

Note from the Attorney General's Office:

1931 Op. Att'y Gen. No. 31-3170 was overruled by
1970 Op. Att'y Gen. No. 70-076.

that time unto the present in order to make sure that no further transactions have taken place which might jeopardize or encumber the title to this land in the interim.

Encumbrance estimate No. 811 is in proper form and shows that there remains in the proper appropriation account a sufficient balance to pay the purchase price of said land.

The controlling board has given its approval.

I am herewith returning to you all the papers enumerated above as having been received.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3168.

APPROVAL, BONDS OF COAL GROVE VILLAGE SCHOOL DISTRICT,
LAWRENCE COUNTY, OHIO—\$25,000.00

COLUMBUS, OHIO, April 21, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3169.

APPROVAL, BONDS OF CITY OF WOOSTER, WAYNE COUNTY, OHIO
—\$17,000.00.

COLUMBUS, OHIO, April 21, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3170.

COUNTY COMMISSIONERS—POWER TO PURCHASE ROAD MATERIALS AND LATER ADVERTISE FOR BIDS FOR THE LABOR ONLY TO BE PERFORMED ON DESIGNATED ROAD.

SYLLABUS:

When county commissioners have already purchased road materials without reference to any designated road project, and later decide to construct a road, they are legally authorized to advertise for and accept bids for the labor only to be performed on a designated road.

COLUMBUS, OHIO, April 21, 1931.

HON. FREDERIC V. CUFF, *Prosecuting Attorney, Napoleon, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“May I have your opinion on the following question, viz:

Has a board of county commissioners the power, for example, to purchase crushed stone to be used in the construction of county roads without reference to any particularly designated highway or improvement; and if the board has such power and does make such purchases,

has it the authority thereafter to advertise for and accept bids for the *labor only* on a certain designated road improvement?

There are many questions of public improvement expense at this time upon which my advise is requested and the opinion on the above question will solve some matters of policy which will be very helpful to me at this time."

The first part of your question has been passed upon by my immediate predecessor in an opinion appearing in Opinions of the Attorney General for 1928, Volume IV, page 2564. The syllabus of said opinion held:

"County commissioners have legal authority under existing law to purchase material for general use in connection with the construction of highways within their jurisdiction, as well as to make such purchases for the improvement, maintenance and repair of such highways."

The above opinion pointed out that sections 7200, 7203, and 7214, General Code, give ample authority for county commissioners to purchase materials such as stone and gravel, without reference to the construction of any particularly designated highway or improvement. Consequently, it is believed unnecessary to discuss this branch of your question more fully, as there has been no change in the laws which would modify this opinion since its rendition. For your consideration and attention, I am enclosing herewith a copy of this ruling.

Coming now to the latter part of your question, I assume that you desire to know whether the county commissioners, after having bought materials some time before, may let a contract for the labor for a designated road construction project, at competitive bidding, and stipulate that these materials be used by the successful bidder. Sections 6906 et seq., General Code, provide for road construction and improvement by county commissioners. Section 6906, General Code, specifically states that:

"The board of county commissioners of any county shall have power, as hereinafter provided, to construct a public road by laying out and building a new public road, or by improving, reconstructing or repairing any existing public road or part thereof by grading, paving, widening, draining, dragging, graveling, macadamizing, resurfacing or applying dust preventatives, or by otherwise improving the same. * * *"

The succeeding sections specify the detailed procedure in initiating a road improvement, and for the purposes of this opinion need not be quoted. Sections 6945 and 6945-1, General Code, read as follows:

Sec. 6945. "After the commissioners have decided to proceed with said improvement, they shall advertise for bids once not later than two weeks prior to the date fixed for the letting of contracts in a newspaper published and of general circulation in said county, if there be any such paper published in said county, but if there be no such paper published in said county then in a newspaper having general circulation in said county. The commissioners may also cause advertisements for bids to be inserted in some trade paper or other publication to be designated by them. Such notice shall state that copies of the surveys, plans, profiles, cross-sections, estimates and specifications for such improvement are on

file in the office of the county commissioners, and the time within which bids will be received. The county commissioners may let the work as a whole or in convenient sections as they may determine. They shall award the contract to the lowest and best bidder. The contract shall be let upon the basis of lump sum bids, unless the commissioners order that the same be let upon the basis of unit price bids, in which event it shall be let upon such basis."

Sec. 6945-1. "If the estimated cost of the improvement is two hundred dollars or less the contract may be let without competitive bidding. If the estimated cost is more than two hundred dollars, but does not exceed five hundred dollars, the contract may be let at competitive bidding, after advertisement, posted in the office of the county commissioners and in at least three other public places in the county for ten days prior to the letting."

Nowhere in the above sections of the Code does it state that bids must be received for both materials and labor. In fact, it would appear that the legislature recognized, in enacting these sections, that the county commissioners might only need to advertise for labor for a road improvement, for Sections 7200, 7203 and 7214, General Code, which as my predecessor has pointed out, give ample authority for the purchase alone and storing of materials, were first passed as part of the Cass Highway Act, which first enacted Sections 6906 et seq., General Code, in 1915 (see the act in 106 O. L., 574-666, entitled: "To provide a system of highway laws for the State of Ohio, and to repeal all sections of the General Code, and acts inconsistent therewith."). Certainly the legislature could not have authorized the purchase of materials without regard to any designated improvement and then require that bids be received for labor and materials whenever an improvement is undertaken. Such a construction of the law would limit the meaning of sections 7200, 7203, and 7214, General Code, which is unwarranted.

Based on the foregoing, I am of the opinion that when county commissioners have already purchased road materials without reference to any designated road project, and later decide to construct a road, they are legally authorized to advertise for and accept bids for the labor only to be performed on a designated road.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3171.

APPROVAL, CONTRACT FOR ELIMINATION OF GRADE SEPARATION
AT CANAL WINCHESTER, FRANKLIN COUNTY, OHIO.

COLUMBUS, OHIO, April 21, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

3172.

BOARD OF EDUCATION—TRANSPORTATION OF CRIPPLED CHILD
UNDER TERMS OF SECTION 7755-3, GENERAL CODE DISCUSSED—
INAPPLICABILITY OF PROVISIONS OF SECTION 7731-3, GEN-
ERAL CODE—EXCEPTION NOTED.