

1938.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, CLERMONT AND GEAUGA COUNTIES, OHIO.

COLUMBUS, OHIO, March 24, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

1939.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, WILLIAMS COUNTY, OHIO.

COLUMBUS, OHIO, March 24, 1921.

HON. LEON C. HERRICK, *State Highway Commissioner, Columbus, Ohio.*

1940.

ROADS AND HIGHWAYS—COUNTY COMMISSIONERS NOT AUTHORIZED TO CONSTRUCT RAILROAD SWITCH INTO LANDS OWNED BY COUNTY FOR STORAGE OF ROAD EQUIPMENT.

Sections 7200 and 1190-2 G. C. do not authorize county commissioners to construct a railroad switch into lands owned and used by the county for the storage of road machinery, tools and equipment.

COLUMBUS, OHIO, March 24, 1921.

HON. LAWRENCE H. WEBBER, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—You have recently requested the opinion of this department upon three questions submitted to you by your county commissioners which you state as follows:

“First: Have the county commissioners authority to purchase a small tract of land abutting upon the B. & O. railroad right-of-way upon which to erect a building to house the road machinery belonging to the county, as well as a place to dump materials and supplies which are delivered by the railroad company?

Second: Have the commissioners authority to erect a building for this purpose?

Third: Have the commissioners a right to construct a switch from the right-of-way of the B. & O. Railroad company onto this land if same may be legally purchased?”

Your first two questions have in effect been answered in the affirmative by this department in an opinion (No. 1600) dated September 30, 1920, and directed to Hon.

C. A. Weldon, prosecuting attorney, Circleville, Ohio, a copy of which is enclosed.

The statement submitted by Mr. Weldon showed that it was not contemplated in that case that a tract of land be purchased and a building afterward erected thereon, but that the land and building be purchased as a unit; whereas, in the statement of facts which you submit, the plan in mind is to purchase the tract and thereafter erect a building. However, there is no difference in principle between the two cases, so that in the opinion of this department your commissioners have authority to purchase the tract and proceed thereafter to erect a building.

It should be noted that in the opinion to Mr. Weldon it was suggested that before the general county fund was resorted to for making the purchase, use should be made of unappropriated moneys, if any, in the public building fund. It was also pointed out that the authority of the commissioners is subject to certain restrictions upon expenditures, such as are imposed by sections 5660 et seq.; 5638 and 2444 G. C. In your case, of course, there would be another set of statutes in point when the commissioners came to erecting the building, namely, sections 2333, et seq. G. C.

The foregoing remarks dispose of your first two questions, leaving your third question for consideration.

Section 7200 so far as pertinent has been quoted in the above mentioned opinion and need not be repeated, except to the extent that the last sentence of the section may be again stated:

"The county commissioners shall provide suitable places for housing and storing machinery, tools, equipment and conveyances owned by the county."

Your letter refers to said section 7200 and also to section 1190-2 G. C. which is found in 108 O. L. Part II, p. 1238. That section has particular reference to certain machinery and equipment turned over to the state by the federal government, and authorizes the state highway commissioner to lease such machinery and equipment to county commissioners. The section provides in part:

"The county commissioners of any county shall be authorized to execute any and all such leases as to them shall seem proper, and shall provide suitable places for housing and storing such automobiles, trucks, road machinery and equipment, and shall keep such automobiles, trucks, machinery and equipment in reasonable repair. Any expense incurred by the county commissioners in carrying out the provisions of this section shall be paid from the road repair fund or other road funds of the county."

These provisions, it will be observed, are practically identical with those of section 7200 in the matter of general authority to provide for housing and storing; so that upon the point whether the commissioners may construct a railroad switch, section 1190-2 adds nothing to section 7200.

It is plain, of course, that neither of the sections expressly confers power on the commissioners to expend the county's funds in constructing a railroad switch. Does such power arise by necessary implication? The answer is in the negative. It cannot be said that because authority to buy land and erect buildings thereon for storage purposes exists by necessary implication in order to give practical effect to the statutes, the same would be true respecting a railroad switch. It is a sufficient answer to such a proposition that while a switch may prove a great convenience and indeed be the means of saving money to the county, yet it is by no means an indispensable or necessary adjunct to a storage house. It needs no citation of authority to show that in Ohio county commissioners have such powers, and such powers only,

as are conferred expressly or as arise by necessary implication; and since, as has been seen, authority to construct a switch does not arise by necessary implication, it follows that the commissioners are without right to expend funds for that purpose.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1941.

APPROVAL, WATER LEASES, OHIO AND ERIE CANAL, BARBERTON, OHIO.

COLUMBUS, OHIO, March 25, 1921.

HON. JOHN I. MILLER, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—I have your letter of March 24, 1921, transmitting for my examination two water leases in triplicate form as follows:

Pittsburgh Plate Glass Company (Columbia Chemical Division), permission to insert 30-inch pipe, Ohio and Erie canal, Barberton, Ohio, annual rental \$3,000.

Pittsburgh Plate Glass Company (Columbia Chemical Division), permission to insert 30-inch pipe, Ohio and Erie canal, Barberton, Ohio, daily rental of \$10 per day when water is used.

I have noted from the provisions of the lease second above noted that such lease is supplementary to and covers a supply of water in addition to that provided for in the lease first above mentioned; and I have noted that the lease period in both instances in five years beginning with May 1, 1921.

I have examined said leases, have found them correct in form and legal, and I am therefore returning them to you, attached, with my approval endorsed thereon.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1942.

APPROVAL, BONDS OF HANCOCK COUNTY, OHIO, IN AMOUNT OF \$72,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, March 25, 1921.

Industrial Commission of Ohio, Columbus, Ohio.

1943.

APPROVAL, BONDS OF ERIE COUNTY, OHIO, IN AMOUNT OF \$24,000 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, March 25, 1921.

Industrial Commission of Ohio, Columbus, Ohio.