

OHIO AND ERIE CANAL	Valuation
F. L. Diley, land lease-----	\$4,000 00
Philip and Margaret John, land lease-----	500 00
Robert E. Miller, land lease-----	5,000 00
E. D. Swigart, land lease-----	916 67

HOCKING CANAL	Valuation
John Love, land lease-----	\$700 00
Chas. J. Wright, land lease-----	666 67

INDIAN LAKE	Valuation
Edgar Hamburger, walkway-----	\$250 00

LAKE ST. MARYS	Valuation
J. P. Long, land lease-----	\$1,000 00

BUCKEYE LAKE	Valuation
Dr. F. L. Stillman, walkway and dock landing-----	\$100 00

I have carefully examined said leases, find them correct as to legality and form, and am therefore returning same with my approval endorsed thereon.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2108.

APPROPRIATIONS FOR HIGHWAY DEPARTMENT—MAY BE USED TO
PAY EXPENSES NECESSITATED BY SECTIONS 14153-5 AND 14153-6,
GENERAL CODE—MIAMI AND ERIE CANAL.

SYLLABUS:

In carrying out the provisions of Sections 14153-5 and 14153-6 of the General Code, the Director of Highways is authorized to use the general appropriations made to the Department of Highways for the purpose of employing engineers, clerks and other employes, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections, and likewise any other general appropriation that may be necessary to accomplish the duties of the Director of Highways in carrying out the mandate of the Legislature.

COLUMBUS, OHIO, May 17, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date, reading as follows:

"I have your Opinion No. 1974 in response to my request of March 13, 1928, regarding certain sections of Amended Senate Bill No. 39 enacted at the last session of the Legislature.

As I understand the opinion I am not authorized to use any funds derived from the gasoline taxes or license fees for the purpose of making the surveys mentioned in the aforesaid Senate Bill No. 39. In this connection, I am informed by the Auditor of this department that all appropriations made to this department, including those under the terms of House Bill No. 502, the General Appropriation Bill, are derived from the revenue produced by the one cent gas tax as levied under House Bill No. 206 or from the motor vehicle license taxes, taxes from motor transportation companies, taxes from commercial bus and truck companies and the two cent gas tax. It being true that funds so derived must be expended upon the state highway system I conclude that there are no funds appropriated to this department that would be available for making a survey of the highway located on the abandoned portion of the Miami and Erie Canal as directed in Senate Bill No. 39 aforesaid.

Will you kindly give me your further opinion in this matter and advise whether my conclusion is correct?"

Section 1 of House Bill No. 502, which is a part of the General Appropriation Act passed by the 87th General Assembly, reads in part as follows:

"The sums set forth herein designated 'Total Personal Service,' 'Total Maintenance' and Total Additions and Betterments,' for the purposes therein specified, are hereby appropriated *out of any moneys in the state treasury not otherwise appropriated.* Appropriations for departments, commissions, bureaus, institutions and offices, for the uses and purposes of which, or of any activity or function thereof, specific funds in the state treasury are provided by law, are hereby made from such specific funds, *insofar as such funds are subject by law to appropriation and expenditure for the purposes herein mentioned,* and to the extent that the moneys to the credit of such specific funds on July 1, 1927, or which may be credited thereto prior to December 31, 1928, shall be sufficient to satisfy such appropriations. * * *

It will be noted from a reading of that portion of Section 1 of House Bill No. 502, above quoted, that the appropriations therein provided under the designations "Total Personal Service," "Total Maintenance" and "Total Additions and Betterments" are appropriated "out of any moneys in the state treasury not otherwise appropriated." It therefore cannot be presumed that all moneys coming to the Department of Highways by virtue of the General Appropriation Act have been appropriated from the specific sources set forth in your communication, since the Legislature has made these appropriations generally out of any funds that may be in the state treasury which have not otherwise been appropriated.

On page 6 of my Opinion No. 1974, to which you refer in your communication, it is stated:

"It is sufficient to say that the Legislature has seen fit to add certain duties to your department in addition to the duties formerly imposed thereon, as was within its power, and that any general appropriations made to your department for the purpose of carrying out the duties of the department generally, may lawfully be used to pay the cost and expenses entailed in performing these additional duties."

Also, on page 7 of said opinion it is further stated:

"In carrying out the provisions of Sections 14153-5 and 14153-6, General Code, you are authorized to use the general appropriations made to your department for the purpose of employing engineers, clerks and other employes, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections, and likewise any other general appropriation that may be necessary to accomplish the duties of the Director of Highways in carrying out the directions of the Legislature."

The Legislature having directed you to make surveys of certain portions of the Miami and Erie Canal abandoned by the provisions of Amended Senate Bill No. 39 (112 v. 388-390), together with maps and plats of the same, and further to make a plat or plan showing the highway proposed to be constructed thereon, its length, grades and width, you may expend any moneys appropriated to your department which have not been appropriated specifically for highway purposes. In other words, the Legislature has instructed you to carry out the provisions of the statutes referred to, and in doing so you may make use of the various appropriation items made to the Department of Highways and Public Works, Division of Highways, appearing at pages 44 and 45 of House Bill No. 502, enacted by the 87th General Assembly, this act making general appropriations for the fiscal period. As stated in my former opinion, these items are contained under the classifications "Personal Service" and "Maintenance." Under "Personal Service" various sums of money are appropriated to pay the salaries of the employes of your department, including a number of engineers, clerks, bookkeepers and other employes. In addition, under this classification, there is an appropriation for "wages" under the code symbol "A 2." Under "Maintenance" may be found many items which are available for the making of the surveys, plats and plans in question, namely, "Office," "Motor Vehicle," "General Plant," etc.

Affirming my former Opinion No. 1974, and replying specifically to your further inquiry concerning the matter of expenditure in carrying out the provisions of Sections 14153-5 and 14153-6 of the General Code, it is my opinion that you are authorized to use the general appropriations made to your department for the purpose of employing engineers, clerks and other employes, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections, and likewise any other general appropriation that may be necessary to accomplish the duties of the Director of Highways in carrying out the mandate of the Legislature.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2109.

COUNTY COMMISSIONERS—AUTHORITY TO PURCHASE ROAD MACHINERY—ADVERTISING—COMPETITIVE BIDDING.

SYLLABUS:

1. *A board of county commissioners has authority to purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highway, bridges and culverts under their jurisdiction as they may deem necessary, as authorized by Section 7200, General Code, without resorting to advertising or competitive bidding.*