

365.

APPROVAL, NOTES OF LOCKINGTON VILLAGE SCHOOL DISTRICT,
SHELBY COUNTY, OHIO—\$262.00.

COLUMBUS, OHIO, March 23, 1933.

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

366.

APPROVAL, NOTES OF CYNTHIAN TOWNSHIP RURAL SCHOOL DISTRICT,
SHELBY COUNTY, OHIO—\$1,150.00.

COLUMBUS, OHIO, March 23, 1933.

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

367.

APPROVAL, NOTES OF SHERMAN RURAL SCHOOL DISTRICT, SHELBY
COUNTY, OHIO—\$398.00.

COLUMBUS, OHIO, March 23, 1933.

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

368.

EMERGENCY ROAD REPAIRS—COUNTY SURVEYOR TO PURCHASE
MATERIALS—VALID APPROPRIATION MUST EXIST BEFORE
SUCH EXPENDITURE IS MADE.

SYLLABUS:

1. *The county surveyor has the authority to make purchases of road materials for emergency repairs, as the same are defined in section 2792-1, General Code.*
2. *Before such purchases can be made, the money required therefor must first be appropriated by the county commissioners and a certificate furnished by the county auditor that the amount needed for such purchases has been lawfully appropriated therefor and is in the treasury, or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances.*

COLUMBUS, OHIO, March 24, 1933.

HON. LOUIS J. SCHNEIDER, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which contains the following inquiries:

"Is it legal for the Surveyor to make his own purchases for emergency purposes, or must he draw from purchases by the board, the materials necessary for emergency projects since the board has indicated its willingness to provide such facilities? Under Section 7214 G. C. is this authority vested in the board?"

If the board has not set up a County Surveyor Emergency Fund as provided for in Section 2792-1 G. C., and has not been requested to do so, what are the legal rights of the Surveyor to make emergency purchases?"

In my Opinion No. 219, addressed to A. L. Chatfield, Prosecuting Attorney of Vinton County, I held that the county commissioners had the authority under section 7214, General Code, to purchase road materials for road repairs and construction, and that the county surveyor had no part in selecting the kind of materials to be purchased, except where the commissioners have authorized the surveyor to make such purchase for work that was determined to be done by force account. Emergency repairs, as they are defined in section 2792-1, General Code, were not considered in that opinion. This section reads as follows:

"For the purposes of this act, necessary repairs, the total cost of which is not more than two hundred dollars, shall be deemed emergency repairs. The county surveyor shall make all emergency repairs on all roads, bridges and culverts in the county, including state highways, and shall keep on hand at all times a supply of material for the purposes of making such repairs. Upon report to the county surveyor of any road or bridge in the county needing immediate attention, the county surveyor shall, if he deems it an emergency repair, proceed at once to make such repair by force account, without preparing plans, specifications, estimates of cost or forms of contract.

The county commissioners are hereby authorized to appropriate a sum of money each year sufficient to enable the county surveyor to carry out the purposes of this section. Such sum shall constitute the 'county surveyor's emergency repair fund.' All expenses incurred in employing extra help or in purchasing materials used in such repairs shall be paid from such fund on vouchers signed by the county surveyor."

As this section provides that the cost of materials purchased for emergency repairs should be paid for by the county surveyor out of the county surveyor's emergency repair fund, and that the county surveyor shall keep on hand at all times a supply of material therefor, it is evident that such materials should be purchased by the county surveyor rather than by the commissioners. This was the holding of my predecessor, appearing in Opinions of the Attorney General for 1931, Vol. III, page 1457. This opinion holds as follows:

"3. A county surveyor has the authority to purchase materials needed in making of emergency repairs under the provision of Section 2792-1, General Code.

4. A county surveyor may purchase materials from the appropriation made under Section 2792-1, General Code, without the approval of the board of county commissioners, even though such purchase is in excess of \$1,000.00."

Before a valid purchase can be made by the surveyor, it is necessary that the money required therefor be properly provided and the certificate of the auditor, as required by section 5625-33, General Code, furnished. Section 5625-33, General Code, reads in part as follows:

"No subdivision or taxing unit shall:

* * * * *

(b) Make any expenditure of money unless it has been appropriated as provided in this act (G. C. §§5625-1 to 5625-39).

(c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn.

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. * * *

Section 5625-29, General Code, reads in part as follows:

"Appropriation measures shall be so classified as separately to set forth the amounts appropriated for each office, department, and division and within each the amount appropriated for personal services; * * *"

It follows therefore that if no money has been appropriated by the county commissioners for emergency repairs, the county surveyor could make no valid purchase of materials therefor; and until the county commissioners make such appropriation, the surveyor cannot perform the duty of purchasing and keeping on hand a supply of material for the purpose of making emergency repairs. In such case, however, I am of the view that, where the county commissioners have on hand road materials which were purchased by them under section 7214, General Code, a county surveyor could, if he desired, and upon being so authorized by the commissioners, use so much of said materials as may be needed for emergency repairs.

I am therefore of the opinion that:

1. The county surveyor has the authority to make purchases of road materials for emergency repairs, as the same are defined in section 2792-1, General Code.

2. Before such purchases can be made, the money required therefor must first be appropriated by the county commissioners and a certificate furnished by the county auditor that the amount needed for such purchases has been lawfully appropriated therefor and is in the treasury, or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances.

Respectfully,

JOHN W. BRICKER,

Attorney General.