moneys from the general fund and turn over such moneys to the county agricultural society would be in the case of a contribution toward the payment of an indebtedness of such society for which the society is primarily liable. On the statement of facts which you have submitted, the lighting equipment was installed by an agreement with the county commissioners whereby the county was to pay a portion of the cost of its installation. It, therefore, seems clear that the county commissioners, having determined that such lights are for the best interest of the county and the society should make the payment in question direct. I am not unmindful of the fact that in a sense the county is contributing to the cost of this installation, since revenues for the use of the fairgrounds would under these circumstances be payable to the society and the portion of the cost borne by the society is equal to the deduction occasioned by a credit for rent for the use of the fairgrounds. As hereinabove mentioned, however, the negotations at the time of the installation of this equipment were with the board of county commissioners.

In specific answer to your second question, therefore, it is my opinion that funds which may be appropriated under the provisions of Section 9887, General Code, by a board of county commissioners for the benefit of a county agricultural society, are within the control of the board of county commissioners and should be expended by the county and not appropriated in a lump sum for the benefit of such agricultural society to be used and distributed by such society for any of the purposes set forth in Section 9887, General Code, as the society may see fit.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1938.

ENGINEERING SERVICES—FOR MUNICIPAL STREET CONSTRUCTION AND REPAVING—PAYABLE FROM GAS AND MOTOR VEHICLE LICENSE MONEYS WITHOUT COMPETITIVE BIDDING.

SYLLABUS:

The language used in Sections 6309-2 and 5537 of the General Code, to the effect that funds available to municipalities for the purpose of constructing and repaving a public street may be expended only pursuant to contract after the taking of competitive bids as provided by law, does not preclude the expenditure of such funds for the cost and expense of engineering services without competitive bidding, since engineering service is essentially non-competitive in character.

COLUMBUS, OHIO, June 3, 1930.

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

GENTLEMEN:—Your recent communication requesting my opinion reads:

> "The syllabus of Opinion No. 1491, dated February 5, 1930, reads:
>
> 'The salary and expenses of a group of engineers employed by a city for the sole purpose of preparing plans, specifications, and supervising the construction of street paving generally, may properly be paid from the proceeds of the motor vehicle and gasoline taxes.'
>
> The syllabus of Opinion No. 1800, dated April 21, 1930, reads:

'Any proportion up to fifty per cent of the funds available to municipalities from the gasoline tax and motor vehicle license tax, under Sections 5537 and 6309-2, General Code, as amended by the 88th General Assembly, may be expended for the purpose of construction and repaving of public streets, but the same may be expended only pursuant to contract. If the amount involved for a given improvement is less than five hundred dollars, a contract is nevertheless required but it may be entered into without competitive bidding.'

We understand Opinion No. 1800 to mean that all expenditures for construction and repaving out of the motor vehicle and gasoline tax receipts must be made on contract only, which precludes the expenditure of such funds for salaries, wages and expenses of engineers and assistants employed by municipality for the sole purpose of preparing plans and specifications and supervising the construction of street paving generally.

Your further advice in connection with these opinions will be appreciated."

My opinion No. 1491, the syllabus of which you quote, did not discuss in detail the provisions of Section 6309-2 and Section 5537, which authorize a municipality to expend not to exceed fifty per cent of the funds received by it by virtue of said sections for the purpose of construction and repaving only pursuant to contract. In other words, the opinion broadly held that such receipts could be used for the purpose of paying a group of engineers for the preparation of plans and supervising the construction of street paving generally. It may be noted in connection with your inquiry that Section 5541-8, which provides for the distribution of the so-called second gasoline tax, does not contain the limitation with reference to the expenditure of fifty per cent pursuant to contracts, and, of course, in so far as receipts from such source are concerned, no question whatever arises. Your communication does, however, present the inquiry as to whether engineering services in connection with the construction of streets, in so far as funds are available for such purpose are concerned, arising from Section 6309-2 and Section 5537, are required to be obtained by contract.

While the sections last above mentioned expressly relate to the expending of said funds by contract, it is believed that this provision is no different than many other provisions relating to the expenditure of public funds in connection with the awarding of contracts. That is to say, it has been an established practice of public officials having power to construct public improvements to arrange for engineering services without competitive bidding or without following the statutes relating to contracts, and charge the same as a part of the cost of improvement. The advertising that is required in order to give notice to bidders, etc., is properly charged as a part of the cost of an improvement, yet it would be absurd to contend that in making such publication the awarding authority would be required to take bids. Furthermore, engineering services necessarily are non-competitive in character. Competition as a matter of practice in such matters has always related to the furnishing of labor and material. From what has been said, it must be concluded that the language used in the sections under consideration herein, requiring funds to be expended in pursuance of contracts in connection with the construction and repaving of public streets by municipalities, cannot be said to include funds expended for engineering services. In other words, such statutes must be given a fair construction in view of the known practice in connection with such improvements.

In view of the foregoing, it is my opinion that the language used in Sections 6309-2 and 5537 of the General Code, to the effect that funds available to municipalities for the purpose of constructing and repaving a public street may be expended only pursuant to contract after the taking of competitive bids as provided by law, does not preclude the expenditure of such funds for the cost and expense of engineering services

without competitive bidding, since engineering service is essentially non-competitive in character.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1939.

CONTRACT—BETWEEN BOARD OF EDUCATION AND HUSBAND OR WIFE OF BOARD MEMBER FOR TRANSPORTATION OF PUPILS, JANITOR SERVICE, ETC.—AUTHORIZED.

SYLLABUS:

A contract made by a board of education with the husband or wife of a member of the board for the transportation of pupils, for janitor service, for repairs or supplies, or for any other purpose, is a valid contract and the making of such contract does not constitute a violation of Section 4757, General Code, by the husband or wife board member who participates in the making thereof.

COLUMBUS, OHIO, June 4, 1930.

HON. C. LUTHER SWAIM, *Prosecuting Attorney, Wilmington, Ohio.*

DEAR SIR:—This acknowledges receipt of your letter of recent date which reads as follows:

> "A ruling is respectfully requested from your office upon the following wording of General Code Section 4757:
>
> 'No member of the board (of education) shall have directly or indirectly any pecuniary interest in any contract of the board or be employed in any manner for compensation by the board of which he is a member except as clerk or treasurer.'
>
> General Code Section 12932 reads as follows:
>
> 'Whoever, being a local director or member of a board of education, votes for or participates in the making of a contract with a person as a teacher or instructor in a public school to whom he or she is related as father or brother, mother or sister, or acts in a matter in which he or she is pecuniarily interested, shall be fined', etc.
>
> The Supreme Court of Ohio in *Board of Education* vs. *Boal*, 104 O. S. 482, 135 N. E. 540, held that these two sections did not prohibit a husband, a member of a board of education, from voting for his wife as a teacher, holding that a married woman had her separate property in Ohio, and that Section 12932 did not include wife or husband in the prohibited clauses. This decision discussed contracts for teaching only.
>
> The question has arisen in this county, and in other counties, and there has never been a final decision or opinion on the same, as to the legality of contracts for janitor service, bus-driving, repairs, etc., in which the other contractual party is a husband or wife of a member of the board of education making such contract. This has often been discussed by various prosecuting attorneys, but no final decision has ever been reached. Therefore, the request to your office for this opinion, for a state-wide interpretation of General Code, Section 4757.
>
> Is a contract valid for the bus-driving or transportation of pupils when