

on the amount of such collections, to be paid upon the warrant of the county auditor upon the general fund of the county, and not deducted from the special assessments.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

925.

ROADS AND HIGHWAYS—STATE AID IMPROVEMENTS—COUNTY COMMISSIONERS WITHOUT AUTHORITY TO EXTEND ASSESSMENT ZONE INTO ADJOINING COUNTY.

There is no statutory authority in the county commissioners in connection with state aid improvements under sections 1178 et seq. G. C. to exercise their option of providing an assessment zone of one-half mile or one mile in width on either side of the road to be improved when the adoption of a zone of such width would extend the assessment area into an adjoining county.

COLUMBUS, OHIO, January 12, 1920.

HON. HARRY A. SMITH, *Prosecuting Attorney, Caldwell, Ohio.*

DEAR SIR:—Your communication of recent date is received submitting for opinion the following:

“Where a main market road or inter-county highway is being improved by the state highway department in conjunction with the county commissioners under section 1191 et seq., or what is popularly known as the state aid plan, and the county commissioners have decided to make the assessment area one mile on each side of said road, and said road is situated so near the county line that said one mile assessment area extends across the line into an adjoining county, under what sections or by what procedure can the assessments be levied, if at all, on the lands within said one mile area in said adjoining county?”

If the road in question were to be improved by the county commissioners under authority of sections 6906 et seq. G. C. instead of under the so-called state aid plan provided for by sections 1178 et seq. G. C. the answer to your question would be found in section 6941 G. C. which as amended 107 O. L. 104 reads as follows:

“When the proposed improvement is wholly within one county but within less than the legal assessment distance of the county line and a petition is filed asking for such improvement, signed by fifty-one per cent of the persons to be especially assessed therefor, such improvement shall be regarded as a joint county improvement, and shall be made in accordance with the provisions of sections 6930 to 6939 inclusive of the General Code of Ohio in so far as said sections are applicable.”

No similar statute is found in the series relating to state aid projects, the nearest approach to it being section 1220 G. C. relating to roads “upon a county

line." The provision giving the option to the commissioners of including within the assessment zone other than property immediately abutting the improvement is found in section 1214 G. C. which reads in part:

"And provided further that the county commissioners by a resolution passed by unanimous vote may make the assessment of ten per cent or more as the case may be of the cost and expense of improvement against real estate within one-half mile of either side of the improvement or against the real estate within one mile of either side of the improvement."

This language in itself negatives the idea of any authority in the commissioners to create an assessment zone which would be of less width on one side of the road than on the other. The plan of extending the assessment zone to the width of one-half mile or one mile as the case may be, is a mere extension of the abutting land plan, as was pointed out in an opinion of this department dated December 12, 1917, appearing in Opinions of Attorney General for 1917, at page 2305. Furthermore, the legislature by the adoption of the above quoted section 6941 in connection with the improvements by the county commissioners, has itself put a construction on the manner of operation of the plans of a one-half mile assessment zone and a one mile assessment zone; for it is quite plain that if the legislature had intended to leave to the commissioners the option of creating zones of unequal width on the sides of the road, there would have been no necessity for section 6941.

For these reasons then, you are advised that there is no statutory authority in the county commissioners in connection with state aid improvements under sections 1178 et seq. G. C. to exercise their option of providing an assessment zone of one-half mile or one mile in width on either side of the road to be improved when the adoption of a zone of such width would extend the assessment area into an adjoining county. As applied to the case you state, the only course open to the commissioners is to confine the assessment area either to the one-half mile zone or to the abutting lands.

Respectfully,

JOHN G. PRICE,

Attorney-General.

926.

ROADS AND HIGHWAYS—STATE HIGHWAY COMMISSIONER—NOT HIS DUTY TO WITHHOLD ESTIMATES PRIOR TO FINAL ESTIMATE FOR PURPOSES OF CLAIM FOR DAMAGES BY THIRD PARTY ON ACCOUNT OF NEGLIGENCE OF A CONTRACTOR ON STATE HIGHWAY IMPROVEMENT.

Under the terms of a certain contract set forth in the opinion, the state highway commissioner is not under the duty of withholding estimates prior to the final estimate, for the purpose of making up an amount sufficient to cover damages