of the infected animal be determined by an appraisal in pursuance of the provisions of Section 1121-10 of the Code. As the court points out in the above quotation, one of the necessary elements in the determination of that value would be the health of the animal in question. If, in fact, the animal at the time of the appraisal is diseased, it necessarily follows its value is depreciated and the rule of the board would require the arbitrators to disregard arbitrarily this factor in arriving at their conclusion. The rule would obviously work to the benefit of the claimants, inasmuch as the factor of disease would necessarily depreciate the value of the animals. Consequently, if the rule be applied, it would be a departure from the statutory course and hence not authorized. It is well settled that expenditures from the public treasury must be in strict accord with statutory authority. Administrative boards, in expending the public moneys, are bound to follow the provisions of law authorizing expenditures. In this instance expenditure is only authorized after appraisal has been made in pursuance of law and the effect in following Section 6 of the rules of the board would, as pointed out by Judge Hay, be an expenditure of public money in a manner unauthorized by law.

I am accordingly forced to the conclusion that the State Board of Agriculture could not, on its part, waive the statutory method of determining the amount paid by agreeing to pursue the course authorized by those of its rules which, as before stated, are invalid.

In view of the foregoing considerations, I am of the opinion that the State Board of Agriculture is without authority to agree with owners of infected cattle that the value thereof shall be determined in accordance with its rules providing certain maximum amounts as a limitation upon the award of the appraisers and requiring that such appraisers shall not take into consideration the fact that animals have been condemned for disease.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2796.

ROAD—WIDENING OF STATE ROAD OVER EIGHTEEN FEET—CONSIDERATION OF METHOD OF DETERMINING COST—RESOLUTIONS MAY BE COMBINED.

SYLLABUS:

1. *Consideration of method to be pursued by Director of Highways in determining the cost occasioned by or resulting from the widening of the paved portion of any state road where the paved portion of such road is constructed or reconstructed to a width greater than eighteen feet.*

2. *Two resolutions proposing to assume the obligation of levying special assessments for a state highway improvement, as authorized by Section* 1214-1, *General Code, and agreeing to co-operate with the state in the cost of widening the paved portion of a state road where the paved portion of the state road is constructed or reconstructed to a width greater than eighteen feet, as authorized by Section* 1200 *of the Code, may be combined and one auditor's certificate thereto will be sufficient.*

COLUMBUS, OHIO, October 29, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your recent communication as follows:

"Section 1191 of the new Norton-Edwards Highway Bill provides that a county may co-operate with the Department of Highways 'In widening the paved portion of any state road where the paved portion of such road is constructed or reconstructed to a width greater than eighteen feet; and such commissioners shall be authorized to pay such portion of the cost occasioned by or resulting from such widening as may be agreed upon by them and said Director.'

Your opinion is requested as to just what portion of the construction can be assumed by a county. It is, of course, understood that an agreed percentage of the cost of a pavement over eighteen feet can be assumed, but it is desired to know whether such other items as extra grading and extra length of structures which are occasioned by the widened pavement may be included.

In your Opinion No. 2632 you advised that it would be necessary for the Director of Highways to make separate estimates for that portion of the work on which the county is authorized to co-operate, and that upon which the state pays the entire cost.

An opinion is requested as to whether it will not be possible for this Department to combine the two estimates into one, at the time of sale, so as to make it less confusing to the bidders. Necessarily we are compelled, with our present system, to require bids to be taken upon many different proposals because of our policy of taking bids on several types of pavement, and an additional sub-division of a project would, of course, result in still more confusion to the bidder.

Your opinion is also requested as to whether one Final Resolution of county commissioners can include both the part of the cost of the project which they are assuming and the assessment ordered by the Director, or whether it will be necessary to have them submit two Final Resolutions and Auditor's Certificates."

You first inquire just what portion of the construction details can be assumed by the county, and next you ask whether the cost of the permissible items must be ascertained definitely by letting separate contracts. That is to say, the conclusion in the prior Opinion No. 2632, to which you refer in your letter, was that separate estimates were necessary in order to arrive at a proper basis for county co-operation. You now inquire whether these estimates must be followed by letting contracts separately so that distinct bids will be had upon a roadway eighteen feet in width and upon that portion of the work necessitated by the widening of the pavement beyond eighteen feet. The two questions are related and will be considered together.

I deem it unnecessary to quote the pertinent provisions of the Code relative to the co-operation of a county in the widening of the paved portion of a state road where the paved portion is constructed or reconstructed to a width greater than eighteen feet. In my prior opinion I quoted these sections and pointed out to you that the county's participation is limited to the actual cost occasioned by or resulting from such widening. This seems clear from the provisions of Section 1191 of the General Code. I further pointed out that Section 1200 of the Code makes it your duty, after the completion of the work, to certify the exact cost of the improvement to the county officials.

It is unfortunate that the Legislature has not defined with more exactness the extent of permissible co-operation, and it accordingly becomes necessary to adopt an administrative procedure with reference to the ascertainment of such cost which will be workable and consistent with sound engineering. The problem really resolves itself into a determination of just what are the costs occasioned by or resulting from the widening in excess of eighteen feet.

In my opinion there is no hard and fast rule which can be applied for the determination of this additional cost. The problem is one which is dependent upon the facts of each particular case, and it would manifestly be improper to apply a hard and fast percentage rule making the participation in the cost dependent upon the additional width of the paved portion. This is so for the reason that other necessary incidents of the road construction may or may not be dependent upon the additional width. It accordingly becomes necessary to examine somewhat in detail the various elements going toward the construction of a road improvement.

Roughly speaking, the total expenditure for a road improvement may be divided into three general subdivisions, namely, paving, roadway and structures. Paving includes the base and top surface and, in certain instances, curbing. Manifestly, the first two items would vary directly with the width of the pavement, but the item of curbing, where a curb is used, would normally be present whatever the width of the pavement. It may, therefore, be stated that the base and top surfacing incident to the additional width of pavement would be a proper factor for county participation, but any curbing could not be taken into consideration unless exceptional circumstances demanded a curb solely because of the additional width. That portion of the construction cost which is known in engineering terminology as "roadway" covers a number of items such as excavation, embankment, borrow, guard rails, finishing slopes and ditches, special drainage, catch basins and certain corrugated pipe incident to the providing of access to private property. It is quite obvious that the items of excavation, embankment and borrow are such as may or may not be properly treated as items in which the county can participate, depending upon the facts of the particular case. It is conceivable that these items would not be appreciably changed in a particular instance by the fact that the roadway was to be twenty feet wide rather than eighteen feet wide. On the other hand, in other instances these items may be larger by reason of the additional width of pavement, and it is conceivable, where there is already an existing surface and a substantial widening is planned, that the major portion of these items results directly from the widening. I accordingly feel that no arbitrary rule can be laid down with respect to these items, but you should be governed in your preparation of plans, specifications and estimates for the eighteen-foot roadway and the additional width of roadway by sound engineering practice, and reach your conclusion upon a consideration of the facts of each particular case.

The other items heretofore mentioned coming within the general classification of "roadway" are such as would be incident to the construction whether it be of eighteen foot width or of a greater width. Consequently these items are not in my opinion properly chargeable to the widening and should be omitted from your estimates and from your final conclusion of the amount of the cost incident to the widening, except where, in your opinion, such items would not, in the particular case, be necessary were the improvement to be made to a width of eighteen feet only.

The item of structures is subdivided into bridges and culverts. These structures underneath the highway might or might not be of a greater width by reason of the additional width of pavement. It is probably true, however, that normally an additional width of pavement would necessitate an equal additional width of structure. This does not mean, however, that the cost of these structures will vary directly in proportion with the amount of additional width of pavement. Certain features of culverts for instance would be the same whether its width be twenty feet or twenty-five feet. Such would be the case in the heading which would be found in a culvert, whatever be its width. Accordingly, here again I believe that it would be necessary for you to determine to the best of your ability from sound engineering practice what the cost of culverts would be for a road constructed to a width of eighteen feet. This estimate should then be revised to take care of the culvert necessary because of the additional width. The county could only properly participate in the additional cost.

In addition to the items hereinabove discussed, there are certain other items properly chargeable to the cost of a road improvement. One of these is the item of state insurance premium, which, of course, varies directly with the cost. Such being the case, the additional expense incident to the widened roadway would properly be chargeable as a part of the cost in which the county commissioners could participate. Another item is that of barricades, signs and lights. These items of cost are incident to road construction whatever be its width, and I am of the opinion that no charge for these items could properly be made in determining the cost in which the county is authorized to co-operate. A further item is that of detours, which likewise must be provided whatever be the width of the pavement. These items in my opinion should not be included, unless there are particular facts which lead you to the belief that they are either necessitated or increased by the excessive width.

The last factor to be considered is that of engineering and contingencies which is always computed at a proper charge in connection with a road improvement. These items would, if my understanding is correct, vary directly with the magnitude of the work, and I believe they should, therefore, properly be considered in determining the cost in which the county may co-operate.

Summarizing the foregoing, my conclusion is that among the items which may be considered in determining the portion of the cost in which the county may participate are the cost of the additional paving, the additional excavation, embankment and borrow, the additional cost of structures, the proportion of the state insurance premium and the additional items of engineering and contingencies. All of these elements of cost are such as would probably enter into the cost of providing the additional width of pavement. It is further conceivable that other elements may enter into such cost, depending upon the particular circumstances.

As I have before stated, however, it does not necessarily follow that in every instance each of these items would be a proper factor. There may be a road in existence in which no additional excavation, embankment or borrow will be necessary and no new structures need be constructed. In such an instance obviously only the additional paving, the additional insurance premium and the additional items of engineering and contingencies could legitimately be included.

In the final analysis the problem is one for the application of recognized engineering principles and each project must be governed by its own peculiar facts.

As I stated in my previous opinion, it will be necessary for your office to prepare estimates for the improvement, assuming that it be for a width of eighteen feet. In the preparation of these estimates you should be governed in the manner which I have indicated above. Thereafter estimates based upon the road as it is actually to be constructed must, of course, be prepared. The latter estimate will bear a definite percentage relation to the estimate based upon a width of eighteen feet.

You inquire whether it is necessary to go further and actually let contracts for the improvement to the width of eighteen feet and for the additional work necessitated by reason of the additional width. While, technically, this would probably be the only way in which the exact cost occasioned by the additional width could be ascertained, yet I do not feel that such a course of procedure, attended as it is with a high degree of detail work and unwieldiness, would be practicable. I accordingly feel that it will be sufficient that the contract be let as a whole and after the contract price is ascertained and the work completed if you apply the percentage ascertained in the preparation of the estimates hereinbefore described to the actual cost of the improvement, a satisfactory basis for the determination of the actual cost occasioned by the additional width of pavement will be had.

While I appreciate that this conclusion is a concession to expediency, yet I believe that the confusion incident to separate bids upon the two portions of the

same work, which is in its nature scarcely separable, would be so unworkable as to warrant me in holding that such course is unnecessary. I may suggest that it might not be too difficult for you to adopt another method of determining the cost of the additional pavement, which would, perhaps, be more exact than the method just described. After the contract for the improvement is let, the bid of the contractor would show a certain definite unit cost price for the various portions of the work. If these units be taken and applied to the original estimate made by you of the eighteen feet improvement, and then the total so determined deducted from the aggregate cost of the improvement as made, a fairly accurate determination of the actual cost of the additional width of pavement would be reached. While I am, of course, not sufficiently familiar with engineering practice to determine the practicability of this course, I suggest that it be used if, in your opinion, there is nothing to prevent.

Your last inquiry is as follows:

> "Your opinion is also requested as to whether one Final Resolution of county commissioners can include both the part of the cost of the project which they are assuming and the assessment ordered by the Director, or whether it will be necessary to have them submit two Final Resolutions and Auditor's Certificates."

You have reference to the agreement authorized by Section 1214-1 of the General Code and that provided by Section 1200 of the Code. These sections are as follows:

> Sec. 1214-1. "The board of county commissioners of any county may assume on behalf of the county, and agree with the director to make, the assessments provided for in Section 34 of this act, and to be made in connection with the construction of any state highway in such county. Any board of county commissioners desiring to assume such assessments, and to make the same, shall notify the director of their willingness so to do, which notification may be given at any time after the director has made, or caused to be made, the estimates of cost covering the proposed construction and after he has determined the rate of assessment and number of installments in accordance with the provisions of the preceding section. Upon receiving such notification, the director shall certify to such commissioners his estimate of cost, less the cost of bridges and culverts and also the rate of assessment fixed by him and the number of semi-annual installments into which the assessments are to be divided. Such board of county commissioners may thereupon enter into an agreement with the director to assume on behalf of the county and to make the assessments in accordance with the certification made to them by the director. Before entering into such an agreement, they shall provide by the issuance of bonds a sum which shall be determined by applying to the estimated cost of the improvement, less the cost of bridges and culverts, the rate of assessment determined by the director. In such agreement the commissioners shall assume on behalf of the county the estimated assessments, and shall agree to make the same, and they shall further agree that the proportion of the cost and expense assumed by them shall be paid by the treasurer of the county upon the warrant of the county auditor issued upon the requisition of the director and at such times during the progress of the work as may be determined by such director. The provisions of Section 5660 of the General Code shall apply to such contract to be made by the commissioners, and a duplicate of the certificate of the county auditor made in compliance with the provisions of said section shall be filed in the office of the director.

The form of such contract shall be prescribed by the Attorney General, and all such contracts shall be submitted to the Attorney General and approved by him before the director shall be authorized to advertise for bids. The commissioners shall be authorized to issue under authority of Section 70 of this act the bonds hereinbefore provided for, and all of the pertinent provisions of said section shall apply to the issuance of such bonds. The commissioners shall thereafter make the assessments assumed by them on behalf of the county and shall cause the same to be collected, and the proceeds of such assessments shall be used solely for the retirement of the bonds issued in anticipation of the collection of said assessments. The making and collection of said assessments and all other matters in connection therewith not specifically provided for in this section shall be had and done as is or may be provided by law with respect to special assessments levied for the construction of county roads. The commissioners shall have the same authority to provide funds in the first instance by the issuance of notes, and to defer the issuance of bonds, as is or may be provided by law with respect to county improvements."

Sec. 1200. "If the county commissioners, after adopting the maps, plans, profiles, specifications and estimates are still of the opinion that the work should be constructed, and that the county should co-operate upon the basis set forth in their proposal, they shall adopt a resolution requesting the Director of Highways to proceed with the work, and shall enter into a contract with the State of Ohio providing for the payment by such county of the agreed proportion of the cost and expense. The form of such contract shall be prescribed by the Attorney General, and all such contracts shall be submitted to the Attorney General and approved by him before the director shall be authorized to advertise for bids. The provisions of Section 5660 of the General Code shall apply to such contract to be made by the county commissioners, and a duplicate of the certificate of the county auditor made in compliance with the provisions of said section shall be filed in the office of the director. All improvements upon which any county may co-operate shall be constructed under the sole supervision of the Director of Highways. The proportion of the cost and expense, payable by the county, shall be paid by the treasurer of the county upon the warrant of the county auditor issued upon the requisition of the director, and at such times during the progress of the work as may be determined by such director. Upon completion of the improvement, the director shall ascertain the exact cost and expense thereof, and shall notify the county commissioners as to his conclusions, and thereupon any balance in the fund provided by such commissioners for the county's share of the cost shall be disposed of as provided by law."

Each of these sections requires the auditor's certificate as to the money being available prior to the making of the contract therein authorized. The sections erroneously refer to Section 5660 of the General Code, which, as I have before pointed out to you, has been repealed, and the reference is evidently applicable to Section 5625-33 of the Code.

The agreement contemplated by Section 1214-1, supra, is to assume the making of the assessments which otherwise the director would make, and authority is given to issue bonds in anticipation of the collection of the assessments. Similarly, Section 1200 is an agreement on the part of the county to assume a portion of the cost of the road improvement, as Section 1193 of the Code authorizes the commissioners to assess any part of the sum so assumed.

As I pointed out in my prior opinion No. 2632, the two proceedings are separate and distinct and the assessments must be treated separately. On the other hand, however, both of the contracts have to do with the improvement of one road. This being the case, I feel that there is no inherent objection to the adoption of one resolution covering both of the agreements, providing the language of the resolution is such as to make it clear that the county is agreeing with respect to the separate matters contemplated. If the agreements may be combined in a single resolution, it necessarily follows that it will be sufficient to have one auditor's certificate. That is to say, the auditor may certify to the one resolution covering the county's agreement with respect to both of the matters.

It should be noted that Sections 1214-1 and 1200 of the General Code, supra, specifically state that a contract be entered into, Section 1214-1 providing that the contract shall be between the county commissioners and the Director of Highways and Section 1200 providing that it shall be between the county commissioners and the State of Ohio. I suggest, therefore, that it will be necessary in either case to have an express written contract in addition to the resolution concerning which you inquire.

In specific answer to your last inquiry, I am of the opinion that the two resolutions proposing to assume the obligation of levying special assessments for a state highway improvement, as authorized by Section 1214-1, General Code, and agreeing to cooperate with the state in the cost of widening the paved portion of a state road where the paved portion of the state road is constructed or reconstructed to a width greater than eighteen feet, as authorized by Section 1200 of the Code, may be combined and one auditor's certificate thereto will be sufficient.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2797.

MARRIAGE—CHRISTIAN SCIENCE READER MAY NOT SOLEMNIZE—LICENSING OF MINISTER DISCUSSED.

SYLLABUS:

1. *Under the present organization of the Christian Science Church, as set forth in its Manual, a "reader in such church is not entitled to the granting of a license to solemnize marriages by a Probate Court in this state.*

2. *A local congregation of the Christian Science Church cannot, by any action of its own, endue one of the "readers" of such church with such powers and functions as to entitle him to the granting of a license to solemnize marriages even though he had previously been ordained as a minister in another church from which he had withdrawn his membership before becoming a member and "reader" in the Christian Science Church.*

COLUMBUS, OHIO, October 29, 1928.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—I am in receipt of your recent communication requesting my opinion as follows:

"B was formerly an ordained minister in the United Brethren Church. He withdrew his membership from that church and became a member of the