

When, however, the right of way is acquired by the Board of County Commissioners, said board should pay the necessary recording fees, this being in compliance with Opinion No. 996, issued by this department under date of September 14, 1927, the first paragraph of the syllabus reading:

"It is the duty of a Board of County Commissioners to provide the necessary right of way when a road is being constructed or improved, under the provisions of Section 1191, et seq., General Code, and such Board of County Commissioners may pay for such right of way out of the money received from taxes levied, under the provisions of Section 1222, General Code, or out of the proceeds of bonds issued, in anticipation of the collection of such taxes, as provided in Section 1223, General Code."

In view of the foregoing and specifically answering your question, it is my opinion that:

1. When right of way deeds are executed and delivered to the state and are filed with a county recorder by a state department for recording, as provided in Section 267, General Code, it is the duty of such department to pay to the county recorder the proper recording fees.

2. When right of way deeds are executed and are delivered to the state and are filed by the Board of County Commissioners for recording, as provided in Section 267, General Code, it is the duty of such board to pay to the county recorder the proper recording fees.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

1216.

COUNTY COMMISSIONERS—AUTHORITY TO CLEAN DITCHES RUNNING THROUGH FARM OWNED BY COUNTY.

*SYLLABUS:*

*A board of county commissioners which has been petitioned for the cleaning out of a ditch is not disqualified to act in the premises merely because the course of such ditch runs through a farm owned by the county.*

COLUMBUS, OHIO, October 31, 1927.

HON. ALBERT E. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of October 6th, which reads as follows:

"Where County Commissioners have been petitioned for a clean-out of a ditch and the ditch runs through a farm owned by the County (farm on which County Home is located) can the County Commissioners act in the proceedings in their office regarding said ditch, or must the Common Pleas Judge appoint others as acting Commissioners to act in their stead."

Your attention is directed to Sections 6501 and 6508, General Code, which, so far as pertinent to your inquiry, provide:

Sec. 6501. "If one or more commissioners of a county are petitioners for an improvement, or own land that will be benefited or damaged by the improvement petitioned for, the auditor shall notify the judge of the court of common pleas of the county who shall within ten days appoint as many disinterested freeholders of the county as may be necessary to take the place of such interested commissioner or commissioners; \* \* \*"

Sec. 6508. "When in the opinion of the commissioners, by resolution entered on their journal, any land owned by the county or any highway therein, under their supervision, is in need of drainage, and such drainage will also specially benefit other land, the commissioners may file a petition without bond, for such improvement in the court of common pleas of the county. Upon such petition being filed the court of common pleas shall act in the same manner, and conduct the same proceedings, and make the same findings and orders as are provided in this chapter for the board of county commissioners. \* \* \*"

The sections above referred to are the only sections having to do with county ditches that in any way disqualify a board of county commissioners from acting in the premises.

Section 6501, supra, is applicable only when "one or more commissioners of a county are petitioners for an improvement, or own land that will be benefited or damaged by the improvement petitioned for."

Section 6508, supra, is applicable only when the board of county commissioners file a petition for such an improvement.

There being no section of the General Code to the contrary I know of no reason why a board of county commissioners, which has been petitioned for the cleaning out of a ditch, is disqualified to act in the premises merely because the course of such ditch runs through a farm owned by the county.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*

1217.

COUNTY COMMISSIONERS—TO SECURE POSSESSION OF PROPERTY OF A COUNTY CHARGE SHALL FILE PETITION IN PROBATE COURT OF COUNTY WHERE PROPERTY IS LOCATED.

SYLLABUS:

*Under the provisions of Section 2548, General Code, when a person becomes a county charge and is possessed of or is the owner of property, real or personal, the county commissioners shall seek to secure possession of such property by filing a petition in the probate court of the county in which such property is located. Said property includes money of a former inmate in the custody of a state hospital for the insane, which was deposited upon the admission of said inmate and remained after the discharge from the said institution.*

COLUMBUS, OHIO, October 31, 1927.

HON. JOHN E. HARPER, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication which reads: