

2839.

NO AUTHORITY FOR COUNTY COMMISSIONERS TO USE "TWO MILL ROAD LEVY MONEY," FOR IMPROVEMENT OF A ROAD BEING IMPROVED BY STATE—SECTION 1214 G. C. CONSTRUED.

SYLLABUS:

The county commissioners may not appropriate any part of the money from the two mill road levy not otherwise appropriated for the county's, township's or property owner's share of the cost of the improvement temporarily so that the county auditor may certify the money is on hand for the purpose of letting a contract, when it is not intended that this money shall go into the improvement.

The county commissioners may not increase the cost and expense of an improvement under section 1214 to more than the amount assigned by law, unless the township trustees should agree to such increase.

COLUMBUS, OHIO, October 6, 1925.

HON. GEORGE D. DUGAN, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—I am in receipt of your communication as follows:

"I desire your opinion on several matters concerning road improvements, as follows:

"1. May the county commissioners appropriate and use the two mill road levy money or any part thereof for the construction and improvements of an I. C. H. or Main Market road, which is being improved by the state?

"2. May the county commissioners appropriate the two mill road levy money or any part thereof, on hand and not otherwise appropriated, for the county's, township's or property specially to be assessed share or shares of the cost of the improvement, temporarily, so that the county auditor may certify the money is on hand for the purpose of letting a contract, when it is not intended that this money shall go into the improvement and bonds are to be issued for such money, and the proceeds of the bond money used to replace the two mill levy money thus temporarily appropriated?

"3. May the county commissioners, under section 1214 G. C. (H. B. No. 59) by resolution unanimously adopted increase the cost and expense of such improvement above ten per cent against the township trustees on the part of the township?"

The first question asked by you has been passed upon by a former attorney general in an opinion found in the Opinions of the Attorney General for 1920, page 112, the syllabus of which is as follows:

"Subject to the prior granting of an order of transfer by the common pleas court in accordance with section 2296 et seq. G. C. county commissioners may devote to state aid improvement projects funds not otherwise appropriated, derived and to be derived from levies under section 6929 G. C. insofar and only insofar as the proceeds of such levies are either in the county treasury or are to accrue to the treasury from levies which have been placed on the duplicate and are in process of collection; provided that the use stated may not be made of any part of such funds as may have been (a) anticipated by bonds issued; (b) directed by popular vote under section 6926-1

G. C. to be put in certain uses; or (c) found necessary for the maintenance and repair fund purposes mentioned in section 6956-1 G. C.”

Your second question is due to the operation of section 5654-1, as enacted by the eighty-fourth general assembly, which requires that the contract shall be let before the bonds shall be advertised for sale or issued. Under section 5654-1 it is contemplated that notes will be issued in anticipation of the bond issue and money thereby raised so that the county auditor may certify that the money is on hand for the purpose of letting a contract.

It is assumed that the attempted use of funds raised by the two mill road levy for the purpose of certification is to avoid the necessity of issuing notes and thereby save the county the interest on the issuance of such notes.

Section 5660 as enacted by the last legislature, found in 111 O. L. 371, provides in part as follows:

“No expenditure, excepting from the proceeds of bonds, shall be made unless authorized by appropriation both as regards purpose and amount, nor shall any expenditure be made from the proceeds of bonds unless duly authorized or directed. No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee, of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification which certificate shall be filed with such authority, officer, employee, commissioners, council, body or board, or the chief clerk thereof. The sum so certified shall not thereafter be considered unencumbered until the county, subdivision or district is discharged from the contract, agreement or obligation or so long as the order is in force.”

This action would seem to tie up the money which was certified to be in the treasury until such time as the county is discharged from the contract, agreement or obligation. If this interpretation is given to this section it will be impossible to use any other money raised by any other means for this particular contract, agreement or obligation. It is also believed that if a certificate is made that there are sufficient funds in the treasury or in the process of collection for the payment of the contract, agreement or obligation that such a certificate would preclude the issuance of bonds for payment of such contract, agreement or obligation.

You are therefore advised in answer to your second question that the county commissioners may not appropriate any part of the money from the two mill road levy not otherwise appropriated for the county's township's or property owner's share of the cost of the improvement temporarily so that the county auditor may certify the money is on hand for the purpose of letting a contract, when it is not intended that this money shall go into the improvement.

Your third question is whether the county commissioners, under section 1214 G. C., as enacted in house bill 59 by the last general assembly, may increase the cost

and expense paid by the township to more than ten per cent, without an agreement with the township trustees.

Section 1214, as re-enacted, provides as follows:

"Except as otherwise provided in this chapter, the county shall pay twenty-five per cent of all cost and expense of the improvement. Ten per cent of the cost and expense of such improvement, except the cost and expense of bridges and culverts, shall be apportioned to the township or townships in which such road is located. If the improvement lies in two or more townships, the amount to be paid by each shall be apportioned according to the number of lineal feet of the improvement lying in each township. Five per cent of the cost and expense of the improvement, excepting therefrom the cost and expense of bridges and culverts, shall be a charge upon the property abutting on the improvement, provided the total amount assessed against any owner of abutting property shall not exceed twenty per cent of the valuation of such abutting property for the purposes of taxation. * * * The county commissioners shall be required to assume on behalf of the county all that part of the cost and expense of an improvement not assumed by or assigned by law to the state or to the township and not specially assessed."

The latter part of this section requires the county to assume all that part of the cost and expense not assumed or assigned by law to the state or to the township. The part assigned by law to the township is ten per cent, and unless the township trustees should assume an additional amount of such cost, the township would not be required to pay more than the amount assigned by law.

You are therefore advised that the county commissioners may not increase the cost and expense of an improvement under section 1214 to more than the amount assigned by law, unless the township trustees should agree to such increase.

Respectfully,

C. C. CRABBE,
Attorney General.

2840.

BOARD OF EDUCATION—QUESTIONS CONCERNING THE ADOPTION OF TEXT BOOKS, DISCUSSED AND ANSWERED.

SYLLABUS:

(1) *Under the provisions of section 7713, General Code, a board of education, by a majority vote, would have authority, after the expiration of any five year adoption period, to make a new adoption, and if such authority is not exercised between the first Monday of February and the first Monday in August, as directed in said section, such authority may, if the best interests of the schools in question require it, be exercised any time after such five year adoption period has expired, the provision of the statute in question being directory and not mandatory.*

(2) *The five-sixths vote of the board of education provided in said section is*