

to bind over a minor under the age of eighteen years to the court of common pleas to await the action of the grand jury, and no fees may be legally taxed or paid in connection with any attempt by such officers to bind over such persons. A mayor or justice of peace has no jurisdiction to dispose of a case against a minor under eighteen years of age other than to transfer the case to the juvenile judge. Fees and costs originally made, are to follow the case for allowance and payment under section 1682 G. C.

3. In cases arising under section 1654 G. C. and all other sections of the juvenile act, the entries and minutes made in the appearance docket of the juvenile court and the entries in the journal of that court of all orders, judgments and findings of the court, are the only 'record' required by law to be kept.—See section 1641 G. C."

In that opinion reference was made to the fact that there is no statutory authority permitting a justice of the peace to bind a minor under the age of eighteen years over to the Court of Common Pleas to await the action of the Grand Jury, and for this reason no fees may be legally taxed or paid in connection with any attempt by such officers to bind over such person. Section 1659, General Code, supra, however, makes it the mandatory duty of the justice of the peace, when a minor under the age of eighteen years is arrested, to transfer the case to the Juvenile Court.

In no other section of the General Code is there provision for the payment of fees to a justice of the peace in such a case and to hold that the amendment of Section 1682, General Code, supra denies the payment of such fees to the justice of the peace would be reading into the section something which is not there. I see no basis for reaching a conclusion contrary to that of my predecessor as contained in the 1921 opinion and accordingly I am of the opinion in specific answer to your inquiry that the cost bill of the justice of the peace and the constable should be certified to by the judge of the Juvenile Court.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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4110.

DEPARTMENT OF HIGHWAYS—CONSTITUTIONALITY OF PROVISIONS  
OF H. B. NO. 180 of 91st GENERAL ASSEMBLY DISCUSSED.

**SYLLABUS:**

*The terms of House Bill No. 180 of the 91st General Assembly discussed with reference to their constitutionality.*

COLUMBUS, OHIO, APRIL 2, 1935.

Hon. Floyd C. Kerns,  
Secretary of Highways Committee,  
House of Representatives,  
Columbus, Ohio.

DEAR SIR:—I acknowledge receipt of the copy of resolution adopted by the High-

ways Committee of the House of Representatives in which my opinion is requested concerning the constitutionality of House Bill No. 180, and suggesting any changes in such bill if necessary to make it constitutional. Said House Bill No. 180 reads as follows:

"A BILL

To authorize the highway department to relocate, construct and maintain state highway number seven, U. S. route fifty-two, section Hanging Rock part, within the limits of the village of Hanging Rock.

Be it enacted by the General Assembly of the State of Ohio:

Section 1. The state highway department is hereby authorized to enter within the limits of the village of Hanging Rock, Lawrence county, state of Ohio, without the consent of the council of said village, for the purpose of relocating, constructing and maintaining state highway number seven, U. S. route fifty-two, section Hanging Rock part."

Section 26 of Article II of the Constitution of Ohio provides in part as follows:

All laws, of a general nature, shall have a uniform operation throughout the State; \* \* \*."

Clearly, the operation of the proposed act is limited to State Highway No. 7 and to the Village of Hanging Rock and, therefore, such act cannot have uniform operation throughout the state. The question, therefore, arises as to whether or not the proposed act is a law of a general nature.

Sections 1189 and 1189-2, General Code, authorize the Director of Highways to construct, reconstruct, improve, widen, maintain and repair state highways within the limits of a municipal corporation, provided he first obtains consent of the legislative authority of such municipality so to do. The proposed act would take away the requirement as to consent in case of relocation, construction or maintenance of State Highway No. 7 within the limits of Hanging Rock. It would have no operation outside of this village.

The following rule was laid down in the case of *Hixon vs. Burson, et al.*, 54 O. S. 470, in the determination of whether a law is of a general nature, which the constitution provides must have a uniform operation throughout the state:

"But how are we to determine whether a given subject is of a general nature? One way is this: If the subject does or may exist in, and affect the people of, every county in the state, it is of a general nature. On the contrary, if the subject cannot exist in, or affect the people of every county, it is local or special. A subject matter of such general nature can be regulated and legislated upon by general laws having a uniform operation throughout the state, and a subject matter which cannot exist in, or affect the people of every county, can not be regulated by general laws having a uniform operation throughout the state, because a law cannot operate where there can be no subject matter to be operated upon.

So that practically this section of the constitution means that the legislation on a subject to which, in its nature, laws having a uniform operation throughout the state can be made applicable, must be by statutes having such uniform operation, and can not be by local or special acts. The subject of the statute being of a general nature, all laws without exception as to such

subject must have a uniform operation. The constitution makes no exception, and the courts can make none.

The evident intention was, to restrict local and special legislation to such subjects as are in their nature not general, so as to compel as near as possible, uniformity of laws throughout the state. \* \* ”

It was formerly held that acts providing for the improvement of designated roads were local in their nature and were not laws of a general nature.

In the case of *State, ex rel., vs. County Commissioners*, 35 O. S. 458, the following was held:

“2. An act providing for the improvement of a designated county road, is local in its nature, and not in conflict with article 2, section 26, of the constitution, which provides that, ‘all laws of a general nature shall have a uniform operation throughout the state.’

3. An act requiring county commissioners to cause a designated road to be improved, and to levy a tax to defray the expense thereof, where the road is open to the public, is not invalid for want of power in the general assembly to pass it.”

This case, however, was overruled by the case of *Hixson vs. Burson, et al., supra*. In this case the court said:

“Is the subject of roads and highways, under that section of the constitution, of a local or general nature?

That the subject of roads and highways is capable of being legislated upon by general laws having a uniform operation throughout the state, is conclusively shown by the fact that such laws were passed at the second session of the general assembly after the adoption of the constitution, and remain in substantially the same form to this day, and no local or special act on the subject of roads was passed for many years thereafter.

The subject of roads is of so general a nature, that by section 19 of the Bill of Rights it is placed alongside of ‘a time of war, and other public exigencies,’ and it is provided that private property may be taken for the purpose of making and repairing roads, without first making compensation therefor; while in all other cases of taking private property for public use, it must be first paid for in money, or secured by a deposit of money. In taking private property for the making and repairing of roads, the officers invoke the power of eminent domain, one of the highest attributes of sovereignty, a power which can not be invoked for a private, but only for a public use. Roads and highways are laid out, surveyed, located, constructed and kept in repair at the expense of the public and for the free use of the public. Without them all public business would be crippled, trade and commerce would be ruined, and it would be impracticable to reach our churches and public schools.

In the case of *Grove vs. Leidy*, 9 C. C. Rep., 272, the subject of roads was held to be of a general nature, requiring legislation having a uniform operation throughout the state, and that case was affirmed by this court in the case of *Leidy vs. Grove*, 53 Ohio St., 662.

There is another consideration. To hold the subject of roads to be of a general nature requiring laws of uniform operation throughout the state, would

make it the interest of all to secure the passage of the best possible system of general road laws.

Such laws could be amended from time to time as experience might suggest, and but little time need be taken to consider and pass such amendments. But regarding the subject of roads as of a local nature, each locality would be interested in some local scheme of road laws, to the exclusion of the general road laws, of the state. Under such local system each member of the general assembly, instead of bettering the general road laws of the state, would find more incentive to secure the passage of local acts affecting his immediate constituents or county, or some township, or particular road; and a member having succeeded in obtaining all the local road laws required by his section, would feel but little interest in securing road legislation for other parts of the state, unless thereby he could get a return of favors for some other local measure in which he might take a special interest. But general legislation would induce each member to be vigilant in the service of the whole people, because thereby he could best serve his own constituents.

From these considerations, it is clear that the subject of roads is of a general nature, and that it is not only capable of being, but ought to be, legislated upon by general laws having a uniform operation throughout the state. The limitations in said section twenty-six, exclude local and special legislation as to roads, and all such legislation is necessarily unconstitutional."

In the case of *State, ex rel., vs. Commissioners*, 54 O. S. 333, the court held invalid a law which authorized commissioners of a particular county to improve a certain road in a prescribed manner. The court said on page 343:

"\* \* \* The location and construction of public roads is a subject of a general nature, and should, therefore, be regulated by general laws, uniform in operation throughout the state."

In the case of *State, ex rel., vs. Davis, et al.*, 55 O. S. 15, the court held an act invalid which authorized the commissioners of Mahoning County to repair, extend, reconstruct and rebuild one or more bridges across the Mahoning River in the City of Youngstown in said county. The court said:

"Highway bridges, as well as the highways of which they are a part, are general subjects of legislation within the meaning of the constitution."

In the case of *Mott, et al., vs. Hubbard, et al.*, 59 O. S. 199, the court held void an act, the operation of which was restricted to Cuyahoga County. The court said:

"The subject-matter of the act is public roads, and that subject matter is of a general nature, and statutes upon subjects of a general nature must have uniform operation throughout the state. Section 26, article 2 of the constitution."

The following was held in the case of *Thorniley vs. State, ex rel.*, 81 O. S. 108:

"Section 4903, being an essential part of a statute providing for the management and control of highways by essentially different methods, in different

counties of the state, is void because repugnant to Section 26 of Article II of the constitution that all laws of a general nature shall have a uniform operation throughout the state. (*Hixon vs. Burson*, 54 Ohio St., 470, and *The State, ex rel., vs. Davis*, 55 Ohio St., 15, approved and followed.)”

The following rule was laid down in *State, ex rel., vs. Spellmire, et al.*, 67 O. S. 77:

“Whenever a law of a general nature having a uniform operation throughout the state, can be made fully to cover and provide for any given subject-matter, the legislation, as to such subject-matter, must be by general laws, and local or special laws cannot be constitutionally enacted as to such subject-matter.”

See also *State, ex rel., vs. Yates*, 66 O. S. 546; *Commissioners vs. State, ex rel.*, 120 O. S. 297; *Commissioners vs. Wiemeyer*, 124 O. S. 103; *County Commissioners vs. State, ex rel.*, 34 O. A. 201.

I am of the view, therefore, that the proposed act if passed would be violative of section 26 of Article II of the Constitution of Ohio, and since the subject of highways has been held to relate to a subject of a general nature, I know of no way in which the proposed act could be changed so that it would be valid and at the same time not have a uniform operation throughout the state.

Respectfully,  
JOHN W. BRICKER,  
*Attorney General.*

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4111.

CONTRACTOR—NOT REQUIRED TO SECURE AFFIDAVIT PROVIDED FOR  
IN AMENDED H. B. NO. 102 WHEN.

**SYLLABUS**

1. *Where the principal contractor has entered into his contract with a public agency prior to the effective date of Amended House Bill No. 102, but subsequent to said effective date such contractor purchases or procures, or agrees to purchase or procure, from other persons materials, supplies or services (other than labor) with which to perform the terms of such public contract, he need not secure from such other persons the affidavits provided for therein and file them with the public agencies.*

2. *A principal contractor who has entered into his contract with a public agency prior to the effective date of Amended House Bill No. 102, and who has agreed to purchase materials, supplies and services (other than labor) from other persons, with which to perform the terms of his contract, prior to said effective date, for delivery subsequent to such date, is not required to secure from such other persons the affidavits prescribed in such act and to file the same with the public agency.*