

3142.

APPROVAL, BONDS OF HOLLOWAY VILLAGE SCHOOL DISTRICT,
BELMONT COUNTY, OHIO—\$18,000.00.

COLUMBUS, OHIO, April 10, 1931.

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

3143.

ROAD IMPROVEMENTS—COUNTY COMMISSIONERS—AUTHORIZING TOWNSHIP TRUSTEES TO CONSTRUCT COUNTY ROAD BY FORCE ACCOUNT, COUNTY PAYING PORTION OF COST, ILLEGAL—WHEN BIDS REJECTED BY COMMISSIONERS, TRUSTEES NOT PERMITTED TO IMPROVE ROAD BY FORCE ACCOUNT—WHEN TRUSTEES AUTHORIZED TO CONSTRUCT ROADS BY FORCE ACCOUNT.

SYLLABUS:

1. Sections 3298-1, et seq., do not authorize the township trustees to construct township roads by force account.
2. Section 5541-8 of the General Code, authorizes the township trustees to expend the proceeds of the gasoline tax for the construction of the roads therein described by force account.

COLUMBUS, OHIO, April 11, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Your recent communication reads:

“You are respectfully requested to render this department your written opinion upon the following:

Question 1: When the commissioners, proceeding under the provisions of sections 6906 et seq., G. C., determined to improve a certain road in a specified township in the county and the surveyor estimates the cost of the same to be \$2,600.00, may the county commissioners authorize the trustees of the township in which the road is situated to construct the same by force account, the county to pay a certain proportion of the cost and the township to pay the balance?

Question 2: May the county commissioners after having advertised for bids for the construction of the road, reject the same and authorize the trustees to improve the road by force account?

Question 3: May the trustees of a township, proceeding under the provisions of Section 3298-1 et seq., construct a road by force account?”

You are referred to my opinion No. 2996, issued under date of February 25, 1931, in which it was held as disclosed by the syllabus, 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."

It is believed that the above is dispositive of the first and second questions which you propound.

In considering your third proposition, we may start with the fundamental basis that township boards of trustees have only such powers as are expressly granted to them by statute and such implied powers as are necessary to carry into effect the express powers.

It is believed that township officers may not construct public improvements by force account except in those instances where the statutes expressly authorize the same, or where the language used in granting a power to such trustees is not susceptible of any construction other than that force account methods may be employed.

Sections 3298-1 et seq., which provide the manner in which township trustees may construct roads under their jurisdiction, do not contain any reference whatever to force account work. On the other hand, said sections do provide for the doing of said work by contracts let in pursuance of competitive bidding. Therefore, it must be concluded that township trustees acting under the sections you mention, may not employ force account methods in so far as any of the provisions of said sections indicate. It may be noted, however, that Section 3373, General Code, expressly authorizes the township trustees to proceed either by contract or force account "in the maintenance and repair of roads." However, Sections 3298-1 et seq., relate to the power of such trustees "to construct, reconstruct, resurface or improve any public road or roads, or part thereof, under their jurisdiction."

In passing, it should be noted that in my opinion No. 2370, issued to your Bureau under date of September 25, 1930, it was held:

"Township trustees, in expending the monies arising under section 5541-8 of the General Code, in constructing, widening and reconstructing the highways described in said section, may proceed by force account or by contract."

It follows, of course, that in the event the township trustees should be improving a township road from the gasoline tax receipts, in accordance with the provisions of Section 5541-8, of the General Code, they may proceed by force account.

In specific answer to your third inquiry, it is my opinion that:

1. Sections 3298-1 et seq., do not authorize the township trustees to construct township roads by force account.
2. Section 5541-8 of the General Code, authorizes the township trustees to expend the proceeds of the gasoline tax for the construction of the roads therein described, by force account.

Respectfully,

GILBERT BETTMAN,

Attorney General.