

270.

APPROVAL, BONDS OF VILLAGE OF BEACHWOOD, CUYAHOGA COUNTY,
OHIO—\$98,784.00.

COLUMBUS, OHIO, April 2, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

271.

FORCE ACCOUNT—ROADS, BRIDGES, AND CULVERTS—COUNTY SURVEYOR WHEN AUTHORIZED BY COUNTY COMMISSIONERS MAY EMPLOY SUCH LABORERS AND TEAMS AS MAY BE NECESSARY—DEFINITION OF "LABORER".

SYLLABUS:

1. *In the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account, the county surveyor may when authorized by the county commissioners, employ such laborers and teams as may be necessary.*

2. *The word "laborers" as used in Section 7198, General Code, should be liberally construed to effect the purpose intended, and includes such foremen, laborers, engineers, mechanics and other persons as may be necessary efficiently to accomplish the road work in question.*

COLUMBUS, OHIO, April 2, 1927.

HON. G. C. SHEFFLER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—I acknowledge receipt of your recent communication as follows:

"May the county commissioners under authority of G. C., Section 7198, employ superintendents and laborers to do maintenance or repairs on roads by force account, or must they authorize the county surveyor to employ such superintendents, laborers, etc., in order to get the work done?

Do you know any section of the Code that gives the county commissioners the right, or the county surveyor the right to employ superintendents or laborers by force account?

What I want to know is which one has the right, the commissioners or the surveyor, to make such employment?"

Section 7198 of the General Code provides as follows:

"The county surveyor *may* when authorized by the county commissioners *employ such laborers and teams*, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts *by force account.*" (*Italics the writer's.*)

You inquire whether under the provisions of the above quoted section the county

commissioners have the right to employ superintendents and laborers to maintain and repair roads by force account, or whether such superintendents and laborers may be employed by the county surveyor upon authorization so to do by the county commissioners.

It will be observed that Section 7198, General Code, specifically provides that "the county surveyor may when authorized by the county commissioners employ such laborers * * *." This language of the statute makes the consent of the county commissioners a condition precedent to the employment of laborers by the county surveyor. In other words, the county commissioners are specifically given the right to authorize the employment of laborers, and after such authority is obtained the county surveyor may employ them.

In an opinion of this department reported in Opinions of Attorney General for 1921, Volume II, page 895, it was held that:

"Where county commissioners have elected to do road work by force account they are not authorized by Section 6948-1, G. C., or otherwise to employ a road foreman to take charge of the work, but they must proceed as defined in Sections 7198 G. C. et seq."

That opinion is short and is therefore set forth herein in full.

"Your letter of September 22nd, is received relative to the matter of force account. The substance of your inquiry is whether the county commissioners may, on the one hand, under Section 6948-1 employ a road foreman to do work; or whether on the other hand, the work is merely to be designated by the board of county commissioners, leaving the actual performance to be carried out by and under the supervision of the county surveyor.

The whole subject of force account work was dealt with at considerable length in two recent opinions of this department of date September 10, 1921, being opinions Nos. 2411 and 2412, directed respectively to Hon. John R. King, prosecuting attorney, Columbus, Ohio, and Hon. Walter B. Moore, prosecuting attorney, Woodsfield, Ohio. Copies of these opinions are enclosed. It is believed that you will find that they practically answer the question you have in mind. However, it may be added that, as noted in opinion No. 2411, Section 6948-1 is a statute of limited application, and merely authorizes the county commissioners to adopt the force account method instead of the contract method of completing road projects formally undertaken under Sections 6906 et seq. So far then as the actual carrying out of the force account project is concerned, reference must be had to Sections 7198 et seq. Moreover, you will find that Sections 7184 and 7192 give the surveyor general charge of the construction, reconstruction, improvement, maintenance and repair of all bridges and highways under the jurisdiction of the county commissioners.

Under these conditions, it is perfectly plain that your county commissioners are not at liberty to employ a road foreman for force account work, but must follow the procedure outlined in Section 7198 G. C."

Opinions numbers 2411 and 2412, referred to in the above quoted opinion are reported in Opinions of the Attorney General for 1921, Vol. II, at pages 822 and 830, respectively.

Like conclusions were reached in a number of other opinions of this department, including the opinions reported in the Opinions of the Attorney General for 1916, Vol. I, page 458; Id., 882, syllabus 18; and Opinions of the Attorney General for 1917, page 2310.

I note that in your letter you ask if the county commissioners "must authorize the county surveyor to employ such *superintendents, laborers, etc.*" While Section 7198 speaks only of laborers in so far as persons are concerned, the whole phrase is that "the county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material *as may be necessary* * * *."

It is my opinion that the word "laborers" should be liberally construed in the above section to effect the purpose intended. While as pointed out in the opinion above quoted, that the work of constructing, reconstructing, improving, maintaining and repairing of roads, bridges and culverts by force account is to be under the general supervision of the county surveyor, it is obviously impossible that such official personally oversee every item of such work being done in various parts of the county at the same time. It is a matter of common knowledge that in order that labor be effectively performed there must be an overseer or foreman for each group of laborers engaged. Moreover, in road work of the kind contemplated by the statute, persons other than common laborers are required. For example, skilled mechanics or engineers may be necessary to repair and operate road machinery.

As stated in 35 C. J., 928:

"The meaning of the term (laborer) depends largely upon the intent and the connection in which the word is used. * * * The term 'laborer' has been held to include an architect, * * * a civil engineer, * * * a foreman, * * * a mechanic, * * * an overseer, * * * a roddman, * * * a sub-contractor, * * * a workman with helpers."

This statute has been liberally construed in the past, not only by the county officials engaged in the construction and maintenance of roads, but by this department as well.

In the second syllabus of an opinion by this department, reported in Opinions of the Attorney General for 1921, Vol. I, page 374, it was held as follows:

"By virtue of Sections 7198 and 7200 G. C., the county surveyor may, if first authorized by the county commissioners, employ a mechanic whose duty it will be to keep in repair the road machinery and road repair trucks of the county. The compensation of the mechanic for his services in such respect should be paid from the road maintenance fund of the county."

See also Opinions of the Attorney General for 1916, Vol. I, page 458, *supra*, wherein the legality of the employment of a foreman and engineer to operate a road roller was sustained in the following language:

"I am unable to see how any other conclusion could be reached, in view of the language of the section in question, and I, therefore, advise you that under the circumstances presented by your communication, the county commissioners will have exhausted their authority when they have authorized or approved the employment by the county highway superintendent of a foreman and engineer to operate a road roller, and have fixed the compensation of such employes, and that the selection of individuals to fill these specified employments lies wholly with the county superintendent."

And in the other opinion, reported in Opinions of the Attorney General for 1916, Vol. I, page 882, above referred to, syllabus 18 reads as follows:

"In the repair of roads by county commissioners, engineers, foremen,

laborers and teams are to be employed by the county highway superintendent, the employment first being authorized by the county commissioners."

I agree with the conclusions of my predecessors in office in the opinions cited herein, and specifically answering your question, I am of the opinion that in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account, the county surveyor may when authorized by the county commissioners, employ such laborers and teams as may be necessary, and for the reasons stated, I am further of the opinion that the word "laborers" as used in Section 7198, General Code, should be liberally construed to effect the purpose intended, and includes such foremen, laborers, engineers, mechanics and other persons as may be necessary efficiently to accomplish the road work in question.

Respectfully,

EDWARD C. TURNER,
Attorney General.

272.

LEGISLATURE—NO AUTHORITY TO APPROPRIATE STATE INSURANCE FUND—NOT OBLIGATED TO BEAR EXPENSE OF ADMINISTRATION OF INSURANCE FUND—MAY AUTHORIZE INDUSTRIAL COMMISSION TO EXPEND STATE INSURANCE FUND—PREMIUM FOR INSURANCE OF STATE EMPLOYEES.

SYLLABUS:

1. *Legislature may not appropriate any part of the interest accruing on the state insurance fund.*
2. *No obligation upon the state to bear all or any part of the expenses of administration of the state insurance fund.*
3. *Legislature may authorize Industrial Commission of Ohio to expend any part of the interest received from state insurance fund in defraying actual and necessary expenses of administration of the fund.*
4. *Premium for insurance of state employees may not be paid out of interest accruing on state insurance fund.*

COLUMBUS, OHIO, April 4, 1927.

HON. EARLE STEWART, *Chairman General Division, Finance Committee, Ohio House of Representatives, Columbus, Ohio.*

DEAR MR. STEWART:—I beg to acknowledge receipt of your request for my opinion as follows:

"The General Division of the House Finance Committee desires your opinion as to whether or not the items in the Executive Budget of Ohio for 1927 and 1928 appearing on page 92, the first ten items on page 93 and the first item on page 186 of same can be authorized by the legislature to be paid one-half from the General Revenue Fund of the State of Ohio, and one-half from the interest received from the State Insurance Fund in the control of Department of Industrial Relations."

If you mean to ask whether or not the legislature can make an appropriation out