

COLUMBUS, OHIO, June 3, 1931.

HON. JOHN MCSWEENEY, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by yourself, as Director of Public Welfare, and the Jennings-Lawrence Company, of Columbus, Ohio, for engineering services in connection with the construction of water mains at Hawthornden Farm, Cleveland State Hospital, Cleveland, Ohio. This contract calls for a total expenditure of eleven hundred dollars (\$1100.00).

You have also submitted an encumbrance estimate No. 6, which bears the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated sufficient to pay the contract price.

You have further submitted evidence showing that the Controlling Board has approved the expenditure.

Finding said contract in legal form, I hereby approve said contract and return to you all the papers submitted.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3298.

APPROVAL, BONDS OF FRANKLIN TOWNSHIP, FRANKLIN COUNTY,
OHIO—\$1,000.00.

COLUMBUS, OHIO, June 5, 1931.

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

3299.

GASOLINE TAX—TOWNSHIP'S PORTION APPLICABLE FOR MAINTENANCE OF ROADS AND HIGHWAYS WITHIN TOWNSHIP EITHER BY FORCE ACCOUNT OR CONTRACT.

SYLLABUS:

Under the provisions of Section 5541-8, General Code, as amended by the 89th General Assembly, in House Bill No. 7, the funds distributed thereunder, to townships, may be used for the purpose of maintaining, as well as constructing, widening, and reconstructing the public roads and highways within such township, irrespective of whether said work is done by force account or by contract.

COLUMBUS, OHIO, June 3, 1931.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"That part of section 5541-8, G. C., as amended by House Bill No. 7, as enacted by the 89th General Assembly, relating to the use of the gas tax fund apportioned to the townships, contains the following provision:

'Upon receipt of said vouchers and warrants each county treasurer shall pay to each township within the county its equal proportional share of said funds which shall be expended by each township for the sole purpose of constructing, maintaining, widening, and reconstructing the public roads and highways within such township.'

The following paragraph provides:

'Provided, however, that no part of said funds shall be used for any purpose except to pay in whole or part the contract price of any such work done by contract or to pay the cost of labor in constructing, widening and reconstructing such roads and highways and the cost of materials forming a part of said improvement;'

Question: May the fund so created be used for the maintenance of roads and highways within the township?"

In considering the two clauses of the act which you quote, there would seem to be a conflict, for the reason that the former includes "maintenance" as one of the purposes for which the funds may be used, whereas the latter clause does not include the term "maintenance" in connection with the use of said funds. However, the first part of the proviso which you quote relates to "such work done by contract", which phrase must refer to the work described in the first clause which you set forth and which includes constructing, maintaining, widening, and reconstructing. It follows, therefore, that the only question your inquiry presents is whether the funds under consideration may be used for the maintenance of roads within the township, when such maintenance is accomplished by force account. While, as hereinbefore indicated, there seems to be an inconsistency, if we were to hold that maintenance must be done by contract, it would be a ridiculous conclusion in view of the practical methods generally employed in highway maintenance.

It is a cardinal rule in this state that statutes will not be construed so as to produce absurd results. After all, the intent of the legislature is the sole guide in determining the meaning of a statute. Prior to the amendment of the statute, the funds distributed to a township could not be used for "maintenance". It was one of the purposes of the amendment to permit the use of such funds for the purpose of "maintenance" as disclosed by the title of the Act, which reads:

"AN ACT

To amend section 5541-8 of the General Code, relating to the distribution of the excise tax on the sale of motor vehicle fuel, and the use of said revenue within the several counties, townships and municipal corporations of the state for constructing, widening, reconstructing and maintaining the public highways, roads and streets therein."

Taking into consideration the history of the legislation under consideration, the title of the act, and the results of its application, it is my opinion that it clearly appears to have been the intent of the legislature to permit the townships to use their portion for the purpose of maintenance by force account or by contract.

In the case of *Industrial Commission of Ohio v. Hilshorst*, 117 O. S., 337, the second branch of the syllabus reads:

"Where different provisions of an act are in irreconcilable conflict, that provision which is most in harmony with the fundamental purpose of the statute must prevail."

In specific answer to your inquiry, you are advised that under the provisions of Section 5541-8, General Code, as amended by the 89th General Assembly, in House Bill No. 7, the funds distributed thereunder, to townships, may be used for the purpose of maintaining, as well as constructing, widening and reconstructing the public roads and highways within such township, irrespective of whether said work is done by force account or by contract.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3300.

BOARD OF EDUCATION—UNAUTHORIZED TO CONTRACT WITH TEACHERS FOR DEFINITE SALARIES WITH PROVISION FOR REDUCTION ON HAPPENING OF CONTINGENCY—AUTHORIZED TO PAY SALARIES DUE IN PREVIOUS YEARS FROM CURRENT FUNDS.

SYLLABUS:

1. *A board of education is not authorized to employ teachers for the schools of its district and fix a definite salary for those teachers, with the proviso that those salaries will be reduced if the income from taxation is insufficient to meet the obligation.*

2. *A board of education may lawfully employ teachers for the ensuing school year on a monthly basis without specifying the number of months the schools of the district will be in session during the school year.*

3. *A board of education may lawfully pay from current revenues, any balances due for salaries to teachers in its schools whether such amounts were earned during the current fiscal year or during previous years.*

COLUMBUS, OHIO, June 5, 1931.

HON. J. L. CLIFTON, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"Many complications have arisen relative to school finance since the passage of the Constitutional Amendment of 1929. Future revenues for the maintenance of the schools are uncertain at this time.

It has been the common practice of boards of education to employ teachers during the months of May and June, for the year beginning sometime between July 1st and September 1st.

The Director of Education asks to be advised on the following questions:

1. Is it legal for a board of education to make contracts with teachers