

I am herewith returning the original and duplicate copies of the transcript of your proceedings relating to the sale of this property, as well as said deed form, all with my approval endorsed thereon as above indicated.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1662.

APPROVAL, CO-OPERATIVE CONTRACTS AND FINAL RESOLUTION  
ON ROAD IMPROVEMENTS IN FRANKLIN, HAMILTON, HANCOCK,  
PAULDING AND WILLIAMS COUNTIES.

COLUMBUS, OHIO, March 24, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval the following co-operative contracts:

Hamilton County—Section "A"—SH No. 39  
Hancock County—Section "D"—SH No. 220  
Paulding County—Payne Village—SH No. 427  
Williams County—Section "O"—SH No. 21  
Franklin County—Section "I-2(a)"; Types A-B, B and C—SH No. 1

You also have submitted a final resolution covering project upon Section "F"—No. 225. Finding said contracts and resolution correct as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith to you.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1663.

VACATION OF STREET—ADJUTANT GENERAL UNAUTHORIZED TO  
FILE WRITTEN CONSENT TO VACATION OF CITY STREET UPON  
WHICH ARMORY PROPERTY ABUTS.

*SYLLABUS:*

*There is no provision of law authorizing the Adjutant General or any other officer of the State to file with the council or other authority of a municipality written consent to the vacation of a street or alley in such municipality, abutting upon which the State owns property for armory purposes.*

COLUMBUS, OHIO, March 24, 1930.

HON. A. W. REYNOLDS, *Adjutant General of Ohio, Columbus, Ohio.*

DEAR SIR: This is to acknowledge receipt of your communication of recent date, enclosing a communication received by you from a firm of attorneys at

Piqua, Ohio, relating to the proposed vacation of certain streets and alleys in the city of Piqua contiguous to certain lands recently acquired by the State of Ohio for armory purposes. From said communications it appears that the vacation of said streets and alleys is contemplated, and that the formal written consent of the State of Ohio, as the owner of property abutting upon such streets and alleys, is desired in order to obviate the necessity of giving the notice of the pendency of the proceedings for such vacation, which would be otherwise required.

With respect to this matter you request me to furnish to you such legal information as will enable your department to give the necessary written consent in this matter so as to comply with the suggestion made in the communication to you, above referred to. The request made in your communication calls for a consideration of the provisions of Sections 3725 et seq., of the General Code, relating to the vacation of streets and alleys in municipalities. Section 3725, General Code, provides, among other things, that on petition by a person owning a lot in a corporation praying that a street or alley in the immediate vicinity of such lot may be vacated, the council of such municipality, upon hearing, and upon being satisfied that there is good cause for such vacation, that it will not be detrimental to the general interest, and that it should be made, may declare by ordinance such street or alley vacated; and that council may include in one ordinance the vacation of more than one street or alley. Section 3726, General Code, provides that when in the opinion of the council there is good cause for vacating a street or alley, or any part thereof, and that such vacation will not be detrimental to the general interest, it may by ordinance and without petition therefor, vacate such street or alley or any part thereof. Sections 3727 and 3728, General Code, provide as follows:

Section 3727. "Notice of the intention of council to vacate any street, alley, avenue, or part thereof shall, in all cases, be given as provided in the next section, except when there is filed with council written consent to such vacation by the owners of the property abutting the part of the street or alley proposed to be vacated, in which case such notice shall not be required."

Section 3728. "No street or alley shall be so vacated or narrowed, unless notice of the pendency and prayer of the petition be given by publishing in a newspaper published or of general circulation in such municipality, for six consecutive weeks preceeding action on such petition or where no newspaper is published in the corporation, by posting the notice in three public places therein six weeks preceding such action. Action thereon shall take place within three months after the completion of the notice."

Although it appears from the communications submitted to me that your department, representing the State in this matter, desires the vacation of the streets and alleys here in question in connection with the proposed use for armory purposes of the lots and tracts of land now owned and held by the State in the city of Piqua, a diligent search of the statutory law of this state fails to show that any authority has been conferred upon you or upon any other officer or agent of the State to give and file the written consent provided for by Section 3727, General Code, above quoted. In this connection it is noted that this office, in an opinion directed to the Adjutant General of Ohio under date of May 22, 1917, and found in Opinions of the Attorney General, 1917, Vol. 1, 756, held:

"There is no provision of law authorizing any state official to sign a petition praying the council of a municipality to vacate a street or alley.

This authority so to act must be given by the Legislature, either by general provisions or by special enactment."

The former opinion of this office, above noted, related to the proposed vacation of Cumberland street in the city of Cincinnati, upon which abutted certain lands owned by the State for armory purposes. The then Attorney General, after referring to the provisions of Section 3725, General Code, and quoting the provisions of Section 3727, General Code, said:

"Section 3728, G. C., provides for the notice of application to be published, and this publication shall be made in those cases in which all the abutting property owners do not sign a petition praying for the vacation of the street or alley.

I have examined our statutes very carefully and find no provision whatever therein that would authorize any state official to sign such a petition. The power of selling or leasing or surrendering any rights which the State of Ohio has in lands rests with the Legislature. It is the only body which has the power to grant authority to officials either to sign deeds or leases or any other instruments conveying its interest in land. As the State of Ohio has an easement in and to said Cumberland street the State, by signing a petition for the vacation of the same, would be surrendering its rights in and to said street. The Legislature has provided no general method by which any state officials may sign such a petition, and of course it has enacted no special legislation for this purpose. Hence, I must conclude that no official of the State would have authority to sign the petition praying for the vacation of said Cumberland street, the Legislature being the only body that could give authority to a state official to sign such a petition."

The former opinion of this office and the conclusion reached on the question there presented are applicable in the consideration of the question suggested by the request made in your communication, and I am of the opinion, as above indicated, that no authority has been conferred by statute whereby any written consent can be filed with the city commission or other proper authority of the city of Piqua consenting on behalf of the State of Ohio to the vacation of the streets and alleys here in question. It follows from this that the vacation of these streets and alleys should be accomplished as otherwise provided by Section 3725 et seq., General Code, and by giving notice of such proceedings in the manner provided by Section 3728, General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*