

1. Under sections 2977 G. C. et seq. as amended 108 O. L. (Pt. II) 1203, 1216, the compensation of assistants and deputies of the county surveyor for services in preparing preliminary plans and surveys for a proposed state highway improvement (section 1219 G. C.) is to be paid from the county surveyor's salary fund. To the extent that the county may be entitled to reimbursement, moneys collected in reimbursement are to be credited to the general county fund. In the matter of compensation of said assistants and deputies for services in superintendence and inspection during progress of work, reference is made to opinion dated April 20, 1918, Opinions of Attorney General, 1918, Vol. I, p. 584.

2. Under said sections 2977 G. C. et seq., the compensation of the county surveyor's assistants and deputies for services in ditch improvement, is also to be paid out of the surveyor's salary fund; reimbursement of the county to be made through return to the general county fund from the general ditch improvement fund, as noted in Opinion No. 957 of date January 23, 1920.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1546.

APPROVAL, FINAL RESOLUTION FOR ROAD IMPROVEMENT IN
ASHLAND COUNTY, OHIO.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

COLUMBUS, OHIO, September 3, 1920.

1547.

ROADS AND HIGHWAYS—SUBJECT TO CONSENT OF MUNICIPALITY,
TOWNSHIP TRUSTEES MAY ENTER INTO AN AGREEMENT WITH
COUNTY COMMISSIONERS FOR IMPROVEMENT OF CITY OR VIL-
LAGE STREETS LYING ALONG LINE OF INTER-COUNTY HIGH-
WAYS AND COUNTY ROADS—MAY USE FUNDS ARISING FROM
LEVY UNDER SECTION 3298-15d G. C.

Subject to the consent of the municipality, whether city or village (section 6949 G. C.), township trustees may under authority of section 6921 G. C. enter into an agreement with county commissioners for the improvement of city or village streets lying along the line of inter-county highways and county roads, and for the purposes of such agreement may make use of funds arising from levy under section 3298-15d G. C. Authority to make such use is not affected by the fact that the trustees have also made the road district tax levy mentioned in section 3298-44 G. C.

COLUMBUS, OHIO, September 7, 1920.

HON. CALVIN D. SPITLER, *Prosecuting Attorney, Tiffin, Ohio.*

DEAR SIR:—You have written to this department as follows:

“Clinton township, Seneca county, Ohio, has been levying annually for road purposes on the property within its boundaries in the corporate limits of the city of Tiffin under the provisions of section 3298-15d, under section 3298-1, 3298-15n, inclusive, 3370 to 3376 inclusive.

Likewise, some time ago it created a road district outside of the municipality as provided by section 3298-25, and it has been making a levy therefor under sections 3298-44 and 3298-45 inclusive.

The roads within the municipality in that part of Tiffin lying within Clinton township are badly in need of repair and notwithstanding that the city is paying several thousand dollars annually for road purposes of its tax money to Clinton township, the trustees now decline to co-operate with the county commissioners in the improvement of those portions of the highway lying between the corporate line and the paved streets within the city on the ground that there is no law permitting them to do so since it has created a separate road district outside the municipality. They take the position that they are willing to co-operate if the law permits them to do so.

The board of county commissioners and myself are somewhat in doubt as to what provisions of the statute control in this matter and I would like to have you outline a method of procedure whereby Clinton township can assist in the improvement of its portions of the highways lying within the municipality of the city of Tiffin, giving to us the sections of the statutes that control in the matter."

In a subsequent letter, you have, in response to a request for additional information, stated:

"Two of the highways entering the city are intercounty highways and the rest are county roads. All extend through and beyond the city. So far as I can ascertain, the particular portions of these several highways between the corporation line and the paved streets within the city never have been improved by the county or the township but they have been improved from year to year by the municipality of Tiffin. The portions of the two intercounty highways lying without the corporation have been improved by the state and the portions of the county roads lying outside of the corporation have been improved by the township for several miles beyond the city to the county line in each direction from the city.

Respecting the levy made under section 3298-15d, the proceeds thereof were not in anticipation of any bond issue but solely for the improvement of the highways and the proceeds thereof have been used entirely by the township outside of the municipality in the improvement of the county roads and the two inter-county highways, as well as perhaps for the improvement of other roads within Clinton township. In other words, the money raised by the levy under section 3298-15d has been used by the township for the improvement of roads outside of the corporation or limits of Tiffin and no part of that money has been used by the trustees for improving any part of the highways within said township lying within the corporation of Tiffin."

Section 3298-15d G. C. reads as follows:

"The proportion of the compensation, damages, costs and expenses of such improvement to be paid by the township shall be paid out of any road improvement fund available therefor. For the purpose of providing by taxation a fund for the payment of the township's proportion of the compensation, damages, costs and expenses of constructing, reconstructing, resurfacing or improving roads under the provisions of sections 3298-1 to 3298-15n inclusive of the General Code and for the purpose of maintaining,

repairing or dragging any public road, or roads, or part thereof, under their jurisdiction in the manner provided in sections 3370 to 3376 inclusive of the General Code, the board of trustees of any township is hereby authorized to levy annually a tax not exceeding three mills upon each dollar of the taxable property of said township. Said levy shall be in addition to all other levies authorized by law for township purposes and subject only to the limitation on the combined maximum rate for all taxes now in force. The taxes so authorized to be levied shall be placed by the county auditor upon the tax duplicate against the taxable property of the township and collected by the county treasurer as other taxes. When collected such taxes shall be paid to the treasurer of the township from which they are collected and the money so received shall be under the control of the township trustees of such township for the purposes for which such taxes were levied."

Said section is part of a series designated sections 3298-1 to 3298-15n, inclusive, providing for road improvement by township trustees. The opening section of said series reads:

"Sec. 3298-1. The board of trustees of any township shall have power, as hereinafter provided, to construct, reconstruct, resurface or improve any public road or roads, or part thereof, under their jurisdiction. Such trustees shall also have the power to construct, reconstruct, resurface or improve any county road or inter-county highway or main market road within their township; provided, however, that in the case of a county road the plans and specifications for the proposed improvement shall first be submitted to the county commissioners of the county and shall receive their approval and in the case of an inter-county highway or main market road such plans and specifications shall first be submitted to the state highway commissioner and shall receive his approval. The township trustees shall have power to widen, straighten or change the direction of any part of a road in connection with the proceedings for its improvement."

On the other hand, section 3298-44 is part of a series designated sections 3298-25 to 3298-53, providing for township road districts and the improvement of roads therein by township trustees. This series is practically a repetition of sections 3298-15d, et seq., except that it deals with a road district instead of a township. The opening section of the series reads:

"Sec. 3298-25. The board of trustees of a township, in which township there is located a municipal corporation or corporations, or a part of a municipal corporation, may by resolution erect that portion of such township not included within the corporate limits of such municipal corporation or corporations into a road district, whenever in their opinion it is expedient and necessary and for the public convenience and welfare for the purpose of constructing, reconstructing, resurfacing or improving the public roads within such road district. The road district so created shall be given an appropriate name by which it shall be known and designated."

Section 3298-44 reads:

"The proportion of the compensation, damages, costs and expenses of such improvement to be paid by the road district shall be paid out of any road improvement fund available therefor. For the purpose of providing by taxation a fund for the payment of the road district's proportion of the

compensation, damages, costs and expenses of constructing, reconstructing, resurfacing or improving roads under the provisions of sections 3298-25 to 3298-53, inclusive, of the General Code, the board of trustees of any township containing a road district is hereby authorized to levy annually a tax not exceeding three mills upon each dollar of the taxable property of said district. Said levy shall be subject only to the limitation on the combined maximum rate for all taxes now in force. The taxes so authorized to be levied shall be placed by the county auditor upon the tax duplicate against the taxable property of the road district and collected by the county treasurer as other taxes. When collected such taxes shall be paid to the treasurer of the township containing the road district from which they are collected and the money so received shall be under the control of the township trustees of such township for the purpose of constructing, reconstructing, resurfacing or improving the public roads of such district."

It thus appears that levies made under virtue of section 3298-15d apply to all the taxable property within the township, including that within municipal corporations forming part of such township; whereas levies made under section 3298-44 are upon only the taxable property of the township outside of municipal corporations in such township.

Evidently, the purpose of the enactment of the series of sections known as 3298-25 et seq., was to provide a means of road improvement by township trustees in those cases where, by reason of tax limitations applying to municipal corporations, no levy (or no sufficient levy) could be made on the taxable property of the whole township for the purposes of road improvement by township trustees. In any event, a comparison of the two series of statutes in question discloses that for the purposes of the activities defined in the respective series, including the levying of taxes, a township road district is wholly distinct from and independent of a township. The trustees in the case stated by you, have made two wholly distinct levies,—one having reference to sections 3298-1 to 3298-15n; and the other having reference to sections 3298-25 to 3298-53. For provisions as to purposes to which separate levies may be applied, we must look primarily to the provisions of each series wherein the levies are authorized; we cannot indulge the assumption that one levy is a check upon the other merely because the township and the township district happen to be very nearly co-extensive. It clearly follows from what has been said that the reason alleged by the township trustees for their failure to contribute to the improvement proposed is untenable. However, the statement just made does not dispose of your inquiry; for it remains to be seen whether there is inherent authority in the trustees to use for the purposes mentioned in your letter funds arising from levy under section 3298-15d.

Section 6921 G. C. appearing as part of the series providing for highway improvement by county commissioners (sections 6906 to 6953 G. C.) reads:

"The county commissioners, or joint board thereof, upon a unanimous vote, may without a petition therefor, order that all the compensation and damages, costs and expenses of constructing any improvement be paid out of the proceeds of any levy or levies for road purposes on the grand duplicate of the county, or out of any road improvement fund available therefor, or the county commissioners or joint board thereof, may enter into an agreement with the trustees of the township or townships in which said improvement is in whole or part situated, whereby said county and township, or one or more of them may pay such proportion or amount of the damages, costs and expenses as may be agreed upon between them."

In the same series of sections there appears section 6949, providing in substance

that county commissioners may construct a proposed road improvement "into, within or through a municipality, when the consent of the council of said municipality has first been obtained," etc.; and likewise in said series there appears in section 6952 this sentence:

"The word 'road,' as used in sections 6906 to 6953 inclusive of the General Code, shall be construed to include any state or county road or roads, or any part thereof, or any state or county road or roads and any city or village street or streets, or any part thereof, which form a continuous road improvement."

The sentence just quoted includes both the types of road mentioned in your letter—inter-county highways and county roads; for said sentence employs the words "any state or county road or roads,"—and state roads, in turn, include both inter-county highways and main market roads (see section 7464 G. C.). A mere reading of section 6921 G. C. shows that it is broad enough to apply to all roads and sections thereof which may be improved by county commissioners under authority of sections 6906 G. C. Hence, we are led clearly to the conclusion that county commissioners are authorized to enter into an agreement with township trustees, whereby the county and township may pay such proportion or amount of the "damages, costs and expenses" of improving a section of inter-county highway or county road as may be agreed upon between the commissioners and trustees, and that for such purpose the terms "inter-county highway" and "county road" include a city or village street lying along the line of an inter-county highway or main market road.

Authority in township trustees to enter into the agreement just mentioned would be a vain thing unless funds to carry out such agreement were provided for by statute. May funds arising from levy under section 3298-15d be resorted to? Affirmative answer is made clear by section 6921-1 G. C., 108 O. L. (Part II) page 1240, and reading in part.

"Where the compensation, damages, costs and expenses of an improvement, other than the portion thereof, if any, to be specially assessed against benefited real estate, are to be paid in part by the county and in part by the township or townships in which such improvement is situated, under an agreement between the county commissioners and the trustees of such township or townships entered into under the provisions of section 6919 or section 6921 of the General Code, the part of such compensation, damages, costs and expenses to be paid by the interested township or townships may be paid from the proceeds of any levy or levies made by the county commissioners under section 6927 of the General Code or from the proceeds of any levy or levies made by the township trustees under section 3298-15d of the General Code. Where bonds are issued to provide funds for any such improvement, the shares of the county and of the township or townships and of the real estate specially assessed, if any, may be provided by a bond issue by the county commissioners under authority of section 6929 of the General Code; or in lieu of such method of providing the necessary funds, the county commissioners may issue bonds under authority of section 6929 of the General Code in an amount sufficient to provide the shares of the county and of the real estate specially assessed, if any, and the remainder of the necessary funds, being the share of the interested township or townships, may be provided by the township trustees by an issue of bonds under authority of section 3298-15e of the General Code. * * * "

(Here follow provisions for validation of township bonds issued under authority of section 3295 and 3298-15e).

Doubtless said section 6921-1 was enacted to correct the situation pointed out by the Supreme court in the case of State ex rel. Trustees vs. Zangerle, Auditor, 100 O. S., 414 (advance sheets Ohio Law Bulletin, April 26, 1920), wherein it was held in effect that townships in issuing bonds for road improvement purposes, must resort to sections 3298-15d and 3298-15e to the exclusion of section 3295 G. C.

In the light of the foregoing, you are advised that subject to the consent of the municipality, whether city or village (section 6949 G. C.), township trustees may under authority of section 6921 G. C. enter into an agreement with county commissioners for the improvement of city or village streets lying along the line of inter-county highways and county roads, and for the purposes of such agreement may make use of funds arising from levy under section 3298-15d G. C., and that authority to make such use is not affected by the fact that the trustees have also made the road district tax levy mentioned in section 3298-44 G. C.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1548.

INHERITANCE TAX LAW—SUCCESSION TO STOCK IN CORPORATION
CONSOLIDATED UNDER LAWS OF THIS AND OTHER STATES—
PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE—HOW
JURISDICTION DETERMINED AND TAX COMPUTED.

In case of the succession to stock in a corporation consolidated under the laws of this and other states and having its principal place of business in another state:

1. *The inheritance tax law of this state applies to the succession to such stock.*
2. *The probate court of the county in which the general office of the company in this state is located, or of any county in which the company has property in this state, has jurisdiction to determine the tax.*
3. *The stock should be appraised at such proportion of its market value as is determined by the proportion of the entire property of the company located in Ohio, due allowance being made for the location of particular property in this and other states; in other words, substantially the same process of apportionment should be followed as is followed by the tax commission in the appraisement of interstate, public utility property for property tax purposes.*
4. *It is the duty of such consolidated company to fix one general office in this state. Where such office is located, in case formal action has not been taken, is a question of fact to be determined by the court which determines the tax. The location of such principal office determines the district of origination of the tax for the purpose of section 5348-14 of the General Code.*

COLUMBUS, OHIO, September 7, 1920.

Tax Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your letter of recent date requesting the opinion of this department upon the following question:

“The ABC Ry. Co. is a consolidated corporation organized in Ohio as well as in other states but does not maintain any principal place of business in this state although about 45 per cent of its property is located in Ohio.

X, a nonresident of this state, owns at the time of death certificates of