

commissioners may apply for and the director of highways and public works may in his discretion grant aid not exceeding one-half of the cost in the construction, re-construction, maintenance or repair of such bridge or culvert from any fund available for the construction, improvement, maintenance or repair of inter-county highways or main market roads. The application shall be made and the proceedings thereon had in conformity with the provisions of law relating to the state highway department. The county's share of the cost of an improvement under the provisions of this section may be paid out of any fund available for the construction, improvement, maintenance or repair of inter-county highways and main market roads. The authority granted in this section shall be in addition to and not in any wise limited by the provisions of sections 5638 to 5644 inclusive, of the General Code."

In Section 3497, General Code, the legislature has classified municipal corporations into two classes, namely, villages and cities. It will be noted that the legislation just quoted has reference and applies to streets in municipalities constituting an extension or continuation of an inter-county highway or main market road and authorizes the construction or maintenance of bridges and culverts on such streets, with the construction and maintenance of which bridges the county commissioners are charged by law. The language of this section is clear and explicit. When it used the word "municipality", it included cities as well as villages.

It would follow that a bridge wholly or partly within the limits of a city and on an inter-county highway or main market road and with the construction and maintenance of which the county commissioners are charged by law, may be constructed and maintained under what is commonly known as the state aid road laws; and, specifically answering the question in your communication, I am of the opinion and you are advised that your department is authorized under the law to assume jurisdiction and proceed to construct the bridge at the city limits of the City of Piqua, as proposed.

Respectfully,
C. C. CRABBE,
Attorney-General.

1568.

NO PROVISION FOR COMPENSATING TOWNSHIP TRUSTEES FOR DUTIES PERFORMED UNDER SECTION 6603 G. C.—WITNESS FEES NOT ALLOWED.

COLUMBUS, OHIO, June 9, 1924.

SYLLABUS:

Under Chapter 5 of House Bill 569, there is no provision for compensating township trustees for their duties under this chapter, and no provision for payment of witness fees.

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

Gentlemen:—

I am in receipt of your recent communication, in which you enclose a letter from the clerk of the Board of Lima Township Trustees, as follows:

"The Township Trustees of Lima Township had a petition for a township ditch under section 6603 of the General Code of Ohio, and have followed the law in regard to it.

I have sought the information from the authorities of the County in Newark, relative to where the pay for the trustees and witnesses they called would come from. I find in Chapter 1 that the Commissioners, under section 6502, are allowed an additional compensation for viewing and hearing on ditches, and as Section 6603 provides that all things required to be done by the township shall be done pursuant to the provisions of Chapter One of this Title. If this connects up with the township ditch proposition, out of what fund would we pay it and out of what fund would we pay witnesses who have been called by the trustees?"

Enacted House Bill 569, in which is found the sections of statute referred to by you, was an emergency act passed April 3, 1923, and is found in 110 O. L., p. 161. The purpose of this act was to codify the drainage laws of the state. This enactment is made up of Chapters 1, 2, 5, 6 and 8. Chapter 1 covers the subject of single county ditches; chapter 2, joint county ditches; chapter 5, township ditches; chapter 6, underground drains; and chapter 8, cleaning and repair of ditches, drains and watercourses.

Section 6603, General Code, which is a part of Chapter 5 of the above act, provides as follows:

"A petition for the improvement of a ditch or drain which is located wholly within a township, which does not pass into or through a municipality, which has an outlet within the township in a public watercourse, which does not benefit or damage land outside of the township, and which has not theretofore been located as a county ditch, may be filed with the clerk of such township instead of with the auditor of the county as provided in chapter one of this title. If such petition is filed with the clerk of the township, the clerk of the township shall at his office, do all things required to be done by the auditor, and the board of trustees of the township shall at their usual place of meeting do all things required to be done by the board of county commissioners in drainage improvements as is provided in chapter one of this title. The proceedings for such improvement shall be had pursuant to the provisions of chapter one of this title, and shall be governed by all the provisions of chapter one of this title, except as modified in this chapter."

Section 6502, General Code, which is part of Chapter 1 of the enactment, provides:

"In addition to the salary otherwise provided by law for county commissioners, each commissioner shall receive, for performing all duties required of him in this chapter, five dollars per day for each day actually engaged in work on an improvement as defined in this chapter, but not to exceed one hundred days in any one year, and not to exceed four days on any one improvement and the one half part thereof shall be paid out of the general fund of the county, and the one half part thereof shall be charged as costs in the location and construction of the improvement and paid in the first instance out of the general ditch improvement fund of the county."

This section provides pay for county commissioners for duties performed

under Chapter 1 and further provides that one-half of said compensation shall be paid from the county general fund and one-half charged as costs against the improvement. It will be noted that section 6603, General Code, supra, specifically provides:

“The proceedings for such improvement shall be had pursuant to the provisions of chapter one of this title, and shall be governed by all the provisions of chapter one of this title, except as modified in this chapter.”

There is nothing said in the section quoted as to compensation of township trustees, so that there could be no modification of the section relating to compensation of county commissioners in Chapter 5.

I am unable to find any place in the drainage laws any reference to calling witnesses or to paying witnesses called in proceedings on county or township ditches. Section 6451, General Code, 110 O. L., p. 166 provides in part:

“ *** the petitioner shall be required to pay all costs incurred in such ditch proceedings; *** ”

Section 6473, found in 110 O. L., p. 177, in part provides:

“The costs before the board of county commissioners shall be paid by the petitioner; *** ”

Also in the second paragraph of the above section it is provided:

“ *** all costs before the commissioners shall be paid by the petitioner, *** ”

On page 178 of the above section it is provided:

“ *** all costs before the commissioners, and the costs of the surveyor in making his survey, reports and schedules, and all costs on appeal shall be a part of the costs of constructing the improvement.”

Also in paragraph 5 of the above section, on page 179, is found:

“ *** and all costs before the commissioners shall be paid by the petitioner, save and except the costs made by the surveyor in making his survey, reports and schedules, and all the costs made on the appeal shall be paid by the appellant.”

The costs referred to in the above section, it is believed, relate to the costs mentioned in section 6498 G. C., 110 O. L., p. 191, which provides as follows:

“The fees that shall be charged and collected for services required of any public officer under this chapter if not specifically otherwise designated shall be the fees allowed for like services in that office, and if he be an officer receiving a salary, then such fees collected hereunder shall be in a like manner accounted for. Publication of notices as required in this chapter shall be paid at the legal rate provided for similar matter originating in the court of common pleas.”

It is therefore my opinion that under Chapter 5 of House Bill 569, there is no provision for compensating township trustees for duties under this chapter, and that there is no provision for the payment of witness fees for persons called for hearing on township ditches.

Respectfully,
C. C. CRABBE,
Attorney General.

1569.

APPROVAL, BONDS OF PUTNAM COUNTY, \$67,945.60, FOR STREET AND ROAD IMPROVEMENTS.

COLUMBUS, OHIO, June 9, 1924.

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

1570.

APPROVAL, BONDS OF VILLAGE OF BLANCHESTER, CLINTON COUNTY, \$49,900.00, TO IMPROVE THE WATERWORKS SYSTEM.

COLUMBUS, OHIO, June 9, 1924.

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

1571.

APPROVAL, BONDS OF CITY OF LANCASTER, FAIRFIELD COUNTY, \$14,000.00, TO IMPROVE WATER LINES.

COLUMBUS, OHIO, June 9, 1924.

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