

2085.

MAINTENANCE AND REPAIR—WHAT CONSTITUTES APPROPRIATION
TO DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS.

SYLLABUS:

The appropriation made to the Department of Highways and Public Works, Division of Highways, by House Bill 502, under subhead F-1, Maintenance and Repair, is not an appropriation only of the balance in the maintenance and repair fund on June 30, 1927, and the receipts accruing to said fund from July 1, 1927, to December 31, 1928, inclusive, but is an appropriation of each item of authorized expenditure under said subhead, aggregating \$18,000,000, to the full amount of each of said items.

COLUMBUS, OHIO, May 12, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“The appropriation made to this department by the last General Assembly, which is covered by House Bill No. 502, reads in part as follows:

‘F-1. Repairs. To maintain and repair highways as provided in Sections 6309, 6309-1, 6309-2, 614-94, 614-95, 614-96 and 5537 of the G. C., and amendatory and supplementary provisions—all unexpended balances in the state maintenance and repair fund, or collected under the above sections, and in the treasury July 1, 1927, and all receipts thereunder from July 1, 1927, to Dec. 31, 1928, inclusive, not herein otherwise expressly appropriated.

Such funds are hereby appropriated as follows:

Maintenance of existing 3,010 miles of traffic bound roads at \$800.00 per mile per year.....	\$3,612,000
Developing remaining 820 miles of earth roads at \$2,500.00 per mile	2,050,000
Maintenance of 500 miles (present earth part of Item 2) of road during 1928 at \$800.00 per mile.....	400,000
Surfacing (traffic bound) and maintenance 175 miles of standard grade at \$2,000 per mile.....	350,000
Routine maintenance of 6,050 miles of hard surface road at \$600.00 per mile per year.....	5,445,000
Routine maintenance of 345 miles of county hard surface improvement on the State Highway System at \$600.00 per mile per year	310,500
Resurfacing and widening.....	2,062,500
Bridge replacements (narrow and dangerous).....	1,000,000
Additions and betterments.....	1,000,000
Salaries	120,000
New equipment.....	1,000,000
Miscellaneous	50,000
Contingencies	600,000

Any revenue in excess of \$18,000,000 shall be distributed to the classifications above enumerated in the same ratio that each of the several amounts above appropriated bears to the total amount appropriated.

Transfers from one of the above classifications to another may be authorized with the consent of the controlling board.

Total F-1 Maintenance and Repairs----- \$18,000,000'

In view of the fact that our estimate of receipts would indicate that the total revenue to be derived from these sources for maintenance and repair purposes will fall far short of the \$18,000,000 originally estimated, I am asking you to give me your opinion as to whether or not there was appropriated the sum of \$18,000,000 for Maintenance and Repair purposes, or whether the appropriation amounts to the balance left in this fund on June 30, 1927, and actual receipts under the above sections from July 1, 1927, to December 31, 1928, inclusive."

The question submitted in your communication does not require any determination of the question as to what is a specific appropriation within the meaning of Section 22 of Article II of the State Constitution, nor as to whether the appropriation made of receipts and balances in the state maintenance and repair fund, provided for by the sections of the General Code referred to in that part of the appropriation act which is set out in your communication, is in itself a specific appropriation. As to this, it is sufficient to say that the language of said appropriation act set out in your communication, considered as a whole, clearly makes specific appropriation of particular items of money for certain definite and particular purposes in full compliance with said constitutional provision; and the question here submitted is whether the appropriation made by the Legislature is only of the "unexpended balances in the state maintenance and repair fund or collected under the above sections, and in the treasury July 1, 1927, and also receipts thereunder from July 1, 1927, to December 31, 1928, inclusive," or whether, on the other hand, the appropriation made is absolute with respect to each of the items making up the aggregate of \$18,000,000, and to the full amount of each item. This is a question of legislative intention to be gathered from the provisions of the appropriation act as a whole.

The appropriations made by that part of the appropriation act, set out in your communication, are a part of those made by said act to the Department of Highways and Public Works, Division of Highways, and the same, together with other specific appropriations made, are part of House Bill No. 502, entitled "An Act to make general appropriations." Said Section 1, referring to specific appropriations hereinafter made, provides in part as follows:

"Appropriations for departments, commissions, bureaus, institutions and offices, for the uses and purposes of which, or of any activity or function thereof, specific funds in the state treasury are provided by law, are hereby made from such specific funds, in so far as such funds are subject by law to appropriation and expenditure for the purposes herein mentioned, and to the extent that the moneys to the credit of such specific funds on July 1, 1927, or which may be credited thereto prior to December 31, 1928, shall be sufficient to satisfy such appropriations. Any sums necessary to supply the balance of such appropriations are hereby appropriated out of any moneys in the state treasury to the credit of the general revenue fund, but no moneys shall be taken from the general revenue fund to support the activities of the fish and game division of the department of agriculture."

Reading the above quoted provisions of Section 1 of said appropriation act, together with that part thereof set out in your communication, the legislative intent

clearly appears to make an appropriation of the items of authorized expenditure making up the aggregate amount of \$18,000,000, and to the full amount of such items of authorized expenditure, and likewise to make an appropriation of all revenues collected into said maintenance and repair fund in excess of \$18,000,000, as provided in that part of said Section 1 of the appropriation act noted in your communication. All payments made in pursuance of the specific items of authorized expenditure noted in that part of the appropriation act set out in your communication, are to be made in the first instance from the specific funds in the state treasury provided therefor by law, that is, out of the maintenance and repair fund provided for by the sections of the General Code noted in the provisions of the appropriation act set out in your communication. Any sums necessary to make up the balance of said specific appropriations are to be taken out of any moneys in the state treasury to the credit of the general revenue fund.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2086.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND THE NEW YORK CENTRAL RAILROAD COMPANY FOR THE ELIMINATION OF A GRADE CROSSING NEAR WILLIAMSON, HANCOCK COUNTY, OHIO.

COLUMBUS, OHIO, May 12, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio acting by and through George F. Schlesinger, as Director of Highways, as first party, and the New York Central Railroad Company as second party.

This contract pertains to the elimination of a grade crossing over the tracks of the New York Central Railroad Company located in State Highway No. 512, at a point near Williamstown in Hancock County, Ohio.

I have carefully examined said contract, and finding it in proper legal form, I hereby approve and return the same to you.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2087.

APPROVAL, FINAL RESOLUTION ON ROAD IMPROVEMENTS IN WASHINGTON COUNTY.

COLUMBUS, OHIO, May 12, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*