

1474.

APPROVAL, BONDS OF BREMEN VILLAGE SCHOOL DISTRICT, FAIRFIELD COUNTY, \$4,799.00, TO FUND CERTAIN INDEBTEDNESS.

COLUMBUS, OHIO, May 15, 1924.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

1475.

“STATE AID ROAD LAWS”—DIRECTOR OF HIGHWAYS AND PUBLIC WORKS—AUTHORITY TO SPECIFY TYPE OF ROAD TO BE BUILT—SECTIONS 1200, 1218 and 5660 G. C. CONSTRUED.

COLUMBUS, OHIO, May 15, 1924.

SYLLABUS:

1. *Under the statutes commonly known as “the state aid road laws”, it is within the discretion of the Director of Highways and Public Works to determine the policy as to kind or type of road to be built.*

2. *When plans, specifications, profiles and estimates have been endorsed with the approval of the Director of Highways and Public Works and submitted to the county commissioners for their adoption, the authority of such county commissioners, under the provisions of Section 1200 of the General Code, is limited to the adoption of such plans, specifications, profiles and estimates as a whole, or to the refusal to adopt the same as a whole...Such county commissioners are without authority to adopt such plans, specifications, profiles and estimates in part, and to refuse to adopt the same in part.*

3. *A certification of funds by a county auditor in an amount sufficient to cover the most expensive type of a proposed highway improvement, is sufficient to and does meet the requirements of Section 5660 of the General Code in connection with types of such proposed highway improvement of a lesser cost.*

4. *A final resolution appropriating an amount of money sufficient to cover that part of the cost and expense of a proposed highway improvement in the first instance to be assumed by the county, and which final resolution also contains an agreement on the part of the county commissioners to assume in the first instance the share of the cost and expense over and above the amount to be paid by the State, which amount is sufficient to cover the most expensive type of a proposed highway improvement, and such final resolution is sufficient to and does meet the requirement of Section 1218 of the General Code in connection with types of such highway improvement of a lesser cost.*

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

Gentlemen:—

This will acknowledge receipt of your recent communication, which reads:

“The question has arisen as to the rights of the Director of Highways

and Public Works in the following case, which is typical of several that have occurred recently:

"Road plans are made and approved by the County Commissioners, including two or more types of pavement. If the County Commissioners sign the Resolution Approving Plans and Determining to Proceed, and also a Final Resolution with an Auditor's Certificate to the effect that the county funds are available for the type with the highest cost and the Commissioners refuse to sign the estimate and Final Resolution for one of the types of lesser cost, would it be legal for the Highway Director to make an award on any of the types included in the plans?

"Your ruling on this question, at an early date, will be greatly appreciated."

It is noted that you say that road "plans" are made and approved by the county commissioners. I assume that you use the word "plans" in the sense that it includes plans, specifications, profiles and estimates provided for and referred to in the following sections:

Section 1196, General Code, reads:

"If the state highway commissioner approves the application or part thereof, he shall, if necessary, cause a map of the highway in outline and profile to be made and indicate thereon any change of existing lines if he deems it of advantage to make such change. He shall cause to be made plans, specifications, profiles and estimates for said improvement."

Section 1199, General Code, reads:

"Upon the completion of the maps, surveys, profiles, plans, specifications and estimates for the construction or improvement of said highway, bridge or culvert, the state highway commissioner shall cause the same to be transmitted to the county commissioners or township trustees, with the certificate of approval of said commissioner endorsed thereon."

Section 1200, General Code, reads:

"Upon the receipt of the surveys, maps, plans, profiles, specifications and estimates for the proposed improvement, the county commissioners or township trustees may by resolution adopt the same, and provide that said highway, bridge or culvert be constructed under the provisions of this chapter. A certified copy of such resolution shall be transmitted to the state highway commissioner."

Upon this use of the word "plans", your proposition and inquiry may be resolved as follows:

In connection with a proposed road project wherein county commissioners have made application for state aid, the Director of Highways and Public Works, acting under provisions of said Section 1196, has made or caused to be made plans, specifications, profiles and estimates covering two or more types of improvements, which plans, specifications, profiles and estimates have, accompanied with the certificate of approval by the Director of Highways and Public Works thereon, been transmitted to the county commissioners under said Section 1199, General Code, and by the county commissioners adopted generally, by resolution, a certified copy of which resolution has been transmitted to the Director of Highways and Public Works under the provisions of said Section 1200 of the General Code.

Also, the county commissioners have regularly adopted a resolution, under the provisions of said Section 1200, General Code, in which they have resolved that the proposed improvement be constructed under the provisions of the statute commonly known as the "state aid laws."

The county commissioners have also adopted what is commonly known as a "final resolution", in which they have agreed in the first instance to assume that part of the cost and expenses of the proposed improvement over and above the amount to be paid by the state, and which resolution appropriates an amount of money to cover that part of the cost and expense so assumed by the county commissioners of the most expensive type of improvement proposed by the Director of Highways and Public Works, and as shown by the plans, profiles, specifications and estimates which have been approved and adopted; and for which amount so appropriated preliminary to the passing of the resolution appropriating the same, the county auditor has filed a proper certification of the funds, the amount so certified being equal to that part of the cost and expenses of the improvement which, in the first instance, is assumed by the commissioners of the most expensive type of improvement contemplated and covered in the plans, profiles, specifications and estimates which have theretofore been approved and adopted.

However, the county commissioners refused to sign, on their face, the estimates for one or more of the proposed types of improvement of lesser cost, and declined to adopt a final resolution and sign an agreement or resolution to construct the improvement of one or more of the types of improvement of lesser cost.

Upon this statement, you inquire whether or not it would be legal for the Director of Highways and Public Works to make an award on any of the types included in the plans, profiles, specifications and estimates thus approved and adopted.

I assume that all the preliminary steps covered by the statutes, such as advertising, etc., have been complied with in connection with each type of improvement which you are giving consideration.

In connection with your communication, it is believed that it would be of interest at this time to set out the established practice and policy of your department in reference to projects of the character under consideration, which practice and policy is of long standing. This practice and policy has been as follows:

Upon application being made by the county commissioners for aid in the construction of a proposed project, and the granting of such application and an allotment thereon being made by the Director of Highways and Public Works, an order is entered and issued, directing that plans, specifications, profiles and estimates covering different types of improvement be made, and these are submitted to the county commissioners for their adoption. Upon the adoption of such plans, specifications, profiles and estimates by resolution by the county commissioners, it has also been the practice that the county commissioners endorse their approval upon the face of the plans, specifications, profiles and estimates so made and adopted and, together with a certified copy of their said resolution, the county commissioners transmit the plans, profiles, specifications and estimates to the Director of Highways and Public Works for his approval.

Upon receipt by the county commissioners of the approval of the Director of Highways and Public Works of the plans, specifications, profiles and estimates, it has been the practice of the county auditor to file with the county commissioners his separate certificate of funds in connection with each type of proposed improvement, the amount of funds certified in connection with each type being equal to the amount of the cost and expense of such type which the county commissioners in the first instance assume to pay. Thereupon, the county commissioners pass a separate final resolution in connection with each type of proposed improvement.

It should be noted that the form of final resolution in connection with each type of proposed improvement is identical in reading, except that the amount appropriated in each final resolution varies, in that such amount in each instance is equal to the amount of the cost and expense which the county commissioners, in the first instance, assume and agree to pay in connection with each particular type.

It should also be noted that in each final resolution, in connection with each type of proposed improvement, the plans, specifications, profiles and estimates are approved generally.

In certifying the funds designed to cover the most expensive type of improvement, the county auditor certifies the funds generally, the certificate containing a statement of amount, which amount is sufficient to cover the highest type of improvement proposed. This certificate is made under the provisions of Section 5660 of the General Code.

Upon all the foregoing statements, it is believed that a consideration of the proposition submitted may be simplified by resolving your inquiry into three questions, and discussing each separately. The first of the three questions suggested is:

1. Upon plans, specifications, profiles and estimates being made, or caused to be made, by the Director of Highways and Public Works, covering various types of improvement, which plans, specifications, profiles and estimates, together with a certificate of approval of the Director of Highways and Public Works endorsed thereon, having been transmitted to the county commissioners for adoption, may the county commissioners adopt such plans, specifications, profiles and estimates in part and refuse to adopt same in part?

Under the provisions of said Section 1200 of the General Code, that the county commissioners may adopt the plans, specifications, profiles and estimates, it is clear that the duty is imposed upon the county commissioners to take some action in reference to the adoption of plans, specifications, profiles and estimates. Without doubt the adoption of the plans, specifications, profiles and estimates is a necessary precedent to the going forward with the improvement.

The section further contains the provision, "and provide that said highway, bridge or culvert be constructed under the provisions of this chapter," showing that up to the point of the passing of the resolution contemplated by this section, the county commissioners have it within their power to either go forward with the proposed improvement, or to decline to go forward with the proposed improvement.

Keeping in mind that it is incumbent upon the Director of Highways and Public Works to make, or cause to be made, and to submit the plans, specifications, profiles and estimates to the county commissioners, it is believed, and I am of the opinion, that the county commissioners are only authorized (1) to adopt, or (2) to decline to adopt the plans, specifications, profiles and estimates as submitted; and that the county commissioners are not authorized to adopt in part and decline to adopt in part. There is no authority in the statute for the county commissioners to change or modify the plans, etc.

It is believed that this theory of the interpretation of the above quoted legislation is strengthened by the provisions of Section 1184 of the General Code, the pertinent parts of which read:

"The state highway commissioner shall have general supervision of the construction, improvement, maintenance and repair of all inter-county highways and main market roads, and the bridges and culverts thereon. * * * ; and he shall approve the design, construction, maintenance and repair of all bridges, including superstructure and substructure, and culverts or other improvements on inter-county or main market roads; * * * ."

The last paragraph of this section makes it the duty of the Director of Highways to make inquiry in regard to systems of road and bridge construction and maintenance, wherever he may deem it advisable, and conduct investigations and experiments with reference thereto.

It would seem, the Director of Highways and Public Works being clothed with the duty of preparing plans, specifications and estimates, together with the design of the proposed improvement, and of making investigations and experiments with reference thereto, that it was clearly the intention of the legislature to repose in the Director of Highways and Public Works the discretion of determining the type of improvement to be made on inter-county highways and main market roads of the state.

It should be said in passing that, under said Section 1200 of the General Code, the method by which the county commissioners may adopt the plans, specifications, profiles and estimates is by resolution, and the journal of the county commissioners in that respect is controlling, rather than the adoption of the same by endorsement of approval on the face of the plans, specifications, profiles and estimates, by the county commissioners.

2. By the passing of a resolution designed to cover the highest priced type of improvement of a proposed project wherein the county commissioners adopt in general terms the plans, specifications, profiles and estimates approved and submitted by the Director of Highways and Public Works, and wherein it is provided that the proposed project shall be constructed, have the county commissioners thereby adopted the plans, specifications, profiles and estimates, including all the types covered, and under such adoption would your department be authorized to proceed under the provisions of Section 1206 of the General Code and advertise for, receive and open bids covering a type of lesser estimated cost, and make an award and enter into contract covering such type of lesser estimated cost?

The pertinent parts of the form of resolution approving plans, specifications, profiles and estimates, and to proceed, after reciting that the State Highway Commissioner has approved the application of the county commissioners for state aid, and has caused to be made and submitted plans, specifications, profiles and estimates, with his approval endorsed thereon, read:

"Resolved, That the section of highway described in paragraph (2), be improved under the provisions of aforesaid law. That said work be done under the charge, care and superintendence of the State Highway Commissioner, and that said maps, plans, specifications and estimates for this improvement as approved by the state highway commissioner, are hereby approved and adopted by this Board."

Having seen that there is no authority on the part of the county commissioners to adopt in part and refuse to adopt in part, the plans, specifications, profiles and estimates as approved and submitted by the Director of Highways and Public Works, the adoption of the same generally, by resolution duly passed, would carry with it the adoption of all the plans, specifications, profiles and estimates, including all types, as approved and submitted by the Director of Highways and Public Works. That is the language and purport of the resolution, and it specifically provides "as approved by the State Highway Commissioner." The resolution duly passed is controlling over any action, or lack of action, by the county commissioners outside of, or off their record.

3. The county auditor having made and filed a certificate of funds in connection with the proposed project, certifying an amount sufficient to cover the estimated cost and expense of the most expensive type, is such a certificate sufficient to cover less expensive types?

Such certificate is made in conformity with Section 5660 of the General Code, the pertinent parts of which read:

"The commissioners of a county, * * * shall not enter into any contract, agreement or obligation involving the expenditure of money, or pass any resolution or order for the appropriation or expenditure of money, unless the auditor * * * first certifies that the money required for the payment of such obligation or appropriation is in the treasury * * * ."

If the certificate covers an amount sufficient to equal the cost of the most expensive type, it is sufficient to cover all types of lesser cost.

In conclusion, and specifically answering your question, I am of the opinion and you are advised that, upon the statement of facts given by you, it would be legal for the Director of Highways and Public Works to make an award on any of the types included in the plans, specifications, profiles and estimates.

In this connection, and with a view of clarifying and simplifying the procedure connected with the legislation leading to an award, I am transmitting for your use new form of resolution "Approving Plans and Determining to Proceed", and new form of "Final Resolution."

Respectfully,
C. C. CRABBE,
Attorney-General.

Received _____ County
Pet. No. _____ Resolution Approving _____ No. _____ Sec. _____
Name of Road _____ Plans and Determining to Proceed.

(Sec. 1200 G. C.)

Mr. _____ offered and moved the adoption of the following resolution:

Whereas, at a meeting of the Board of County Commissioners of _____ County, Ohio, held in the office of the Commissioners of said county, on the _____ day of _____, 192____, a quorum being present, the improvement of the _____ Road, _____ No. _____ under provisions of Sections 1178, 1231-11, inclusive, of the General Code of Ohio, came on for further consideration; said section of highway as described in the preliminary application of this Board to the Director of Highways and Public Works, on the _____ day of _____, 192____, being as follows:

and located in the Township of _____, in all a distance of about _____ miles.

Whereas, The Director of Highways and Public Works has approved said application and has caused a map of the following described section of said highway to be made in outline and profile, to-wit:

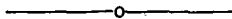
and has made, or caused to be made, plans and specifications and estimates of costs and expenses of various types for improving the above described section of highway, and has transmitted the same to this Board, with the certificate of his approval endorsed thereon; Therefore, Be It

Resolved, That the above described section of highway be improved under the aforesaid law. That said work be done under the charge, care and superintendence of the Director of Highways and Public Works, and that said maps, profiles, plans, specifications and estimates of all the various types for this improvement as approved and submitted by the Director of Highways and Public Works, are hereby approved and adopted in their entirety by this Board.

Resolved, That the Clerk of this Board be, and he is hereby directed to transmit to the Director of Highways and Public Works a certified copy of these Resolutions.

Thereupon, Mr. ----- seconded said motion; and upon the roll being called, the result of the vote was as follows:

Mr. ----- "Aye" Board of County Commissioners
of
Mr. ----- "Aye" -----
Mr. ----- "Aye" County.



The State of Ohio, }
} Office of the Board of County Commissioners.
----- County. }

This is to certify that we have compared the foregoing copy of resolution with the original record thereof, found in the record of the proceedings of the Board of County Commissioners of said ----- County, and which resolution was duly passed by the Board of County Commissioners of said county on the ----- day of -----, 192--, and that the same is a true and correct copy of said resolution and the action of the Board of County Commissioners of said county thereon.

We further certify that said resolutions and the result of the vote thereon are recorded in the Journal of the said Board of County Commissioners of said County in Vol. -----, at page -----, and under date of -----, 192-----.

(SEAL) -----
President of the Board of County Commissioners
of ----- County, Ohio.
Clerk of the Board of
Secretary ex-officio County Commis-
sioners of ----- County, Ohio.

NOTE: If the County Auditor is Secretary ex-officio of the Board, the word "Clerk" should be stricken out and the certificate executed by the Auditor, with seal attached. If the Board has a Clerk other than the County Auditor, the words "Secretary ex-officio" should be stricken out and the certificate executed by such Clerk.

FINAL RESOLUTION

Received ----- NOTE—Before the ----- County
adoption of this
Pet. No. ----- Final Resolution, I. C. H. No. ----- Sec.-----
the County Auditor

Name of Road ----- must make and seal,
 ----- and file with the
 ----- Board of County Com-
 ----- missioners his Cer-
 ----- tificate of Funds in
 strict compliance with Section 5660 G. C.
 The County Auditor should record his
 Certificate of Funds in the Commissioners'
 Journal.

Mr. ----- moved the adoption of the following resolution:
 Whereas, on the ----- day of -----, 19-----, this board
 adopted a resolution approving plans and determining to proceed under the pro-
 visions of Sections 1178 to 1231-11 G. C. in the matter of the improvement of
 the following described section of highway, to-wit:

and directing the clerk of this board to transmit a certified copy of said resolu-
 tion to the Director of Highways and Public Works, and

WHEREAS, The clerk has reported to this board that such certified copy
 has been duly transmitted to said Director of Highways and Public Works; and

WHEREAS, Funds for the payment of the estimated cost of said improvement
 other than the proportion and share of said cost that is to be borne by the State
 have become available as to which funds the County Auditor has made a certificate,
 now on file with this board, and here recorded, as follows;

I hereby certify that the money, to-wit: \$-----
 required for the payment of the cost other than that part thereof assumed by the
 State, of the improvement known as I. C. H. No -----, Section -----,
 County of -----, is in the treasury to the credit of, or has
 been levied, placed upon the duplicate and in process of collection for the state and
 county road improvement fund and not appropriated for any other purpose; or is
 being obtained by sale of bonds of said county issued on account of said im-
 provement, which bonds are sold and in process of delivery.

I further certify that this certificate was made, sealed and filed with the Board
 of County Commissioners of ----- County before said
 Board of County Commissioners passed the final resolution in connection with
 the within described project; and that this certificate was forthwith recorded in
 the record of proceedings of said Board of County Commissioners, namely: Com-
 missioners' Journal, Vol.-----, at page -----

IN WITNESS WHEREOF, I have hereunto set my hand
 and official seal as said county auditor,
 this -----day of -----, 19-----

(SEAL)

 ----- County Auditor.
 of ----- County, Ohio.

THEREFORE, Be It Resolved, That the sum of -----
 Dollars, being an amount sufficient to cover that part of the cost and expense as-

sumed in the first instance by this county of the most expensive type of above mentioned and described improvement, or any other type approved and adopted in connection therewith, be and the same is hereby appropriated for improving under the provisions of said law. We do hereby agree to assume in the first instance the share of the cost and expense over and above the amount to be paid by the State and guarantee the Director of Highways and Public Works that such money shall be available at such time or times as it may be needed in the construction of said highway.

Mr. ----- Aye
Mr. ----- Aye
Mr. ----- Aye

Commissioners of

----- County.

IN WITNESS WHEREOF, we sign, in duplicate, and certify to be correct in duplicate, the foregoing resolution, and the action of said Board of County Commissioners thereon, this ----- day of -----, 19-----.

Board of County Commissioners
of ----- County, Ohio.

THE STATE OF OHIO, }
 } Office of Board of County Commissioners.
----- COUNTY. }

This is to certify that we have compared the foregoing copy of resolutions with the original record thereof, found in the record of the proceedings of the Board of County Commissioners of said ----- County, and which resolution was duly passed by the Board of County Commissioners of said ----- County on the ----- day of -----, 19-----, and that the same is a true and correct copy of the record of said resolution and the action of said Board of County Commissioners thereon.

We further certify that said resolution and the result of the vote of said Board of County Commissioners thereon is recorded in the Journal of said Board of County Commissioners in Vol. -----, at page -----, and under the date of -----, 19-----.

IN WITNESS WHEREOF, we have hereunto set our hands this ----- day of -----, 19-----.

(SEAL)

President of the Board of County Commissioners of -----
County, Ohio.

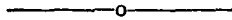
Clerk
Secretary ex-officio of the Board of County
County Commissioners.

NOTE: If the County Auditor is Secretary ex-officio of the Board, the word "Clerk" should be stricken out and the certificate issued by the Auditor, with seal attached. If the Board has a Clerk other than the County Auditor, the words "Secretary ex-officio" should be stricken out and certificate executed by such Clerk.

To the Attorney General:

I do hereby certify that there has been appropriated from the -----
fund of the Department of Highways and Public Works, Division of Highways
of Ohio, the sum of \$----- to the credit of -----
County, being an amount sufficient to cover that part of the cost and expense
to be paid by the State in connection with the most expensive type, or any other type.

Dated ----- Auditor Division of Highways.



DEPARTMENT OF THE ATTORNEY GENERAL.

Pursuant to the requirements of Sections 1178 to 1231-11 inclusive of the General
Code of Ohio, the foregoing agreement of the Board of Commissioners of
----- County, Ohio, is approved as to form and legality.

Dated ----- Attorney General of Ohio.

----- County.
----- Twp.
----- Inter-County
Highway No. -----
Petition No. -----

FINAL RESOLUTION

Received in the Department of Highways by mail (at the hands of)
this ----- day of -----, 19-----

(Signature of person actually receiving same)

