

which the territory described in your letter may be transferred to the McDonald village school district.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1378.

DISAPPROVAL, DEED TO LAND OF EDAR C. MILAR IN GOSHEN TOWNSHIP, TUSCARAWAS COUNTY.

COLUMBUS, OHIO, January 8, 1930.

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

DEAR SIR:—This is to acknowledge receipt of your recent communication, submitting for my examination and approval, a warranty deed executed by one Edar C. Milar, a widow, conveying to the State of Ohio a certain tract of 1.03 acres of land in Goshen Township, Tuscarawas County, Ohio, which tract of land is more particularly described in said deed and in Opinion No. 1251 approving the abstract of title with respect to the purchase of this property directed to you under date of December 3, 1929.

Upon examination of said deed I find that I am required to disapprove the same for the following reasons:

(1) It does not appear that said deed was signed and acknowledged in the presence of two witnesses, as required by the provisions of Section 8510, General Code. (2) The named grantee in said deed is "The State of Ohio, Division of Highways." The words "Division of Highways" should be eliminated so that the deed will stand as one to the State of Ohio, its successors and assigns, without qualification or limitation as to the department which is to make use of the property conveyed.

I am herewith returning said deed to you.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1379.

DITCH IMPROVEMENT—CONSTRUCTED BY MUNICIPALITY WITHIN THE CORPORATION—COUNTY MAY NOT PAY PART COST OF SAME EVEN THOUGH BENEFITED THEREBY—SUGGESTED REMEDY.

SYLLABUS:

In the event a ditch improvement lies wholly within the corporate limits of a municipal corporation and such improvement is being constructed by the municipality, which has taken jurisdiction thereof, there is no authority for the expenditure of county funds to pay a portion of the cost of such improvement, notwithstanding the fact that the county may be benefited thereby. In the event the improvement will result in a benefit to the county, the county commissioners should take jurisdiction thereof

and proceed therewith pursuant to the provisions of Sections 6442, et seq. of the General Code.

COLUMBUS, OHIO, January 8, 1930.

HON. PAUL J. WORTMAN, *Prosecuting Attorney, Dayton, Ohio.*

DEAR SIR:—I am in receipt of a letter from Hon. R. M. Galloway, your assistant prosecuting attorney, which reads as follows:

“On May 22, 1929, Opinion No. 420, you rendered an opinion to this office relative to the jurisdiction of the county commissioners in tiling and closing a ditch located entirely within the limits of the village of Miamisburg.

The improvement was petitioned for by the village but the county commissioners did not deem it advisable to assume jurisdiction and grant the improvement.

By reference to our request and your opinion, it will be noted that the county will be benefited by reason of the elimination of several bridges which the county maintains. At that time and assuming that the county would be benefited by the elimination of the expense attached to maintaining and re-constructing these bridges in the village, the county commissioners promised the village authorities to pay part of the cost of tiling and closing the ditch, the amount to be paid being substantially the same as it would have cost the county for maintaining and re-constructing the bridges. The village was to assume jurisdiction over the improvement.

In view of your opinion No. 1231 recently rendered to the prosecuting attorney of Miami County relative to a similar situation in Piqua, Ohio, and at the request of the solicitor for the village of Miamisburg, a copy of whose letter we enclose, we respectfully ask your advice as to whether or not the commissioners of this county may pay to the village of Miamisburg the amount promised if the village assumes jurisdiction over the improvement and completes the same.”

Opinion No. 420, to which you refer, held that under the provisions of Sections 6442, et seq. of the General Code, upon the filing of a petition therefor by the mayor or council of a municipal corporation, county commissioners are vested with jurisdiction to determine the necessity of a ditch improvement and to proceed therewith, if found necessary, notwithstanding the fact that the improvement may be wholly within the limits of a municipal corporation. Your attention is particularly called to the fact that the question under consideration in this opinion was an improvement of which the county, and not the municipality, had taken jurisdiction. In the event a board of county commissioners finds that a proposed improvement of public ditching is necessary and that it will be conducive to the public welfare as provided in Section 6452, General Code, it may grant the prayer of the petition and proceed with the improvement.

It is provided that the cost of such improvement shall be paid in part by the owners of benefited property. Such cost shall also be paid in part by the county. This portion of the cost is predicated upon the benefits to the county by reason of the improvement being conducive to the public welfare and also by reason of any benefit to state or county roads or highways which may result. It is also provided that such part of the cost as may be found to benefit any public corporation or political subdivision of the state shall be assessed against such corporation or subdivision. Sections 6454 and 6463, General Code.

An examination of these sections, comprising Chapter 1 of Title III of the General Code, discloses complete machinery for the construction of county ditch improvements by county commissioners. It must be borne in mind that the authority vested

in the board of county commissioners to expend county funds for such purposes is predicated upon a finding by the county commissioners that the improvement is necessary. The authority to expend county funds for such purposes is further predicated upon the limitation that such funds may be expended only to the extent that the improvement benefits the general public or state or county roads or highways. In the instant case there is probably no question but that the portion of the cost which the county is willing to contribute toward this ditch improvement may be said to be the part which is conducive to the public welfare, or possibly the part which is of benefit to county or state roads, as provided in Section 6463, General Code. The statutory authority to expend county funds for a county ditch improvement apparently applies only to such improvement of which the county has taken jurisdiction. I find no such authority extended to an improvement constructed by municipalities. Obviously, if the board of county commissioners has not taken jurisdiction, the award of contracts and other vital factors entering into the matter of cost are not under their control. The Legislature might, perhaps, under the Constitution, empower the county commissioners to delegate to a municipality the authority to construct an improvement the cost of which is to be borne in part by the county, but it has not done so. The expenditure of county funds for ditch improvements, as above indicated, is predicated upon the county taking jurisdiction. I am of the view that the reasoning contained in Opinion 1231 is directly applicable to the question here presented.

It is suggested that if the county commissioners would take jurisdiction of this improvement, it could possibly be consummated in the same manner as if the municipality had taken jurisdiction. There are no limitations in Section 6463, General Code, as to percentages of apportionment of cost, and in the event the improvement is benefiting the municipality to a very great extent, there is no reason why the board of county commissioners could not apportion the cost in accordance therewith. If such procedure were followed, probably the desired ends would be reached by following the provisions of the statute instead of endeavoring to expend county funds without authority.

Specifically answering your question, I am of the opinion that in the event a ditch improvement lies wholly within the corporate limits of a municipal corporation and such improvement is being constructed by the municipality, which has taken jurisdiction thereof, there is no authority for the expenditure of county funds to pay a portion of the cost of such improvement, notwithstanding the fact that the county may be benefited thereby. In the event the improvement will result in a benefit to the county, the county commissioners should take jurisdiction thereof and proceed therewith pursuant to the provisions of Sections 6442, et seq. of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1380.

SCHOOL DISTRICT—SALARIES UPON WHICH PROPORTIONATE SHARE OF TAX LEVY UNDER SECTION 7575, GENERAL CODE, IS BASED—FINALITY OF COUNTY BOARD'S DETERMINATIONS—HOW BALANCE OF SAID TAX LEVY TO BE DISTRIBUTED.

SYLLABUS:

1. *In accordance with the terms of Section 7600, General Code, as amended by the 88th General Assembly, the proportionate share of the 2.65 mills tax levy provided*