

failing to erect proper barriers or signals to warn travelers upon the highways of the presence of danger due to such construction work."

See Opinions of the Attorney General for 1928, page 2964.

The question under consideration in the latter opinion was whether or not a board of township trustees was liable in the light of Section 3298-17, General Code, for failure to erect proper barriers or signals to warn travelers upon the highways of the presence of danger due to construction work that was being done on said highway by the said trustees. The question of liability insurance was not involved in the opinion. In the course of the opinion, the attorney general said:

"Whatever may be the nature of the work in improving township roads, as to its being construction, reconstruction, maintenance or repair, once the work is undertaken the board of township trustees is acting in the discharge of its official duties."

In the 1929 opinion referred to by you, which is found in the reported Opinions of the Attorney General for 1929 at page 1013, it is held:

"By reason of the liability created by Section 3298-17, General Code, in cases where boards of township trustees are negligent in the performance of their duties in connection with roads, such boards may lawfully protect themselves against damages by means of insurance."

It will be noted that the first 1928 opinion, which is the one referred to by you in your inquiry, does not assume to hold that a real liability may not be protected against by the carrying of liability insurance, but merely that township trustees may not effect such insurance upon their trucks and road building machinery for the reason that they incurred no liability in the operation of those trucks.

Upon consideration of the terms of Section 3298-17, General Code, I am of the opinion that the term "official duties" as used therein, includes the construction, reconstruction and repair of roads, and so expressed myself in the 1929 opinion above referred to. This is practically the same view taken by the Attorney General in the preparation of the latter of his 1928 opinions referred to above. Carrying this idea to its logical conclusion, it follows that the liability imposed by the statute on township trustees for negligence or carelessness in the operation of motor vehicles and road building machinery in the construction, reconstruction and repair of township roads or in the furtherance of any business of the township may lawfully be protected against by the carrying of liability insurance. This is contrary to the view expressed by the Attorney General in the earlier of his 1928 opinions referred to above, and in effect overrules the principle there set forth.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2996.

FORCE ACCOUNT—COUNTY ROAD CONSTRUCTION—COUNTY COMMISSIONERS MAY NOT AUTHORIZE TOWNSHIP TRUSTEES TO SO PROCEED—SUCH AUTHORITY MAY ONLY BE CONFERRED ON COUNTY SURVEYOR.

SYLLABUS:

1. *County commissioners, under their power to construct county roads, have no power to authorize township trustees to construct county roads by force ac-*

count. They may confer such authority solely on the county surveyor.

2. County commissioners are not authorized to purchase material for county road repair work and empower township trustees to hire the labor therefor.

3. In instances where the county is repairing county roads, the county surveyor has the exclusive authority to hire the necessary labor therefor when so authorized by the county commissioners.

COLUMBUS, OHIO, February 25, 1931.

HON. PAUL A. FLYNN, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—This acknowledges receipt of a communication from your predecessor requesting my opinion as follows:

“Mr. H., our county surveyor, has had some dispute with our county commissioners as to the extent of the authority of the county surveyor over the hiring of labor in the repair and construction of county roads. He has asked me to submit to you the following questions for your opinion thereon:

Have the county commissioners authority to authorize the township trustees to force account new constructed county roads, instead of the county surveyor?

Have the county commissioners authority to purchase material for county road repair work and authorize the township trustees to hire the labor, instead of the county surveyor?

Have the county commissioners authority to hire the labor for county road repair work, instead of the county surveyor?”

I have been orally advised that the questions submitted arise solely from doubts as to the powers of county commissioners in constructing and repairing county roads and not from the laws authorizing township trustees to initiate and complete construction and repair of county roads of their own volition. My discussion and conclusions hereinafter stated are based on this assumption.

My examination has disclosed no express authority whereby the county commissioners may authorize the township trustees to construct county roads by force account. It is, of course, unnecessary to cite authority for the proposition that the powers of county commissioners are limited to those granted by statute and such as are necessarily incidental to carry out the powers so expressly granted.

It is believed that Section 7198, General Code, and an opinion of my predecessor found in Opinions of the Attorney General for 1927, p. 1100, furnish a complete answer to the first question contained in the above quoted letter. Section 7198, General Code, provides as follows:

“The county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account.”

It is held in the second branch of the syllabus of the opinion cited above (Opinions of Attorney General for 1927, p. 1101):

“By the express terms of Section 7198, General Code, when it has been determined to construct, reconstruct, improve, maintain or repair a road, bridge or culvert by force account, the power and duty to employ the necessary laborers and teams, lease the necessary implements and tools

and purchase such material as may be required are exclusively vested in the county surveyor, who as a condition precedent thereto must be authorized so to do by the county commissioners."

Coming now to the second question contained in the communication of your predecessor, county commissioners are authorized under Section 7214 of the General Code to purchase material for county road repair work. Section 7200, General Code, authorizes county commissioners to purchase machinery, tools or other equipment for the same purpose. See Vol. I, Opinions of the Attorney General for 1919, p. 110, for a complete discussion of the powers granted by the two sections of the General Code cited above. I find no statutory authority, express or implied, whereby the county commissioners may purchase the materials for the repair of a county road, and authorize the township trustees to hire the labor instead of the county surveyor. It would seem that where the county commissioners are purchasing the material under the authority of Section 7214, General Code, the hiring of labor would necessarily be governed by Section 7198, General Code, above quoted. The limitations on the power of the county commissioners relative to the construction of county roads contained in the above discussion in answer to the first question is equally applicable to the repair of county roads by county commissioners. See also Vol. I, Opinions of the Attorney General for 1916, p. 882, 18th branch of the syllabus and discussion of the same proposition on p. 899.

In the maintenance and repair of county roads the county surveyor has the sole power to hire the labor necessary therefor subject to the authority of the county commissioners. Section 7198, General Code, *supra*. In my opinion No. 2106, rendered under date of July 18, 1930, to Hon. L. E. Harvey, Prosecuting Attorney of Miami County, it is held that unless the maintenance and repair work is carried on by contract let pursuant to competitive bidding the county surveyor has the sole authority to hire the labor for repair of roads when authorized by the county commissioners. See p. 3 of said opinion, copy of which I enclose for your information. See also my opinion No. 1921, rendered May 29, 1930, to Hon. Forrest E. Ely, Prosecuting Attorney of Clermont County, a copy of which I send herewith.

In specific answers to the above questions, I am of the opinion that:

1. County commissioners, under their power to construct county roads, have no power to authorize township trustees to construct county roads, by force account. They may confer such authority solely on the county surveyor.
2. County commissioners are not authorized to purchase material for county road repair work and empower township trustees to hire the labor therefor.
3. In instances where the county is repairing county roads, the county surveyor has the exclusive authority to hire the necessary labor therefor when so authorized by the county commissioners.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2997.

DISAPPROVAL, BONDS OF MEIGS TOWNSHIP SCHOOL DISTRICT,
MUSKINGUM COUNTY, OHIO—\$800.00.

COLUMBUS, OHIO, February 25, 1931.

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