, providing in part as follows:

"Sec. 7184. The county surveyor shall have general charge of the construction, reconstruction, improvement, maintenance and repair of all bridges and highways within his county under the jurisdiction of the county commissioners. * * * "

"Sec. 7192. The county surveyor shall supervise the construction, reconstruction, improvement, maintenance and repair of the highways, bridges and culverts under the jurisdiction of the county commissioners; * * * "

It will be observed that under the provisions of Section 7198, above quoted, it is necessary as a condition precedent to the power of a county surveyor to employ laborers and teams, lease implements and tools and purchase such materials as may be necessary in the construction of a bridge for the board of county commissioners to authorize the county surveyor so to do.

An examination of the form submitted shows that it is directed to a particular bridge company and authorizes such company to proceed with the construction of a bridge and to employ all labor and to purchase and transport all materials, except that furnished by the county, necessary therefor. It contains alternative provisions that the bridge company shall use its own tools and equipment or shall use those of the county.

Compensation is fixed upon a per diem basis, which includes the services of the various departments within the organization of the bridge company, and in addition thereto, provides that the company shall be reimbursed by the county for the salary and expenses of a foreman to be employed by said company for the purpose of overseeing the construction work of said bridge. It will also be noted that the form further provides that the company is to protect the county against all claims for infringements of any patent on any device or process used in the structure and that the company is to guarantee the work performed by it for a period of one year after the same is completed.

Although such form is made to appear as an order from the county surveyor directed to the bridge company, yet in reality when duly accepted by the company it is a contract containing mutual obligations upon the part of both the company and the county. The company is not being hired by the surveyor to oversee the work of constructing the bridge as would an individual who might be employed by the surveyor as a foreman of labor, but is actually furnishing all the material except such as may be furnished by the county, and all labor the same as any contractor would in proceeding to do work under a contract entered into with the county commissioners.

It is true that provision is made in the form submitted for the supervision of the work on the part of the county surveyor, but such surveyor likewise supervises the work that is regularly let by contract after competitive bidding. A search of the statutes will reveal that nowhere therein is the county surveyor authorized to advertise for bids and let a contract for the building of a bridge. This authority is placed exclusively in the board of county commissioners, and to permit an agreement with a bridge company such as the one in question would be tantamount to a doing away with competitive bidding, and with all other restrictions and safeguards prescribed by law relating to the making of such a contract with the county.

It has always been the policy of the law to protect the expenditure of public money by requiring advertisement of bids and the letting of contracts in order that, by competition, public work may be accomplished by the lowest expenditure and in the most economical manner possible.

In an opinion of this department found in Opinions of the Attorney General, 1921, Vol. II, p. 822, in the third branch of the syllabus it was held:

"It is recommended that public authorities follow the competitive bidding system unless adherence thereto is in particular instances either impracticable or against the public interest."

It is readily apparent that if the county surveyor could enter into an agreement with a bridge company for the building of a bridge in the manner contemplated in the form submitted, such surveyor would be doing that indirectly which he could not lawfully do directly, namely, the entering into a contract without public notice

and the receiving of bids for the building of a bridge, and the surveyor would be placed in a position of being authorized to favor a particular bridge company with all of the county's bridge building. This would destroy the right of the taxpayers of the county to have public work done at the lowest price obtainable after competitive bidding.

The purpose of Section 7198, *supra*, is to permit a county, acting by and through its county surveyor, who must be first authorized by the county commissioners, to do the work of constructing, reconstructing, improving, maintaining or repairing of roads, bridges and culverts without entering into a contract. This section authorizes the county, through its county surveyor to employ the necessary laborers and teams, to lease the necessary implements and tools and to purchase such materials as may be necessary for such an improvement. It does not permit, and there is no other statute authorizing, the county surveyor to delegate his authority and duties under Section 7184, 7192 and 7198, *supra*, and this department has repeatedly so held.

See Opinion No. 281 rendered under date of April 2, 1927, which quoted with approval and followed an opinion of this department reported in Opinions, Attorney General, 1921, Vol. II, p. 895, in which it was held:

"Where county commissioners have elected to do road work by force account they are not authorized by Section 6948-1 G. C. or otherwise to employ a road foreman to take charge of the work, but they must proceed as defined in Sections 7198 G. C. et seq."

See also Opinions, Attorney General, 1921, Vol. II, p. 822 and *Id.* page 830.

For the reasons stated it is my opinion that:

1. A county surveyor is not authorized by the terms of Section 7198, General Code, or otherwise, to enter into a contract with a bridge company for the construction of a bridge in which the company is to employ all necessary labor, purchase and transport all material not furnished by the county, furnish the services of the various departments of such company, furnish a foreman, protect the county against all claims for infringement of any patent on any device or process used in the structure and guarantee the work for one year after completion, for which the company is to be paid a stated sum per day and be reimbursed for the salary and necessary expenses of the foreman and the actual amount of all expenditures, including materials and labor. Such an arrangement does not constitute the doing of work by force account, but is in effect a contract for the construction of the bridge.

2. By the express terms of Section 7198, General Code, when it has been determined to construct, reconstruct, improve, maintain or repair a road, bridge or culvert by force account, the power and duty to employ the necessary labors and teams, lease the necessary implements and tools and purchase such material as may be required are exclusively vested in the county surveyor, who as a condition precedent thereto must be authorized so to do by the county commissioners.

3. When a board of county commissioners has elected to construct, reconstruct, improve, maintain or repair a road, bridge or culvert by force account, they are not authorized by Section 6948-1, General Code, or otherwise, to employ a road foreman to take charge of the work, which by the terms of Sections 7184, 7192 and 7198, General Code, is exclusively in charge of the county surveyor, who is without authority to delegate his duties in the premises.

Respectfully,
EDWARD C. TURNER,
Attorney General.