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HIGHWAYS—PROVISIONS OF SECTION 1178-2 G. C. DO NOT AUTHORIZE DEPARTMENT OF HIGHWAYS TO CONSTRUCT AND MAINTAIN ROADS WITHIN GROUNDS OF SEVERAL STATE WELFARE INSTITUTIONS.

SYLLABUS:

The provisions of Section 1178-2 of the General Code of Ohio do not authorize the Department of Highways of Ohio to construct and maintain roads within the grounds of the several state welfare institutions.

Columbus, Ohio, April 25, 1945

Hon. Frazier Reams, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your recent request for my interpretation of Section 1178-2 of the General Code of Ohio, which request reads as follows:

"The practice of the Department of Highways, State of Ohio, has apparently been to build and maintain roads up to the property of the State Welfare institutions, but not to build and maintain roads within and upon the grounds of these State institutions. Section 1178-2 provides that the Highway Director is authorized and directed to construct and maintain State highways 'leading to such institutions' and 'to establish a State highway connecting such institutions and railroad delivery point'.

Will you please advise whether or not this section (1178-2) is sufficiently broad to authorize the Director of Highways to build and maintain roads within and upon the grounds of the State Welfare institutions?

Since this information is desired for the guidance of the legislative committee which is considering an amendment to this section, we will greatly appreciate an early opinion."

Section 1178-2, of the General Code of Ohio, reads as follows:

"The director of highways is hereby authorized and directed to examine the existing highway facilities serving the several hospitals and penal and correctional and other similar institutions belonging to the State of Ohio, and located outside municipal corporations. Where he finds that any such state institution is not located on a state highway, or connected with a state highway by a suitable road affording in its present condition adequate transportation facilities to those having occasion to visit such institution, he shall be authorized to establish a state highway leading to such institution from a convenient point on an existing state highway. Where he finds that any such institution is not served by adequate highway facilities connecting it with the railroad delivery point from which it principally obtains fuel, provisions and supplies, he shall be authorized to establish a state highway connecting such institution and railroad delivery point. Limitations imposed by law on the mileage of state highways shall not apply to state highways established under the provisions of this section.

The director of highways shall be authorized to construct at state expense all state highways established under authority of this section, and to pay the entire cost thereof from the state highway construction fund. Such highways shall after construction be maintained by the department of highways and the cost of such maintenance shall be paid from the state maintenance and repair fund of the department."

The manifest intention of the Legislature was to authorize the Department of Highways of Ohio to build and maintain access roads from a part of the state highway system to state hospitals, penal, correctional and other similar institutions belonging to the State of Ohio and not located within a municipal corporation, in order to provide adequate transportation facilities for those persons having business at such institutions and to connect these institutions with railroad facilities enabling the delivery of fuel and provisions. No language employed in this section can be said to authorize the construction and maintenance of roads within the grounds. Indeed there is a reason which the Legislature must have had in mind why this was not contemplated and that is Section 23 of the General Code of Ohio, which reads as follows :

"A street, alley or road shall not be laid out or established through or over the lands belonging to a public institution of the state *without the special permission of the general assembly.*"

(Emphasis the writer's.)

This contention is further borne out by the plain provisions of Section 1178-1 of the General Code of Ohio, which reads as follows :

"The director of highways is hereby authorized to construct, reconstruct, improve, repair and maintain roads leading from a state highway to any public state park or state forest, including all such parks and properties under the control and custody of the division of conservation, division of forestry and Ohio archaeological and historical society; also to any state property used for military purposes or any road which leads along the side of, or through school lands which are owned by the state. The director of highways shall confer with the authority in control of any such park or property before deciding upon the location and character of any such improvement. The director of highways is authorized to add to the state highway system not more than fifty miles of above-mentioned roads. This additional mileage is in addition to and not subject to the provisions of Section 1189 of the General Code.

The director of highways is hereby authorized to construct, reconstruct, improve, repair and maintain roads within the boundary of any public state park or state forest, including all such parks and properties under the control and custody of the division of conservation, division of forestry and Ohio archaeological and historical society; or used for military purposes, provided the officer or board which has control of or supervision over such property first consents in writing to the construction, reconstruction, improvement, repair and maintenance of such road. Such roads shall be maintained in such manner as may be agreed upon between the director of highways and such officer or board.

The costs of such construction, reconstruction, improvement, repair and maintenance shall be paid from the state highway construction funds or the maintenance and repair funds, according to the character of the improvement, provided that the expenditures for any one year shall not exceed fifty thousand dollars and provided further that the expenditure for highways leading to the aforesaid state properties shall not exceed five thousand dollars per mile and expenditures within such aforesaid state properties shall not exceed three thousand dollars per mile."

(Emphasis the writer's.)

It is significant that Section 1178-1 of the General Code of Ohio in its present form was effective July 31, 1931 and Section 1179-2 of the General Code of Ohio was effective August 1, 1931. These two sections were the acts of the same Legislature on the same general subject, hence, the provision of Section 1178-1 of the General Code of Ohio aids in the interpretation of the statute in question.

In Section 1178-1 of the General Code of Ohio the Legislature specifically authorized the Department of Highways of Ohio to construct and maintain *roads within* the boundaries of the various parks set forth in this section.

In Section 1178-2 of the General Code of Ohio nothing was said concerning the right of the Department of Highways to do anything other than provide a connection between the institution and the state highway system and railroad facilities for such institutions outside of municipal corporations.

From a comparison of these sections, it is abundantly clear that the Legislature intended the language "leading to such institutions" as used in Section 1178-2 of the General Code of Ohio to mean to the boundary lines and not within the grounds.

Finally, and it is here only incidental, this statute under consideration (G. C. 1178-2) grants the right and authority to expend public funds and as such is entitled to a strict construction.

In the case of State, ex rel., The A. Bentley & Sons Co., v. Pierce, Auditor, 96 O. S. 47, the Court said:

“* * * * In construing such grant of power, particularly administrative power through and by a legislative body, the rules are well settled that the intention of the grant of power, as well as the extent of the grant, must be clear; that in case of doubt that doubt is to be resolved not in favor of the grant but against it. * * *”

Therefore, in specifically answering your question, it is my opinion that the provisions of Section 1178-2 of the General Code of Ohio do not authorize the Department of Highways of Ohio to construct and maintain roads within the grounds of the several state welfare institutions.

Respectfully,

HUGH S. JENKINS

Attorney General