

claims made by them when it has already developed that Bentz Brothers owe the state of Ohio something like twenty-two thousand dollars upon this contract. This is evident from the fact that they entered into a contract to complete the work for \$40,888.00, while the cost and expense of the work up to date is \$62,895.13.

Further, we would like to suggest to the advisory board this question: From whence would the money come to pay Bentz Brothers? The state highway department has no contingent fund from which it can pay such claims as this. In the matter of this improvement the records show that the county agreed to pay \$26,000.00 and the state agreed to pay \$25,000.00, or a total of \$51,000.00 was appropriated for this improvement. This amount of money has already been used and considerably more than this amount has been used. Hence there is nothing in the fund at all out of which Bentz Brothers could be paid, and the only recourse, as said before, would be to the bond which has been signed by Bentz Brothers themselves and by a certain surety company."

It thus appears that prior to the time of the giving of the release by the General Assembly, consideration had been given both by your department and this department to the claim described in the present opinion. The highway advisory board, in conformity with the views of my predecessor, as set forth in the memorandum mentioned, entered the following on September 24, 1918:

"*Morgan County*—I. C. H. No. 162, section "F"—Brief of Special Counsel Kramer presented.

A brief dated September 10 addressed to the board by John F. Kramer, special counsel, signed by Attorney-General McGhee was submitted in which the following suggestions were made:

(1) That the state highway advisory board has no jurisdiction whatever in reference to those matters which took place prior to the time of its coming into existence.

(2) That it has no authority whatever in law to make a finding upon the claims presented to it herein, and that there is no money whatever out of which any sum allowed by it could be paid, even though the board should make a finding; and

(3) If Bentz Brothers have a general claim for damages against the state, it is one which would have to be adjusted by the legislature of the state and not by the state highway advisory board."

Respectfully,

JOHN G. PRICE,

Attorney-General.

1766.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
PUTNAM COUNTY, OHIO.

COLUMBUS, OHIO, December 31, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*