

viction as provided for in Section 13451-18, General Code, which reads as follows:

“In all sentences in criminal cases, including violations of ordinances, the judge or magistrate shall include therein, and render a judgment against the defendant for the costs of prosecution, and if a jury has been called to the trial of the case, a jury fee of \$..... shall be included in the costs, which, when collected, shall be paid to the public treasury from which the jurors were paid.”

The foregoing provision of the General Code, as it relates to the collection of a jury fee in criminal cases, was considered in Opinions of the Attorney General for 1930, Vol. II, page 865, wherein it was held as disclosed by the syllabus as follows:

“The legislature having failed to fix in Section 13451-18, General Code, the amount of jury fees which shall be included as costs, therefore, no authority exists to tax jury fees and include them in a judgment against a defendant in a criminal case.”

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3455.

COUNTY COMMISSIONERS, BOARD—COUNTY HIGHWAYS
—POWER TO OBLIGATE COUNTY FOR ERECTION AND
MAINTENANCE OF SIGN POSTS, WARNING AND
GUIDE SIGNS—NO POWER TO CONTRACT BEYOND
TERM OF INDIVIDUAL COMMISSIONERS—EXCEP-
TION—NECESSITY.

SYLLABUS:

1. *A Board of County Commissioners has the power to obligate the county for the erection and maintenance of sign posts and warning and guide signs on county highways.*

2. *A Board of County Commissioners does not have the power to make contracts for a period of time extending beyond the terms of the in-*

dividual commissioners "unless the necessity or some special circumstances show that the public good requires such contracts to be made".

COLUMBUS, OHIO, December 28, 1938.

HON. RALPH J. BARTLETT, *Prosecuting Attorney, Columbus, Ohio.*

DEAR SIR: I wish to acknowledge receipt of your communication requesting my opinion on the legality of a contract which is being considered by the county commissioners of your county. By the terms of said contract a certain advertising company would furnish, free of charge, to the county, standard highway reflectorized warning signs and also other highway markers to be erected by the county. The said company would also furnish for each sign post a sponsor's sign, i. e., an advertisement. The county would agree to erect the sign posts which would, in addition to the standard warning markers, contain the advertising plates and to maintain the same for a period of five years from the date of erection. The advertising company would agree to furnish all such signs as the county may request "free of all charges excepting the erection and maintenance thereof for a period of five years"; that the sign would become and remain the property of the county upon the above conditions.

The construction, improvement, maintenance and repair of roads of the county highway system are clearly within the authority of the county commissioners, Sections 7466, et seq., General Code. However, there is no specific statute relating to the construction of posts to hold and display warning signs. In Section 7469, General Code, there is a recognition of the use of such signs for said section contains the authorization for the use of telegraph and telephone poles for the purpose of attaching thereto "sign posts, guide posts, warning signs or other signs, when prescribed by the chief highway engineer or county highway superintendent." (Your letter indicates that the county highway engineer is in favor of the proposed contract.)

In general it may be said, despite the fact that there is no specific statute relating to the construction and erection of posts to display warning signs and guide signs, that such devices have become, by general use and custom, a necessary part of any public highway system and that the statutes which place upon the county commissioners the duty of maintaining, repairing and improving the county highway system impliedly confer the power to do all necessary things to maintain the highways of the county highway system in such condition as to make travel thereon safe for the public.

Furthermore, there is no difficulty with the fact that the contract authorizes private advertisements along the public highways because Section 7204-1a, General Code, provides that obstructions (which are

defined to include "advertising or other signs and posters") may be erected on a county highway with the consent of the county commissioners.

Therefore, the sole remaining question is whether or not the fact that the life of the contract extends beyond the terms of some of the present county commissioners invalidates the agreement. In other jurisdictions there is considerable case law on this subject and the decisions show considerable variety of legal thought. In *State, ex rel. vs. Lutz*, 111 O. S. 333, 338, the following rule is laid down:

"The policy of the law is rather against the power of one board of county commissioners to make contracts so indefinite in time that the same may extend beyond the life of the board, and thus bind another or future board, although in some cases such a contract may be valid and binding even though the performance of some part may be impossible until after the expiration of the term of the majority of the board as it existed when the contract was made. Yet the general rule is that such contracts, extending beyond the term of the existing board, and employment of agents or servants of the county for such period, thus tying the hands of a succeeding board, are not looked upon with favor unless the necessity or some special circumstances show that the public good requires such contracts to be made."

It was likewise similarly held in the case of *Commissioners vs. Ranck*, 6 O. C. D. 133 that the contract of employment made by a board of county commissioners for a period of time extending beyond the time when a change is certain to occur in the membership of the board was against public policy and was, therefore, void unless made in good faith and in the interests of the public and for a time reasonable under the circumstances.

It is obvious that no legal opinion, therefore, can be rendered upon the validity of the proposed contract by this office. Such a determination would, as pointed out in the above quoted portion of the decision in the case of the *State, ex rel. vs. Lutz, supra*, involve consideration of many factors and circumstances which are not now known to me.

In determining in this particular case, whether or not "the necessity or some special circumstances show that the public good requires such contracts to be made," some of the things to be considered no doubt would be the financial condition of the county, the

necessity for the signs, the expense of erecting and maintaining the signs, the amount for which the signs could be purchased on the open market, etc.

In constituting the county commissioners the principal executive officers of the county (*Ireton vs. State*, 12 O. C. C. N. S. 202, 31 O. C. C. 412, affirmed without opinion in 81 O. S. 562, 91 N. E. 1131; 11 O. J. 305), the law makers of this state have delegated to that body the determination of what is necessary.

Your particular circumstance is, therefore, a matter of executive and administrative discretion and is properly subject only to review by the courts.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

3456.

APPROVAL—BONDS, OTTAWA HILLS VILLAGE SCHOOL DISTRICT, LUCAS COUNTY, OHIO, \$75,000.00, DATED NOVEMBER 1, 1938.

COLUMBUS, OHIO, December 28, 1938.

The Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN :

RE: Bonds of Ottawa Hills Village School Dist.,
Lucas County, Ohio, \$75,000.00 (Unlimited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of school building bonds in the aggregate amount of \$140,000.00, dated November 1, 1938, bearing interest at the rate of 3% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute valid and legal obligations of said school district.

Respectfully,

HERBERT S. DUFFY,
Attorney General.