

of "road superintendent." Finally, section 3374-2 above quoted, makes specific provision that expense of cutting brush and weeds shall be paid from township road fund, thus providing for all highways; while said section 7146 makes no provision authorizing payment of cost out of county road funds.

Upon the whole, therefore, it may well be said that even if it be admitted that upon its face section 7146 "revises the whole subject matter" of section 3374-2 and is "intended as a substitute for it," yet from a practical standpoint it fails of any such effect. We are thus left to conclude that section 3374-2 is unrepealed in any particular, and that insofar as section 7146 has any effect it adds to the provisions of the former section in that it seeks to charge street commissioners with the duty of cutting weeds and brush on certain types of roads.

You are therefore advised in specific answer to your question that the re-enactment of section 7146 does not relieve township trustees of the duty of cutting brush, weeds etc., along county and state highways.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1455.

HIGHWAY DEPARTMENT—APPROPRIATIONS OF \$2,400 EACH FOR "TESTING ENGINEER" AND "GRADE III ENGINEER"—SECTION 1182 G. C. ACTS AS LIMITATION IN FIXING SALARY OF ONE OF ENGINEERS IN EXCESS OF \$2,400.

Appropriations of \$2,400 each for "Testing Engineer" and "Grade III Engineer, Highway Department, as appearing respectively in house bill No. 535 (108 O. L. 733, 849) and house bill No. 762 (108 O. L. 1321, 1327), cannot in view of the provisions of section 1182 G. C. (108 O. L. 480, 1332) be so apportioned by the state highway commissioner as to fix the salary of one of the engineers in excess of \$2,400. The controlling board is without power in the premises.

COLUMBUS, OHIO, July 23, 1920.

HON. A. V. DONAHEY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—You have recently submitted through Mr. H. E. McCollister, auditor of disbursements, highway department, the following:

"The state highway commissioner has presented a pay roll to this department for the first half of July, which carries 18 grade 3 engineers at \$2,750.00 each per year, and one grade 3 engineer at \$1,920.00 per year, under the authority of house bill No. 772, passed February 4, 1920, which amends section 1182 of the General Code to read in part as follows:

"The state highway commissioner shall also within the limits of the appropriations made by the General Assembly, appoint as many division engineers as may become necessary to carry out the provisions of this chapter. Each of said division engineers shall be paid a salary which shall be fixed by the state highway commissioner.

The civil service rules do not apply to salaries of division engineers as fixed by the state highway commissioner (see section 4 of S. B. 258 passed Feb. 4, 1920).

House bill 536, O. L. 108, p. 849, appropriates \$46,750.00 for 17 grade

3 engineers, which the board of control has apportioned at \$2,750.00 each per year, also appropriate \$2,400.00 for a testing engineer, which the civil service commission classifies as a grade 3 engineer: and in house bill 762 passed Feb. 4, 1920, a supplementary appropriation of \$2,400.00 is made for grade 3 engineer.

I respectfully ask your early opinion as to whether the state highway commissioner can fix salaries of division engineers in excess of specific items appropriated by the general assembly, although within the limits of the total amount appropriated and still comply with the provisions of house bill 772, or in other words can the highway commissioner with or without the approval of the board of control (see section 4 H. B. 536, O. L. p. 912), total all money appropriated for grade 3 engineers and divide the amount among as many, or as few engineers as he may deem necessary, or must he confine himself to a maximum of one-seventeenth of \$46,750.00 each per year, for seventeen grade 3 engineers and \$2,400.00 each per year for two grade 3 engineers?"

I take it that the pay-roll to which you refer as being presented by the state highway commissioner does not show an excess in the salary of seventeen grade 3 engineers as compared with appropriation in house bill 536 (108 O. L. 849)—seventeen grade 3 engineers, \$46,750.00, which is equivalent to \$2,750.00 each; and that the sole practical effect of the commissioner's action is to allow at \$2,750.00 the salary of the testing engineer (Grade 3) as compared with \$2,400.00 as appropriated in said House Bill 536—a difference or increase of \$350.00; and to allow at \$1,920.00 the salary of the Grade 3 engineer for which appropriation at \$2,400.00 was made in subsequent House Bill 762—a difference or decrease of \$480.00, thus leaving \$130.00 undisposed of as compared with the aggregate money appropriation.

You refer to section 1182 as amended by House Bill 772 (now appearing 108 O. L., part II, p. 1332). In its previous form as enacted on May 27, 1919, said section had provided (see 108 O. L. 480):

"The state highway commissioner shall also within the limits of the appropriations made by the general assembly appoint as many division engineers as may become necessary to carry out the provisions of this chapter. Each of said division engineers shall be paid a salary of not more than two thousand seven hundred and fifty dollars per annum, to be fixed by the state highway commissioner * * * *"

Said section 1182, both in its earlier form as just referred to and in its form as amended by H. B. 772, contained further provision that

"* * * * The state highway commissioner may appoint as many additional clerks or stenographers and such engineers * * * within the limits of appropriations as he may consider necessary to carry out the provisions of this chapter. *Each of said employes shall be paid a salary to be fixed by the state highway commissioner, within the limits of the appropriations made by the general assembly * * * **"

That part of section 1182 just quoted is in reality the part that is pertinent to your inquiry; for while it is true, as appears from your letter, that according to the classification made by the civil service commission, the testing engineer and the Grade 3 engineer provided for in H. B. 536 and H. B. 762, respectively, are within the same grade as division engineers, yet it clearly appears that the general assembly has made a distinction in that in said H. B. 536 it appropriated for a maximum of \$2,750.00 to

division engineers as compared with \$2,400.00 for the testing engineer and grade 3 engineer,—in other words, the general assembly itself by its appropriations has identified certain engineers as coming within the first part of section 1182 (division engineers) and others as coming within the last quoted part of said section. Since, as has already been pointed out, the action of the state highway commissioner does not affect the distribution of the \$46,750.00 appropriated for division engineers, your question really comes down to the point whether in view of the last quoted part of section 1182, taken in connection with appropriations for "testing engineer" (H. B. 536) and Grade 3 engineer (H. B. 762), the state highway commissioner in fixing salaries may exceed in the case of one of these engineers the \$2,400.00 appropriations made for each of them.

Clearly the answer is in the negative. His power to fix salaries is "within the limits of appropriations." One \$2,400.00 appropriation has been made for an identified Grade 3 engineer, known as testing engineer, and another \$2,400.00 appropriation for an engineer identified by the legislature as a Grade 3 engineer; and in each case under the last quoted part of section 1182 such \$2,400.00 marks the maximum salary limit.

The conclusion just stated is in no wise weakened by the fact that the general assembly in S. B. 258 (108 O. L. part II, p. 1234) when making an appropriation for an additional \$600.00 salary to highway department engineers, made use of the items "eighteen Grade III engineers" and "testing engineer;" for as is shown by section 4 of said act its purpose was to "give each person holding an engineering position * * * who receives a salary of \$2,400.00 *per annum or more*, an increase of fifty dollars per month for the period from January 1, 1920, to June 30, 1921," and the legislature therefore had no reason for the purposes of identification to make a separate appropriation for seventeen division engineers and one Grade 3 engineer.

You refer to the powers of controlling board as set forth in section 4 of H. B. 536. Those powers so far as pertinent to your inquiry concern only the giving of authority to expend moneys otherwise than in accordance with classifications of detailed purposes, but within the purpose for which appropriation is made. They do not extend to the giving of authority to expend money otherwise than as authorized by statute; and as has been indicated, the power of the state highway commissioner as to the maximum of salary of the two engineers in question is limited by statute to the amount of the appropriation.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1456.

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

COLUMBUS, OHIO, July 24, 1920.

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

1457.

APPROVAL, BONDS OF MANSFIELD CITY SCHOOL DISTRICT IN AMOUNT OF \$200,000.

COLUMBUS, OHIO, July 24, 1920.

Industrial Commission of Ohio, Columbus, Ohio.