

from other sources that the premises here under consideration have not been the subject of any litigation in the federal courts, this deficiency in the abstract may be disregarded.

An examination of the warranty deed as submitted by your department shows the same to be a regularly drawn warranty deed in proper form and properly executed by Grace V. Hughes, an unmarried person, which deed it is believed will be sufficient to convey a fee simple title to the State of Ohio when same is properly delivered.

The abstract and warranty deed submitted by your department to this office for examination are herewith returned.

Respectfully,
C. C. CRABBE,
Attorney General.

1601.

APPROVAL, FINAL RESOLUTIONS, ROAD IMPROVEMENTS IN THE FOLLOWING COUNTIES: WARREN, FAIRFIELD, MONROE AND JACKSON.

COLUMBUS, OHIO, July 3, 1924.

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

1602.

INTER COUNTY HIGHWAY—WHAT CONSTITUTES A PROCEEDING UNDER SECTION 26 G. C.—WHEN SUCH PROCEEDING IS PENDING.

COLUMBUS, ONIO, July 7, 1924.

SYLLABUS:

1. *The various steps before a board of county commissioners and the director of highways and public works, in connection with a state aid road improvement project under the provisions of Section 1191 of the General Code, and related sections, wherein it is sought to construct, improve, maintain or repair an inter-county highway, constitute a "proceeding" within the contemplation of Section 26 of the General Code.*

2. *Such a proceeding is pending, within the contemplation of said Section 26 of the General Code (a) when the owners of twenty-five per cent of the lineal feet abutting on the inter-county highway petition the county commissioners for its construction, improvement, maintenance or repair, under the provisions of the state aid road law; or (b) when the county commissioners, without the presentation of any petition, or the township trustees, under the conditions as set out in Section 1192 of the General Code, make application to the director of highways and public works for aid in the construction, improvement, maintenance or repair of an inter-county highway, under the provisions of said law.*

3. Section 1222 of the General Code, as amended by an act passed February 28, 1923, (110 Ohio Laws, p. 453) and which became effective June 17, 1923, should be read in connection with Section 26 of the General Code and has no application to an inter-county highway improvement project pending prior to June 17, 1923.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

COLUMBUS, OHIO, July 7, 1924.

Gentlemen:—

This will acknowledge receipt of your communication of recent date, as follows:

“You are respectfully requested to furnish this department with your written opinion on the following question:

“Section 1222 General Code was amended, 110 O. L. 453, effective June 17, 1923. Prior to its amendment this section provided for a levy to be made against the property of a township on account of the township's share of the construction, improvement, maintenance or repair of inter-county highways and provided that such levy should be made in addition to all other levies made for any purpose or purposes and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws.

“Since the amendment in 110 O. L. 453, it is provided that such levy will be in addition to all other levies authorized by law for township purposes and shall be outside of the limitation of two mills for general township purposes subject only to the limitation upon the combined maximum rate for all taxes now in force. In other words, prior to this amendment a levy could be made outside of all limitations, but since the amendment it must be inside the 15 mill limitation.

“Question: To what point must the legislation on inter-county highways have been completed on June 17, 1923, to entitle the budget commission to place a levy for the township's share of inter-county highways outside of all limitations as was authorized by Section 1222 G. C., prior to the last amendment?”

The pertinent part of Section 1222, General Code, prior to its amendment, read:

“For the purpose of providing a fund for the payment of the proportion of the cost and expense to be paid by the interested township or townships for the construction, improvement, maintenance or repair of highways under the provisions of this chapter, the county commissioners or the township trustees are authorized to levy a tax not exceeding two mills upon all the taxable property of the township in which such road improvement, or some part thereof, is situated. Such levy shall be in addition to all other levies made for any purpose or purposes and the same shall not be construed as limited, restricted or decreased in amount or otherwise by any existing law or laws * * * .”

As amended (110 O. L. 453), the pertinent part of said section reads:

“For the purpose of providing a fund for the proportion of the cost and expense to be paid by the interested township or townships, for the construction, improvement, maintenance or repair of highways under the provisions of this chapter, the county commissioners or township trustees are

authorized to levy a tax not exceeding two mills upon all taxable property of the township in which such road improvement or some part thereof is situated. Such levy shall be in addition to all other levies authorized by law for the township purposes and shall be outside the limitation of two mills for general township purposes and subject only to the limitations upon the combined maximum rate for all taxes now in force * * * .”

The General Assembly of Ohio, deeming it wise to explain as a legislative policy the constitutional policy expressed in Section 28, Article II, which provides

“The General Assembly shall have no power to pass retroactive laws:”

enacted Section 26 of the General Code, which reads:

“Whenever a statute is repealed or amended, such repeal or amendment shall in no manner affect pending actions, prosecutions, or proceedings, civil or criminal, and when the repeal or amendment relates to the remedy, it shall not affect pending actions, prosecutions, or proceedings, unless so expressed, nor shall any repeal or amendment affect causes of such action, prosecution, or proceeding, existing at the time of such amendment or repeal, unless otherwise expressly provided in the amending or repealing act.”

Section 26 of the General Code which, in substance, has been in effect for more than half a century, is a limitation upon all legislation.

Opinions of the Attorney General for 1920, Vol. I, p. 580;

Bode vs. Welsh, 29 Ohio St., 19;

State vs. Zangerle, 101 Ohio St., 235.

The second paragraph of the syllabus in the case of *State vs. Zangerle*, supra, reads:

“Section 26, General Code, is a rule of legislative interpretation and is to be construed as a part of any amended act unless such amendment otherwise expressly provides.”

In this case it was also decided that a road improvement proceeding before the county commissioners, under and by virtue of the provisions of Section 6910 and related sections of the General Code, was a proceeding within the meaning of the term as used in said Section 26. The first paragraph of the syllabus reads:

“An order or resolution declaring for or in favor of a county road improvement, or fixing the assessment therefor, is a ‘proceeding’ within the contemplation of Section 26, General Code.”

By analogy it would follow that a highway improvement project for the improvement of an inter-county highway, under the provisions of Section 1191 and related sections of the General Code, would be a “proceeding” within the contemplation of said Section 26 of the General Code.

As stated by you, amended Section 1222 of the General Code became effective June 17, 1923, and thus arises the pertinency of your inquiry as to what point the legislation in connection with the improvement must have been completed on this date to entitle the budget commission to place a levy for the township's share of inter-county highways outside all limitations as was authorized by Section 1222 of the General Code prior to the amendment. Or, in other words, to what point

must such legislation have been completed so that it may be said that such proceeding is a pending proceeding on said date, within the meaning of the provisions of said Section 26 of the General Code?

Section 1191 of the General Code, among other things, provides that county commissioners may make application to the Director of Highways for state aid in the construction, improvement, maintenance and repair of inter-county highways, which application shall be filed prior to March first of the year in which the appropriation is made or may become available. Section 1192 of the General Code in substance provides that in the event the county commissioners do not file any such application prior to March first of such year, the trustees of any township in the county may make application within certain time limits of such year.

Section 1204 of the General Code, among other things, in substance provides that if the owners of 25 per cent or more of the lineal feet abutting on an inter-county highway petition the county commissioners for the construction, improvement, maintenance or repair of such inter-county highway, the county commissioners shall, if they are of the opinion that the improvement will be for the best interest of the public, make application to the Director of Highways and Public Works for state aid in the construction, improvement, maintenance or repair of such inter-county highway, under what is commonly known as the "state aid road laws."

This same section further authorizes the county commissioners, without the filing of any petition, to make application for state aid in the construction, improvement, maintenance or repair of an inter-county highway, under the provisions of the state aid road laws.

As hereinbefore noted, under the provisions of Section 1192 of the General Code, and in the event that the county commissioners do not make application within the time limited in said section, the trustees of a township may make application for aid in the construction, improvement, maintenance or repair of an inter-county highway, under the provisions of the state aid road law.

There are then two methods pertinent to your inquiry whereby proceedings for the construction, improvement, maintenance or repair of an inter-county highway may be instituted, namely:

- (1) Upon petition by the land owners; and
- (2) Upon application by the county commissioners, without the intervention of a petition of the land owners and, under certain circumstances, upon application by township trustees.

Under either method, the procedure relating to such an improvement project is the same throughout, except that in the one instance the initial action is taken by the land owners.

The legislation in connection with the road improvement project being a "proceeding" within the contemplation of said Section 26 of the General Code (State vs. Zangele, supra), the question is, When is such a proceeding pending? What steps are necessary, under the statute, that it may be said such a proceeding is pending?

"Pending" has been defined as "remaining unfinished, or undecided."

In connection with the first method above noted, it is necessary that a petition be filed with the county commissioners. As soon as a proper petition is filed, it becomes the mandatory duty of the county commissioners to take some action, which action is that they determine whether or not it will be for the public interest to make the improvement petitioned for; and if they are of the opinion that it will be for the public interest, they shall then make application to the Director of Highways and Public Works for state aid in connection with such proposed improvement and under the provisions of the state aid road laws. It is the filing of the petition that initiates or starts the pending of the proceedings.

In connection with the second method, the commissioners, without the filing of

any petition, or the township trustees, under certain conditions as hereinbefore set out, may file their application for state aid in the construction, improvement, maintenance or repair of an inter-county highway, with the Director of Highways and Public Works, and it becomes the duty of the Director of Highways and Public Works to take some action thereon.

In this instance, it is the filing of a proper application for state aid, by the county commissioners, or, under certain circumstances, by the township trustees, with the Director of Highways and Public Works, that initiates or starts the pending of the proceedings.

In passing, it is deemed pertinent to say that the proceedings, being once pending, continue to pend until the final determination thereof. The proceedings may be determined by the final completion thereof or at various stages of the proceedings, as, for instance, should the county commissioners, upon a petition being filed by the land owners and upon investigation and consideration be of the opinion that the improvement would not be for the public interest, the proceedings would be terminated.

In conclusion, I am of the opinion, and you are advised, that if, in the one instance, the requisite number of land owners, prior to June 17, 1923, filed with the county commissioners a proper petition for the construction, improvement, maintenance or repair of an inter-county highway, or, in the other instance, should the county commissioners or the township trustees, under conditions as hereinbefore pointed out, prior to June 17, 1923, have filed with the Director of Highways and Public Works an application for state aid in the construction, improvement, maintenance or repair of an inter-county highway, the proceedings in either instance have proceeded to an extent where it may be said that they were on said date a pending proceedings within the contemplation of Section 26 of the General Code, and the budget commission would be entitled to place a levy for the township's share of such inter-county highway, outside of all limitations, as was authorized by Section 1222 of the General Code, prior to the amendment of said section, which amendment became effective June 17, 1923.

Respectfully,

C. C. CRABBE,

Attorney General.

1603.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE CARSON-PAYSON COMPANY OF DANVILLE, ILLINOIS, FOR CONSTRUCTION AND COMPLETION OF COMBINED PLUMBING AND HEATING CONTRACT FOR RECITATION BUILDING, MIAMI UNIVERSITY, AT COST OF \$21,620.00.—SURETY BOND EXECUTED BY THE NATIONAL SURETY COMPANY.

COLUMBUS, OHIO, July 10, 1924.

HON. L. A. BOULAY, *Director, Department of Highways and Public Works, Columbus, Ohio.*

Dear Sir :—

You have submitted for my approval contract between the State of Ohio, acting