

of such extra work contract. However, in the case of an emergency which will not permit of the delay necessary to advertise, the Director may let the contract without advertising, when he has made a finding of such fact on his journal.

Applying the provisions of the above section to the facts stated, it would appear that the excavation is increased about twenty-five per cent by reason of the relocation of the highway and that the cost thereof will be far in excess of two thousand dollars. Therefore it will be seen that it will be necessary to let an extra work contract in pursuance of advertising or competitive bids unless, of course, there is an emergency which will not permit of such delay and the Director so concludes and makes a finding of such fact upon his journal.

While I have not had before me the provisions of the contract to which you refer it is believed unnecessary to consider its provisions upon the question presented for the reason that the statute above mentioned must be regarded as a part of the contract and will be the controlling factor irrespective of any provisions that may be contained therein.

Based upon the foregoing and in specific answer to your inquiries, it is my opinion that, under the circumstances you present:

1. The contractor cannot be required to do the extra work which you describe at the unit price stated in the contract.

2. The contractor and the Director of Highways, under such facts and circumstances, may not agree upon a new unit price for the extra work unless an emergency exists which will not permit of the delay necessary to advertise said extra work contract and the Director makes a finding of such fact upon his journal.

3. In the event an emergency does not exist the Director of Highways should proceed to advertise for bids for the extra work and award a contract to construct the same.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1823.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENT IN FULTON COUNTY.

COLUMBUS, OHIO, May 3, 1930.

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

1824.

APPEARANCE BOND—GIVEN TO STATE IN BASTARDY PROCEEDING—
PROPER PARTY TO INSTITUTE SUIT ON SUCH BOND, WHEN FOR-
FEITED, DETERMINED.

SYLLABUS:

An action upon a recognizance given for the appearance of a defendant in a bastardy proceeding may be brought by the prosecuting attorney in the name of the State of Ohio.