

2205

ROADS AND HIGHWAYS—COUNTY SURVEYOR AND COUNTY COMMISSIONERS MUST AGREE AS TO TYPE OF IMPROVEMENT—DUTY OF COUNTY COMMISSIONERS TO ASCERTAIN LOWEST AND BEST BIDDER.

If, as permitted by section 6911 G. C., bids for work on county roads are received on several types of improvement, the county surveyor and board of county commissioners must, after bids are opened, agree as to the type of improvement to be made. After such agreement has been arrived at, it then becomes the duty of the county commissioners by virtue of section 6945 G. C. to ascertain the lowest and best bidder from among those who have submitted proposals as to the particular type of improvement which has been agreed on; and it is for the commissioners to say whether they will ask the opinion of the surveyor as to who is the lowest and best bidder. (Previous opinion 1919 Opinions, Attorney-General, Vol. I, p. 862, referred to.)

COLUMBUS, OHIO, June 29, 1921.

HON. WALTER S. RUFF, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—In response to an inquiry recently submitted, your attention was called to the opinion of this department mentioned below; and by way of reply you have written as follows:

"I have read Opinion 510 which your department issued to the bureau of inspection and supervision of public offices on July 23, 1919, but it does not answer the question which I intended to propound.

It is customary with our board of county commissioners and surveyor to prepare several alternate plans, all of which are approved by the board of commissioners and the county surveyor, and bids are received upon all of these plans and specifications,—then after the bids are received, the county commissioners determine which of the bids will be accepted for the improvement of the road.

The question which is bothering me, and which I intended to submit to you for answer is—Does the county surveyor have any voice in determining which bid shall be accepted for the improvement?

You understand all of the different plans have the approval of the commissioners and the surveyor, for instance,—A plan will be submitted for a brick pavement with slag base; another brick with gravel base; another brick with concrete base; also, a plan for macadam road; another plan for an asphalt pavement, all the plans and specifications being approved by the county commissioners and the surveyor. Bids are received upon all the plans.

The county surveyor claims that under this section he has a right to assist the commissioners in determining which bids are to be accepted.

It is my contention that when the commissioners and the surveyor agree on plans and specifications that that is as far as the surveyor has any right, and that the acceptance of the bids is entirely in the hands of the county commissioners. If you will refer to your opinion of July 23, 1919, you will find that it does not answer that question."

The opinion you mention is found in Opinions of Attorney-General for 1919, Vol. I, at page 862. It deals with section 6911 G. C. which then read and still reads as follows:

"When the board of commissioners has determined that any road shall be constructed, reconstructed, improved or repaired, as herein provided for, such board shall determine by resolution by unanimous vote, if acting without a petition, and by a majority vote, if acting upon a petition, the route and termini of such road, the kind and extent of the improvement, and at the same time shall order the county surveyor to make such surveys, plans, profiles, cross-sections, estimates and specifications as may be required for such improvement. The county commissioners may order the county surveyor to make alternate surveys, plans, profiles, cross-sections, estimates and specifications, providing therein for different widths of roadway, different materials or other similar variations, and approve all or any number of such alternate surveys, plans, profiles, cross-sections, estimates and specifications. The county surveyor may, without instructions from the county commissioners, prepare alternate surveys, plans, profiles, cross-sections, estimates and specifications, providing therein for different widths of roadway, different materials, or other similar variations. Where alternate surveys, plans, profiles, cross-sections, estimates and specifications are approved by the county commissioners or submitted by the county surveyor on his own motion the county commissioners and county surveyor shall after the opening of the bids agree which of such surveys, plans, profiles, cross-sections, estimates and specifications shall be finally adopted for the construction of the improvement."

In the previous opinion in question, the following inquiry had been submitted in connection with the agreement mentioned in the concluding sentence of said section:

"In such agreement, will the votes of three commissioners be considered a majority or is it necessary that at least two of the commissioners and the surveyor vote together to constitute a majority?"

and the inquiry was answered by the statement:

"It follows, therefore, that the answer to your inquiry is that when alternate plans, etc., have been prepared, the vote of the three commissioners is without effect to adopt plans, etc., if the surveyor does not agree to such adoption."

It therefore appears that you are correct in your view that the precise question you have in mind was not answered by the previous opinion.

Section 6945 G. C., relating to county road contracts and constituting part of the series of sections embracing said section 6911 G. C., reads in part:

"The county commissioners may let the work as a whole or in convenient sections as they may determine. They shall award the contract to the lowest and best bidder."

Reading these provisions with the last sentence of section 6911, the result is:

If bids have been taken on several plans, then the surveyor and county commissioners, *after the opening of bids*, must in the manner pointed out in the previous opinion agree as to which *plan and specification* will be adopted; whereupon the duty of the surveyor ends except as the county commissioners may at their option and in their discretion see fit to call on the surveyor for advice. The type of improvement having been selected through the medium of agreeing on plans and specifications in the manner aforesaid, the right, duty and responsibility pass to the commissioners of ascertaining the lowest and best bidder from among the bidders who may have submitted proposals on the particular type of improvement selected. It is for the commissioners to decide whether they will ask the surveyor to express his opinion as to who is the lowest and best bidder.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

2206.

FISH AND GAME—HUNTERS' LICENSES—SHOULD BE ISSUED FROM OFFICE OF CLERK OF COURTS, NOT PRIVATE PLACE OF BUSINESS.

Hunters' licenses should be issued from the office of the clerk of courts and not from a private place of business, since the placing of a deputy in a private place of business, to issue hunters' licenses, would be against public policy and unauthorized by law.

COLUMBUS, OHIO, June 29, 1921.

HON. LAWRENCE H. WEBBER, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your request for the opinion of this department upon the following statement of facts:

“Our clerk of courts has asked me to write you for your opinion with reference to the following proposition:

He wishes to know if it would be legal for him to appoint a man who is a clerk in one of the local hardware stores doing a big business in the sale of fire arms and sporting goods, as a deputy for the purpose only of issuing hunting licenses. Very often it is quite an accommodation for a man, especially during the rush at the opening of rabbit season, to get his license in the evening at some store when the court house is closed. This would be with the understanding that the man who issued the licenses would receive no compensation for so doing, but the county would take in all of the money, the same as it does in the clerk's office and an accounting would be made to the clerk by his deputy at stated periods.”

Pertinent sections of the law are 1432, 1433, 2871, 2981 and 2983 of the General Code.

From a reading of the statutes above quoted, it is apparent that the clerk of the courts can appoint as many deputies as might be needed and it is