

J. N. Hoffman, land lease-----	\$150 00
Northern Ohio Power & Light Co., pole line-----	3,333 34
Pille & Bechtel, land lease-----	5,333 34

<i>Hocking Canal</i>		<i>Valuation</i>
William Thompson, land lease-----		\$100 00

<i>Portage Lakes</i>		<i>Valuation</i>
H. E. Miller, dock-landing and walkway (west res.)-----		\$100 00
George B. Wolf, cottage site and landing, (north res.)-----		1,200 00

<i>Indian Lake</i>		<i>Valuation</i>
Ewing Mahan, business, cottage sites and landing-----		\$1,666 67
H. E. Wise, walkway and landing-----		400 00

I have carefully examined the above leases, and finding them correct in form, and legal, I hereby approve the same.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1086.

HIGHWAY—ERROR IN DESCRIPTION SHOULD BE CORRECTED BY
AMENDING THE RESOLUTION FOR IMPROVEMENT.

SYLLABUS:

Where, subsequent to the filing of an application for state aid, an inter-county highway was relocated by the Director of Highways and Public Works as authorized by law, and all the various steps in the procedure to improve such highway, upon a co-operative basis between the county and the state as provided in Sections 1191, et seq., of the General Code, have been taken, including the letting of the contract, and through inadvertence and mistake the description of the highway, as it was before its relocation, was incorporated in the resolution of the county commissioners approving the plans and determining to proceed, and in the resolution authorizing a bond issue, all other necessary legislation, the plans, the advertisement for bids and the contract containing a description of the road as relocated, it is the duty of such board of county commissioners to correct such erroneous description to conform with its actual intention, by amending said resolution to show correctly the description of the particular section of the highway to be improved.

COLUMBUS, OHIO, September 30, 1927.

HON. OTHO L. MCKINNEY, *Prosecuting Attorney, Springfield, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“The board of county commissioners of this county on the 25th day of September, 1922, by resolution, made application to the Director of Highways for state aid for the construction of the Springfield-Troy Road, I. C. H. No. 196, said road being particularly described in said resolution.

Acting upon this resolution and application, the State Highway Department did grant state aid for the road as described. In October, 1924, the State Highway Department, after hearings, changed the location of the said road No. 196 and abandoned the old road as a part of the highway system.

On August 8, 1927, the county commissioners, by resolution, determined to proceed with the construction of I. C. H. No. 196 and passed the necessary legislation for the issuance of bonds to cover the county's share of some \$93,000. In the resolution of August 8, 1927, the particular description of No. 196 is the same as the road described in 1922 and all the legislation pertaining to the issuance of bonds was based on the old abandoned road. The contract for the road was let by the Highway Department and the contractor had moved on the job preparatory to beginning the actual work when the discovery was made that all of the proceedings for the improvement and the financing of the county's share, as well as the state aid granted, was on the old description and the abandoned portion of the road.

It develops that no request for state aid was made by the commissioners or any grant was made by the State Highway Department to improve the road No. 196 under the changed description and route.

The query is, whether under the above stated facts the commissioners can legally proceed by amendment of their resolution or otherwise, or must the proceedings be started from the beginning with an application to the State Highway Department for state aid on the new route as has been determined by the State Highway Department.

I am enclosing a transcript of the proceedings of the commissioners covering the entire proceeding up to date, for your convenience in determining the matter."

Accompanying your letter is a transcript of all the proceedings undertaken by the board of county commissioners of your county relative to the proposed improvement of I. C. H. No. 196 located in Springfield and German Townships. Said transcript also contains copies of the various communications from the Department of Highways and Public Works indicating the various steps that have been taken by said Department pertaining to this improvement.

A question not without considerable difficulty, arises from the fact, that a change in the location of I. C. H. No. 196 was made in said townships, subsequent to the filing of the application for state aid by the board of county commissioners of Clark County, pursuant to the provisions of Section 1191 of the General Code. Said application for state aid contains the following description of the section of the road sought to be improved:

"Beginning at the intersection of the Springfield-Troy Road, I. C. H. No. 196, Clark County, with the National Road, I. C. H. No. 1, Section B, thence in a northerly and northwesterly direction along I. C. H. No. 196 to the west corporation line of North Hampton in Springfield, German and Pike Townships in all a distance of 7.25 miles."

The application for state aid, above referred to, was made by the county commissioners on the 25th day of September, 1922. Such application received favorable consideration, and on the 16th day of February of the year following, certain state funds were set aside as the state's share of the improvement.

Subsequently on the 10th day of September, 1923, after a petition had been presented to the board of county commissioners of Clark County by certain citizens of Clark County who were interested in a change of the location of that portion of I. C. H.

No. 196 in Springfield and German Townships, the board of county commissioners requested the Director of Highways and Public Works to conduct a hearing upon the question of the changing of the location of said highway by continuing the same to the village of Lawrenceville. At that time, after a hearing, such change in the location of said highway as requested in the petition presented to the county commissioners was denied by the Director of Highways and Public Works. Later on, in March of 1924, petitions were filed containing the names of one hundred persons, again requesting a relocation of said I. C. H. No. 196 in the same manner as in the former petition. On March 13, 1924, the board of county commissioners referred said petition to the Director of Highways and Public Works and requested that an early date be set for a hearing upon said petition and on October 20, 1924, after hearing, an order was made by the Director of Highways and Public Works changing the location of said highway as follows:

“Beginning at the intersection of the present location of the Springfield-Troy road, I. C. H. No. 196, and the Lawrenceville-North Hampton road, No. 196, Sec. A, near the west line of Sections 32 and 33 German Township; thence east between Sections 26, 27, 20 and 21, German Township to Lawrenceville thence in a southeasterly direction through Sections 20, 14, 13, 18 and 12, German Township, crossing North Valley Pike to Springfield Township line; thence east through Section 12, Springfield Township, to the intersection of the line between Sections 5 and 11, Springfield Township, at Bechtle Avenue; thence south along Bechtle Avenue to the corporation line of the City of Springfield, Ohio, a distance of 6.95 miles or a distance of 9.08 miles (.58 miles longer than the present location) from intersection of Main and Fountain Avenue, center of the business section of Springfield, Ohio, and as shown on plat.”

That portion of I. C. H. No. 196, relocated by the order of the Director of Highways and Public Works on October 20, 1924, was officially designated by him as Section “Q,” Springfield-Troy Road, I. C. H. No. 196. Again on March 14, 1927, the county commissioners of Clark County by resolution, requested that the relocation of Section “Q” of the Springfield-Troy Road, I. C. H. No. 196, formerly Section “E” be extended eastwardly along the Koblenz Road (First Street) to the intersection of the west corporation line of the City of Springfield about two hundred feet west of the Springfield-St. Paris Road. After conducting a hearing on the change in the highway as requested, the Director of Highways and Public Works made such change.

It is quite significant that in all instances where the request for a change in the location of I. C. H. No. 196 was made, that such requests were made by the board of county commissioners of Clark County, Ohio, so that there can be no question but that they were fully cognizant of all proceedings taken in that regard. The relocation last provided for extended Section “Q” of I. C. H. No. 196 up to the corporation line of Springfield and undoubtedly such request was made in order that I. C. H. No. 196 when improved would connect with a street in the City of Springfield that would be a proper extension of said highway in said city.

It is also quite significant that on the 6th day of June, 1927, the board of county commissioners resolved to proceed with the construction of I. C. H. No. 196, Section “Q.” The description of the road as it had been relocated was correctly designated as Section “Q” as the same had been designated by the Director of Highways and Public Works after the change had been made. Thereupon on July 11, 1927, the Department of Highways and Public Works set aside the sum of \$14,500 as the state’s share of constructing bridges contemplated by such improvement and the sum of \$72,500 as the state’s share in the improvement of Section “Q,” I. C. H. No. 196.

On the first day of August, 1927, petitions of owners of property abutting upon the improvement were presented to the board of county commissioners of Clark County asking that the road be improved, in which they gave sufficient right of way to widen said highway and said petitions correctly referred to the road to be improved as Section "Q."

Plans, specifications and estimates for the project were then prepared under the supervision of the Director of Highways and Public Works and in all these a correct reference is made to the highway as relocated. Thereafter, on the 8th day of August, 1927, the county commissioners approved said plans, and endorsed them by subscribing their names thereon and these plans correctly show that portion of I. C. H. No. 196 which had been relocated and, as relocated, was to be improved. These plans show a designation of the highway to be improved as Section "Q," Springfield-Troy Road, I. C. H. No. 196.

However, through inadvertence, the county commissioners in the resolution approving said plans and determining to proceed with said improvement erroneously made use of the description of the old road as contained in the application for state aid as made on September 25, 1922. In preparing this resolution the wrong description was incorporated therein. This mistake undoubtedly occurred by copying the description from the application for state aid. Again in the resolution providing for the issuance of bonds for the proposed road, to obtain funds to take up short time notes to be issued for paying the cost of said improvement, the same erroneous description was used. However, in the county auditor's certificates, certifying to the life of the improvement and the fact that the money necessary as the county's share was in the treasury or in the process of collection, the highway is correctly described as Section "Q" of I. C. H. No. 196.

It is also well to mention that the advertisement for bids on this improvement as well as the contract for the work, correctly described the relocated highway as the road to be improved.

The question then presents itself whether the use of an erroneous description in the resolution approving the plans and determining to proceed, as well as in the resolution providing for the issuance of bonds, makes the entire proceeding void, or whether such a mistake cannot be corrected by properly amending the legislation to show the change the board of county commissioners had in mind.

As heretofore pointed out the description of the section of the road to be improved appearing in the resolution determining to proceed as well as in the resolution providing for the issuance of bonds, was undoubtedly taken and copied from the application for state aid. The description of the highway as made in the application for state aid was at the time it was made correct, but subsequent to the changing of the location of said highway, was of course, incorrect.

That a change in the alignment of a road may be made by the Director of Highways and Public Works subsequent to the filing of an application for state aid by a board of county commissioners will be seen from the language of Section 1191, General Code, which provides :

"If the state highway commissioner approves the application or part thereof, he shall, if necessary, cause a map of the highway in outline and profile to be made and indicate thereon, *any change in existing lines, if he deems it of advantage to make such change.* * * * " (Italics the writer's.)

It is quite obvious that if the Director of Highways could, as in this instance, materially change the alignment of a road, that such change would necessitate a change in the description of said highway which would be different that that which was described in the application for state aid.

All of the various sections of the statutes pertaining to the various steps to be taken by a board of county commissioners and the State Highway Department, are of the same series or group of statutes and were enacted in relation to each other. So that in order to determine a question such as is presented by you, it is necessary to read these various sections in the light of each other. The first step in the procedure is the application for state aid. Previous to the execution of the plans for approval and after the application for state aid is made, it is apparent that the Director of Highways is given specific authority to change the alignment of the highway which may involve a relocation of the same. It is quite apparent therefore, that the Director of Highways and Public Works is not bound by the description of the highway as contained in the application for state aid and that he may change such highway so that the description of the highway contained in the application for state aid will not cover the highway as changed.

Your attention is directed to Section 1201 of the General Code which is a part of the same group of statutes pertaining to the improvement of inter-county highways and main market roads upon a cooperative basis between a county and the state or between a township and the state, the pertinent part of which reads:

“ * * * It shall be the duty of the state highway commissioner in the improvement of inter-county highways and main market roads to change the line of the proposed improvement from that followed by the existing highway *whenever such change is practicable* and whenever by making such change it is possible to eliminate dangerous curves, sharp angles or steep grades.
* * * ”

It will be observed that the Director of Highways and Public Works shall change the line of an existing highway whenever in his opinion such change is practicable and such change may be made subsequent to the application for state aid which is the first step in the procedure.

Therefore, it follows that the description of the road for which aid is requested as provided in Section 1191, *supra*, is not controlling, and that, as will be hereinafter pointed out in this opinion, the county commissioners have their remedy if they are dissatisfied with any change in the location of a highway which has been made subsequent to their applying for state aid for a section of a highway which is described in their application for state aid, in that they can either approve or disapprove the plans for such improvement which must be presented by the Director of Highways and Public Works for their approval. This is evident from the language of Section 1200, General Code, as follows:

“Upon receipt of surveys, plans, profiles, specifications and estimates for the proposed improvement, the county commissioners or township trustees *may by resolution adopt the same*, and provide that said highway, bridge or culvert be constructed under the provisions of this chapter.” (Italics the writer’s.)

In the instant case the county commissioners approved the plans which clearly show upon the face thereof, the actual improvement to be made so that there cannot be any question that they have had in mind at all times, since the relocation of the highway, the improvement of the portion of the highway, as shown by said plans even though the application for state aid contains a description of a highway which has been abandoned and no longer exists.

It appears from an examination of the transcript of the proceedings as submitted, that no assessments have been made against property as provided in Section 1214 of

the General Code. Therefore, all property owners affected by the improvement will have an opportunity to be heard relative to their assessments and their rights can in no way be affected because of the erroneous description of the road to be improved as it appears in certain resolutions of the board of county commissioners as hereinbefore referred to.

There is no question in my mind that the county commissioners have at all times, since the relocation of said highway, had in mind the improvement of that particular portion of I. C. H. No. 196 as shown by the plans and which leads to the village of Lawrenceville, and that entirely through inadvertence an erroneous description of the section of the road to be improved appears in the resolution approving the plans and determining to proceed, as well as the resolution providing for the issuance of bonds.

Answering your question specifically, it is my opinion, that where, subsequent to the filing of an application for state aid, an inter-county highway was relocated by the Director of Highways and Public Works as authorized by law, and all the various steps in the procedure to improve such highway, upon a cooperative basis between the county and the state as provided in Sections 1191, et seq., of the General Code, have been taken, including the letting of the contract, and, through inadvertence and mistake the description of the highway as it was before its relocation, was incorporated in the resolution of the county commissioners approving the plans and determining to proceed, and in the resolution authorizing a bond issue, all other necessary legislation, the plans, the advertisement for bids and the contract containing a description of the road as relocated, it is the duty of such board of county commissioners to correct such erroneous description to conform with its actual intention, by amending said resolutions to show correctly the description of the particular section of the highway to be improved.

Further, it is my opinion that the action by the board of county commissioners in amending said legislation will be legal, and I know of no reason that makes it necessary to start the proceedings from the beginning, with an application for state aid.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1087.

DITCH SUPERVISOR OR COUNTY SURVEYOR—APPOINTMENT BY COUNTY COMMISSIONERS—AUTHORITY TO CLEAN DITCHES WITHOUT APPLICATION OF LAND OWNER—EMPLOYMENT OF NECESSARY LABOR AND PURCHASE OF MATERIALS—COST TO BE CERTIFIED TO COUNTY COMMISSIONERS—AUDITOR TO PLACE AMOUNT ON TAX DUPLICATE OF LAND OWNER.

SYLLABUS:

1. *A ditch supervisor, or a county surveyor designated by the county commissioners to act as ditch supervisor, may under Sections 6693 to 6697, General Code, inclusive, apportion the necessary work of cleaning and repairing ditches and water-courses, and cause the same to be cleaned out and repaired without an application first being made to do so by the owner of the lands affected.*

2. *A county surveyor, to whom the county commissioners of the county have delegated the duty to act as ditch supervisor, when directed by the county commis-*