

of pertinent statutes and have been arrived at only because such statutes are believed to admit of no other construction. As suggested in previous opinions of this department, the rule should be that public authorities should follow the competitive bidding system unless in particular instances it is impracticable or clearly against the public interest to do so.

For your information, a copy is enclosed of an opinion (No. 2412)—being rendered on this date to Hon. Walter B. Moore, prosecuting attorney, Woodsfield, Ohio, which, while it deals with bridge repair rather than bridge construction, may prove of interest to you.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2412.

BRIDGES AND CULVERTS—COUNTY COMMISSIONERS MUST CAUSE COUNTY SURVEYOR TO PREPARE PLANS, ETC., BEFORE PROCEEDING BY FORCE ACCOUNT ON ROAD OR BRIDGE REPAIR WORK—WHAT STATUTES APPLICABLE TO FORCE ACCOUNT WORK—SEE ALSO SUBSEQUENT OPINION NO. 2411, SEPTEMBER 10, 1921.

1. *In case county commissioners desire to do road or bridge repair work by force account, they must, before making purchases for the purpose (sections 7200 and 7214 G. C.) and before authorizing the county surveyor to make purchases and employ labor and teams for the purpose (section 7198 G. C.), cause the county surveyor to prepare plans, specifications and estimates (sections 2792 and 7187 G. C.) This is true without regard to the cost of the work.*

2. *The requirements of sections 5660 and 5661 G. C. are applicable to the purchases of materials, tools, equipment and supplies, and to the employment of teams and labor under authority of sections 7198, 7200 and 7214 G. C.*

COLUMBUS, OHIO, September 10, 1921.

HON. WALTER B. MOORE, *Prosecuting Attorney, Woodsfield, Ohio.*

DEAR SIR:—You have written to this department as follows:

“In the report of examination by the county officers of Monroe county, Ohio, for period ending May 24, 1920, my attention has been called to the following language used in connection with the report on the commissioners’ office:

‘Section 7198 G. C., 107 O. L. 115, provides for certain improvements by “Force Account.” The opinion of the Attorney-General, Vol. III, 1917, page 2332, holds that this does not apply to the construction of new bridges.

If in the repair of any bridges or roads, the commissioners decide to proceed by such method they should so definitely state, that there would be no question as to their intent, and should require the plans, specifications, estimates, etc., just the same as if proceeding to let contract by competitive building, the proper resolution should then be entered upon their journal showing their intent, and the work should then proceed under the direct supervision of the county surveyor. And

as they must approve all bills for any payments thereunder, definite fixed prices should be agreed upon before such work actually begins.'

Both the county surveyor and county auditor have requested me to write you for an opinion as to whether this statement is the law of this state when the commissioners determine to repair bridges or road by 'Force Account.'

Is it sufficient for the commissioners to pass a resolution declaring their intention to proceed with such repairs, either of roads or bridges, by 'Force Account' without any preliminary steps and without any limitation as to the extent of repairs or amount to be expended."

With the foregoing inquiry you have submitted in a separate letter the following comments:

"With reference to my letter of even date inquiring as to repair of bridges or roads by 'Force Account,' will say that personally I do not feel that it was the intention of the legislature to throw these matters open so that the county surveyor, or any other person, could promiscuously pile up expense to be charged to the county and no limit placed upon them.

This question has been giving us much trouble in this county, and there is not at any time anything which appears in the record to show whether there is money in the treasury available for use in making the proposed repair; and, of course, it would be difficult to certify that there was sufficient funds unappropriated and available for that purpose when the auditor had no idea whatever as to the amount of the probable cost."

The opinion of this office, to which you refer, has been reviewed in response to an inquiry recently made by Hon. John R. King, prosecuting attorney, Franklin county, Ohio, and a copy of the opinion rendered to him as of this date (No. 2411) is enclosed for your information. While this opinion in a sense does not directly affect the questions which you present, yet it contains quite a full review of the statutes in connection with force account work, and thus furnishes the groundwork for the consideration of your inquiry; and you will see that it is to the effect that the earlier opinion referred to by you is not to be followed in the respect that it confines procedure by force account to repairs only of bridges, but that construction or reconstruction, as well as repairs, may be undertaken by force account.

Keeping in mind the views set out in the opinion to Mr. King, we come to the matter of preliminary procedure for road and bridge repairs by force account.

Statutes which are of primary importance are sections 5660 and 5661 G. C., which read respectively as follows:

"Sec. 5660. The commissioners of a county, the trustees of a township and the board of education of a school district, 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 or clerk thereof, respectively, first certifies that the money required for the payment of such obligation or appropriation is in the treasury to the credit of the fund from which it is to be drawn, or has been levied and placed on the duplicate,

and in process of collection and not appropriated for any other purpose; money to be derived from lawfully authorized bonds sold and in process of delivery shall, for the purpose of this section, be deemed in the treasury and in the appropriate fund. Such certificate shall be filed and forthwith recorded, and the sums so certified shall not thereafter be considered unappropriated until the county, township or board of education, is fully discharged from the contract, agreement or obligation, or as long as the order or resolution is in force."

"Sec. 5661. All contracts, agreements or obligations, and orders or resolutions entered into or passed contrary to the provisions of the next preceding section, shall be void, but such section shall not apply to the contracts authorized to be made by other provisions of law for the employment of teachers, officers, and other school employes of boards of education."

The important point to bear in mind is that so far as the auditor's certificate is concerned, there is not the slightest difference between providing for repairs to a road or bridge through the medium of a written contract with a contractor, after advertising, and providing for such repair work through the medium of force account.

So much being premised, the next question is, how are the county commissioners to determine the amount to be set aside for a given piece of road or bridge repair work, and how is the auditor to determine the amount of his certificate? The answer is to be found principally in the provisions of sections 2792 and 7187 G. C., which read respectively as follows:

"Sec. 2792. The county surveyor shall perform all duties for the county now or hereafter authorized or declared by law to be done by a civil engineer or surveyor. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction or repair of all bridges, culverts, roads, drains, ditches and other public improvements, except buildings, constructed under the authority of any board within and for the county. When required by the county commissioners, he shall inspect all bridges and culverts, and on or before the first day of June of each year report their condition to the commissioners. Such report shall be made oftener if the commissioners so require."

"Sec. 7187. The county surveyor shall report to the county commissioners on or before the first day of April in each year the condition of the county roads, bridges and culverts in the county, and estimate the probable amount of funds required to maintain and repair the county roads, bridges and culverts, or to construct any new county roads, bridges or culverts required within the county.

The county surveyor shall, on or before April first of each year, make an annual estimate for the township trustees of each township, setting forth the amount required by the township for the construction, reconstruction, resurfacing or improvement of the public roads within the jurisdiction of the township trustees. The estimates herebefore provided for shall relate to the year beginning on the first day of March next ensuing and shall be for the information of the county commissioners and township trustees in the making of their annual levies.

The county surveyor shall approve all estimates which are paid

from county funds for the construction, improvement, maintenance and repair of roads and bridges by the county. He shall also approve all estimates which are paid from township funds for the construction, reconstruction, resurfacing or improving of roads, under the provisions of sections 3298-1 to 3298-15, inclusive, of the General Code. He shall also approve all estimates which are paid from the funds of a road district for the construction, reconstruction, resurfacing or improvement of the roads thereof under the provisions of sections 3298-25 to 3298-53 inclusive of the General Code. When the county surveyor has charge of the highways, bridges and culverts within his county, under control of the state, he shall approve all estimates which are paid by the state for the construction, improvement, maintenance and repair of the same.

No contract for the construction of a bridge, the entire cost of which exceeds ten thousand dollars shall be binding upon the county unless the plans are first approved by the state highway commissioner. Provided, however, that the state highway commissioner may require of a county surveyor the submission of plans for any or all bridges and culverts costing more than one thousand dollars; and upon notification by the state highway commissioner to the county commissioners and county surveyor that such plans must be submitted for approval no contract for such bridges or culverts shall be entered into by the county until such plans have been approved by the state highway commissioner."

This department in passing upon section 7187, as it stood in the so-called Cass Law (106 O. L. 575, et seq.) held (Opinions 1916, Vol. 1, p. 134) that

"plans and specifications must be prepared and estimates furnished by the county highway superintendent in all cases where the cost of the bridge, road or culvert exceeds two hundred dollars,"

and further held in substance that if the cost of a road or bridge improvement did not exceed two hundred dollars, the question whether the county highway superintendent should first prepare plans and specifications and furnish estimates rested in the discretion of the county commissioners. At the time said opinion was rendered said section 2792, above quoted, existed in the same form as at present; but no reference was made to said statute in said opinion. However, said section 7187, as it stood in the Cass law, contained provisions not only for the approval and making of estimates by the county highway superintendent, but also for the making by him of plans and specifications for the construction and repair of roads and bridges. This provision as to preparing plans and specifications was stricken out of section 7187 by the so-called White-Mulcahy Act (107 O. L., 69 et seq.) and the words "county surveyor" were substituted for the words "county highway superintendent." The reason for this change would seem to have been that said section 2792 had already made provision for the preparation of plans and specifications by the county surveyor. It therefore follows that the view of this department, as expressed in the opinion last above referred to, is still fully applicable to said section 7187, when that section is considered with section 2792, except that there is now no exception made where the cost is under two hundred dollars—in other words, under the statutes as they exist at present, the county surveyor must

furnish plans and specifications and approve estimates in all cases of road and bridge repair work undertaken by county commissioners.

It is quite true that the supreme court, in the case of *Hibbard vs. Biddle*, 81 O. S., 181, in passing upon said section 2792 (then section 1166 R. S.) held in substance that the question whether plans, specifications and details were to be made in all cases of road improvement, rested in the discretion of the county commissioners. This opinion of the supreme court was rendered in 1909, a number of years before the rendition of the opinion of this department last above referred to, and the latter opinion did not cite the supreme court case. However, it is to be recalled that in the meantime vast and radical changes had been made in the road laws, and the county surveyor had been constituted, under the title of county highway superintendent, as practically the executive officer in carrying out road and bridge improvement projects. In view of these changes in the road laws, the supreme court case can no longer be regarded as authority. It follows when the provisions of sections 2792 and 7187 are read together, it is incumbent in all cases of bridge and road repair that plans, specifications and estimates be first furnished and approved by the county surveyor.

This requirement, then, furnishes the ready means to the county commissioners for their appropriations and to the county auditor for the making of his certificate. The estimates of the surveyor will form the basis.

In the quotation given in your letter from the bureau's report of the examination of county offices, it appears that it was suggested that when the county commissioners decide to proceed by force account, as distinguished from competitive bidding, they should so definitely state. It is presumed that this suggestion means that the statement of intention should be entered on the commissioners' journal before the surveyor prepares plans, estimates, etc. No statutory requirement has been found for the making of such a statement of intention, though it is readily perceived that as a matter of good administration the suggestion might well be followed.

The foregoing views furnish answer to your inquiry by way of summary:

1. In case county commissioners desire to do road or bridge repair work by force account, they must, before making purchases for the purpose (Sections 7200 and 7214 G. C.) and before authorizing the county surveyor to make purchases and employ labor and teams for the purpose (Section 7198 G. C.), cause the county surveyor to prepare plans, specifications and estimates (Sections 2792 and 7187 G. C.). This is true without regard to the cost of the work.

2. The requirements of sections 5660 and 5661 G. C. are applicable to the purchases of materials, tools, equipment and supplies, and to the employment of teams and labor under authority of sections 7198, 7200 and 7214, G. C.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*