

2746.

APPROVAL, BONDS OF VILLAGE OF CUMBERLAND, OHIO, IN AMOUNT OF \$28,000 FOR STREET IMPROVEMENTS.

COLUMBUS, OHIO, December 29, 1921.

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

2747.

APPROVAL, DEFICIENCY BONDS OF MONTPELIER VILLAGE SCHOOL DISTRICT, WILLIAMS COUNTY, OHIO, IN AMOUNT OF \$25,000.

COLUMBUS, OHIO, December 29, 1921.

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

2748.

MUNICIPAL CORPORATIONS—TREATING OF STREETS WITH OIL—  
SUCH AN IMPROVEMENT AS TO COME WITHIN MEANING OF  
WORDS "MAINTENANCE" AND "REPAIR" USED IN SECTION 6309-2  
G. C.

*The process of treatment with oil of municipal streets and public roads, authorized by sections 3751, 3752, 3753 and 3754 G. C. is such a street or road improvement as to come within the meaning of the words "maintenance" and "repair" as used in section 6309-2 of the General Code.*

COLUMBUS, OHIO, December 30, 1921.

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

GENTLEMEN:—Receipt is acknowledged of your letter of recent date reading as follows:

"We respectfully request your written opinion upon the following matter:

Section 3751 to 3754 inclusive of the General Code provide a method by which streets may be treated with oil.

*Question:* May such oiling be considered as a repair within the meaning of section 6309-2 of the General Code?"

Sections 3751 to 3754 inclusive of the General Code provide the method by which municipal corporations may improve streets, alleys, etc., by treatment with oil for the purpose of laying the dust on, and the preservation of the surface of, the same.

Sections 3751 and 6309-2 G. C. are pertinent to your question. Section 3751 reads:

"Municipal corporations may treat with oil, for the purpose of laying the dust on, and preserving the surface of, streets, alleys, squares and public roadways. When the council desires to have such work performed by contract, it shall pass an ordinance declaring its intent so to do. In villages the council shall contract and in cities the council shall direct the director of public service to contract, for a period named, not exceeding five years, with any person or corporation for treating with oil the streets, alleys, lanes, squares and public roadways and places, such contract to include all the districts established as hereinafter provided, during the entire term of such contract."

It may be noted that this section, together with sections 3752, 3753 and 3754 G. C. specifically provide for the method of treatment with oil of the streets, alleys, squares, and public roadways of the municipality, and comprehensively provides for the details of such a procedure.

Section 6309-2 G. C. provides:

"The revenue collected under the provisions of this chapter shall be distributed as follows:

(1) All fees collected under this chapter shall be paid into the state treasury to the credit of a fund to be designated as the 'state maintenance and repair fund.'

(2) Fifty per centum of all taxes collected under the provisions of this chapter shall be for the use of the municipal corporation or county which constitutes the district of registration as provided in this chapter. Such moneys shall be paid into the treasury of the proper county as provided herein and distributed as are other taxes. In the treasuries of such municipal corporations and counties, such moneys shall constitute a fund which shall be used for the maintenance and repair of public roads and highways and streets and for no other purpose, and shall not be subject to transfer to any other fund. 'Maintenance and repair' as used in this section, includes all work done upon any public road or highway, or upon any street, in which the existing foundation thereof is used as the subsurface of the improvement thereof, in whole or in substantial part.

(3) Fifty per centum of all taxes collected under the provisions of this chapter, shall be paid by the secretary of state into the state treasury to the credit of the 'state maintenance and repair fund.'

The 'state maintenance and repair fund' provided for herein shall be available for the use of the secretary of state in defraying the expenses incident to carrying out and enforcing the provisions of this chapter and for the use of the state highway commissioner in the manner provided by law. The general assembly shall make appropriations therefrom for such purpose."

Paragraph 2 of this section in part provides:

"*Maintenance and repair* as used in this section includes all work done upon any public road or highway, or upon any street, in which *the existing foundation* thereof is used as in the sub-surface thereof, in whole or in substantial part."

The question proposed is whether the oiling or treatment with oil of a municipal street or thoroughfare may be deemed such a repair as to come within the meaning of the words "maintenance and repair" as occurring in this paragraph of the section.

It is believed that the words "maintenance" and "repair" as used in this section mean to include any improvement, maintenance, or repair which would tend to preserve the surface of the existing roadbed, and that such an improvement or repair is chiefly limited to those cases in which the existing foundation thereof is used as in the subsurface thereof, in whole or substantial part.

"Words and Phrases" defines the word "repair" as used in cases of road improvement as follows:

"'Repair' of a turnpike, means a filling up of holes, and an evening up of the surface in such a manner that the ordinary and expected travel of the locality, may pass with reasonable ease and safety. *Milford vs. Traction Co.*, 4 O. C. C. (N. S.) 191, 16 O. C. D. 271."

Thus it would seem that the process of street or road oiling might be considered as having the tendency and effect of making more compact, by reason of its cohesive qualities, the surface of the roadbed so treated, and of evening up the same in such a manner as to reasonably come within the meaning of the words "maintenance" and "repair" as used in the considered section.

You are therefore advised that in the opinion of this department the process of street oiling contemplated by the provisions of section 3751 to and inclusive of 3754 G. C. is such as may be included within the meaning of the words "maintenance" and "repair" occurring in the provisions of section 6309-2 of the General Code.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2749.

LIGHTS—TOWNSHIP TRUSTEES NOT AUTHORIZED TO PROVIDE  
LIGHTS FOR SECTION OF STREET.

*Held, under the facts discussed, that township trustees are not authorized to provide artificial lights for a section of street.*

COLUMBUS, OHIO, December 30, 1921.

HON. JOHN R. KING, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR:—Your letter of December 22, 1921, is received, reading as follows:

"Marion road is an important highway leading east from Parsons avenue in the city of Columbus, but the road lies just out of the city limits in the county of Franklin. It is located in an industrial section and a great number of workmen use the road in going to and from the factories in question. Without being lighted, its use is considered