

and unambiguous, it must be given the meaning and effect required by the plain and ordinary signification of the words used, whatever may have been the language of the prior statute."

However, I am unable to see how the express provision now found in the provisions of Section 2917, General Code, with respect to the employment of attorneys other than the prosecuting attorney adds anything to the implied prohibition found by the courts in the provisions of Section 1274, Revised Statutes, read in connection with those of Section 845, Revised Statutes. We have seen that, consistent with the implied prohibition against the employment of such other counsel, gathered from the provisions of Sections 1274 and 845, Revised Statutes, the view has been clearly expressed by said courts considering said provisions of the Revised Statutes that notwithstanding this implied prohibition, the board of county commissioners would be authorized to employ other counsel to represent it in an action in which such board might be a party, where the prosecuting attorney refused to do so.

On the facts stated in your communication, I am of the opinion that the board of county commissioners therein referred to has authority to employ counsel other than the prosecuting attorney to represent said board in any proper action or proceeding it may see fit to institute, to set aside or vacate the judgment by which the unauthorized settlement made by the prosecuting attorney in the appeal case was consummated. It appears that in this case the question at issue between the prosecuting attorney and the board of county commissioners, which the prosecuting attorney took upon himself to determine, was purely one of fact to be determined by the board of county commissioners rather than by the prosecuting attorney so far as any proposed settlement of the road appeal case was concerned. The prosecuting attorney having made such unauthorized settlement of the road appeal case, it is not believed that, by his refusal to represent the board of county commissioners in this matter or to cooperate with it in securing other counsel for the purpose, he now can prevent said board from taking proper steps to set aside or vacate the judgment entered in pursuance of such unauthorized settlement; and, as an incident to the right of the board of county commissioners to institute some proper action or proceeding against said judgment, it is believed that said board has the right to employ counsel for this purpose.

In conclusion it may be stated that this opinion is not to be construed as expressing any opinion with respect to the merits of any actions or proceedings which the county commissioners may institute for the purpose of vacating or setting aside said judgment.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

---

1828.

ROADS—WHERE APPLICATION FOR STATE AID WAS FILED UNDER FORMER SECTION 1191, GENERAL CODE,—IS PENDING PROCEEDING WITHIN PURVIEW OF SECTION 26, GENERAL CODE.

**SYLLABUS:**

*Where an application for state aid was filed under the provisions of former Section 1191 of the General Code, and the State agreed to co-operate in the construction of a new road to the extent of a certain specified sum of money, such procedure constitutes a proceeding that is "pending" within the meaning of Section*

26 of the General Code, so that all steps necessary to complete such improvement should be taken under former Sections 1191 et seq., General Code, and not under these sections as amended in House Bill No. 67 (112 v. 430), effective on the second day of January, 1928.

COLUMBUS, OHIO, March 8, 1928.

HON. R. L. THOMAS, *Prosecuting Attorney, Youngstown, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“I would appreciate very much your opinion on the following question:

May the County Commissioners under Section 1191 of the General Code, co-operate with the State Highway Department in the construction of a new road?

The facts presented by our county surveyor are as follows: During the early part of the year 1926 application was made by the County Commissioners of this county for state aid in the construction of a new road to be known as the Cleveland-East Liverpool Road. During the month of October, 1927, the State Highway Department agreed to co-operate with the County Commissioners of Mahoning County to the extent of \$65,000.

Due to the proceedings necessary to establish this road, a contract was not drawn until after the new State Highway Act went into effect.

Another feature regarding this new highway is the offer of the Federal Government to contribute \$40,000 for this improvement.”

It is quite apparent from the foregoing statement of facts that the proceedings for the road in question were started long prior to the effective date of House Bill No. 67, commonly known as the “Norton-Edwards Act.” As stated by you, the application for state aid was made by the county commissioners early in 1926, while House Bill No. 67 did not become effective until the second day of January, 1928.

Section 91 of House Bill No. 67, provides in part that:

“Nothing in this act shall in any way nullify or affect the obligations or rights of any county, township or other subdivision of the state contracted on or before and in effect at the time this act becomes effective, nor shall the existing rights and obligations of any person contracting with the state or any political subdivision thereof be affected. \* \* \* ”

Section 26, General Code, reads:

“Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.”

With reference to the question as to what steps must be taken under the sections of the General Code pertaining to cooperation between the state and county on the matter of the improvement of roads as they formerly read (Sections 1178 to 1231,

inclusive) in order to constitute a "proceeding" and thus permit the construction of an inter-county highway or main market road under former Sections 1191 et seq., General Code, after the effective date of said House Bill No. 67, this department in Opinion No. 776, addressed to the Director of Highways and Public Works, on the twenty-fifth day of July, 1927, held:

"1. A proceeding is 'pending' within the meaning of Section 26 of the General Code when a board of County Commissioners makes application for state aid under the provisions of Section 1191 of the General Code, and such a proceeding may be completed under the present law after the effective date of House Bill No. 67, passed by the eighty-seventh General Assembly (Norton-Edwards Act).

2. A board of County Commissioners or a board of Township Trustees contracts an obligation within the meaning of Section 91 of House Bill No. 67 at such time as it files an application under Section 1191 of the General Code for state aid, in that by filing such application a board of County Commissioners or a board of Township Trustees agrees to pay one-half of the cost of surveys and other preliminary expenses incident to the construction, improvement, maintenance or repair of an inter-county highway or main market road."

Inasmuch as the application for state aid was made in your case by the Board of County Commissioners prior to the effective date of House Bill No. 67, it follows that, in view of the holding in Opinion No. 776, supra, such application instituted a proceeding that was "pending" when House Bill No. 67 became effective within the meaning of Section 26 of the General Code, so that all the necessary steps to complete the road in question may be accomplished under Sections 1191 et seq., General Code, as they previously read, including the letting of a contract for such an improvement.

Reference is made in your letter to the fact that the Federal Government is proposing to contribute the sum of \$40,000 toward this project. In this connection your attention is invited to the fact that provision is made in Section 1178, General Code, as amended, as well as under this section as it formerly read, for the co-operation of the State with the Federal Government in the construction, improvement, maintenance and repair of post roads and other roads designated by the Federal Government for that purpose.

From the foregoing discussion, and answering your question specifically, it is my opinion that where an application for state aid was filed under the provisions of Section 1191 and related sections of the General Code, and the State has agreed to co-operate to the extent of a certain specified sum of money, in the construction of an inter-county highway or main market road, such procedure constitutes a proceeding that is "pending" within the meaning of Section 26 of the General Code, so that all steps necessary to complete such improvement should be taken under former Sections 1191 et seq., General Code, and not under the provisions of these sections as amended in House Bill No. 67 (112 v. 430), effective on the second day of January, 1928.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*