

OPINIONS

	<i>Valuation.</i>
<i>Buckeye Lake.</i>	
Evelyn D. Rood, lease at Buckeye Lake-----	200 00
W. H. Nieman, lease at Buckeye Lake-----	100 00
<i>Lake St. Marys.</i>	
Frank Milinski, lease at Lake St. Marys-----	1,000 00
David J. Horn, lease at Lake St. Marys-----	400 00
Thos. J. Heusch, lease at Lake St. Marys-----	400 00
<i>Indian Lake.</i>	
Harold B. Owens, lease at Indian Lake-----	1,333 33
J. C. & Myrtle Jacobs, lease at Indian Lake-----	200 00
<i>Portage Lake.</i>	
Theron I. Baughman, lease at Portage Lake-----	600 00

I have carefully examined said leases, find them correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1929.

ROADS AND HIGHWAYS—AUTHORITY OF COUNTY COMMISSIONERS
TO ASSIST TOWNSHIPS FOR ROAD PURPOSES.

County commissioners are without authority to adopt a general plan of returning to one or more of the townships of the county the amount of money raised and procured in such township or townships by county levies under section 6926 G. C. (as supplemented by section 6926-1 et seq. G. C.) and section 6956-1 G. C. However, the county commissioners and township trustees may by virtue of sections 7464 and 7467 G. C. enter into an agreement whereby the commissioners may contribute to the township trustees of one or more townships making application for aid, a sum proportionate to their respective needs in the maintenance of township highways, which contribution may be made out of funds not otherwise appropriated arising from levy under section 6926 G. C. to the extent that such funds are not subject to the preferred uses pointed out in opinion of this department (No. 959), dated January 23, 1920. The commissioners, however, in so assisting township trustees, may not resort to funds accruing from levy under section 6956-1 G. C.

COLUMBUS, OHIO, March 21, 1921.

HON. C. A. RADCLIFFE, *Prosecuting Attorney, Lancaster, Ohio.*

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

“The board of trustees of the several townships of Fairfield county have submitted to the county commissioners the following petition:

“Lancaster, Ohio, Feb. 28th, 1921.

To the Board of Commissioners of Fairfield County, Ohio.

Gentlemen:—We the undersigned trustees of the several townships of this county, present this our petition praying that your honorable board may aid and assist the several townships of this county by returning to the said townships, to be expended under the directions of the trustees in such town-

ships on township roads, the amount of money raised and produced in each township by one mill levy (general levy) for road purposes; the same to be effective for this and succeeding years.'

In response to my request for a designation of the statutes under which the money was levied and raised and a citation of authorities showing the power of the board of commissioners to make the disposal of the funds asked for by the trustees, counsel for the trustees submitted the following memorandum:

'Petition by township trustees to board of commissioners for assistance to repair township roads:

Classification of county roads—106 O. L. 648, Sec. 241.

Subdivision "C." "Commissioners shall have full power and authority to assist the township trustees in maintaining all such roads." (Township Roads.)

The moneys now in road fund and in process of collection for road purposes seem to have been raised under

6926-1 G. C., 108 O. L. 500-501;

6956-1 G. C., 108 O. L. 503.'

The board of commissioners will be pleased to have your opinion on the question of their power to comply with the petition of the trustees as promptly as you may find convenient."

The quotation in your letter from 106 Ohio Laws is from section 241 of the so-called Cass Highway Law. That section has been designated as section 7464 G. C. and has not been amended since the passage of the Cass Act. The section reads in full as follows:

"Sec. 7464. The public highways of the state shall be divided into three classes, namely: State roads, county roads and township roads.

(a) State roads shall include such part or parts of the inter-county highways and main market roads as have been or may hereafter be constructed by the state, or which have been or may hereafter be taken over by the state as provided in this act, and such roads shall be maintained by the state highway department.

(b) County roads shall include all roads which have been or may be improved by the county by placing brick, stone, gravel or other road building material thereon, or heretofore built by the state and not a part of the inter-county or main market system of roads, together with such roads as have been or may be constructed by the township trustees to conform to the standards for county roads as fixed by the county commissioners, and all such roads shall be maintained by the county commissioners.

(c) Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships; and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act."

When enacting the foregoing section the general assembly also enacted in section 7467 further provisions, since unamended, reading:

"The state, county and township shall each maintain their respective roads as designated in the classification herein-above set forth; provided, however, that either the county or township may, by agreement between the county commissioners and township trustees, contribute to the repair and maintenance of the roads under the control of the other. The state, county or township or any two or more of them may by agreement expend any funds available for road construction, improvement or repair upon roads inside of a village, or a village may expend any funds available for street improvement upon roads outside of the village and leading thereto."

Very clearly, then, these two statutes are to be read together, with the result that county commissioners are at liberty to grant assistance to township trustees in the maintaining by the latter of township roads, thus leaving open for inquiry the manner and extent of such assistance.

Your letter shows that the funds which the township trustees seek to have applied by the county commissioners in assisting the township trustees to maintain township roads are the accruals of levies under sections 6926-1 G. C. and 6956-1 G. C. Those sections were the subject of a somewhat extended discussion in an opinion of this department (No. 959) directed to Hon. Walter W. Beck, Prosecuting Attorney, Lisbon, Ohio, under date January 23, 1920, a copy of which is enclosed. You will find on examination of said opinion that the funds arising from the levy authorized by section 6926 G. C. (which after its enactment was supplemented by sections 6926-1 et seq. G. C.) may be subject to certain preferred uses which would prevent their being applied by the county commissioners in assisting township trustees, which preferred uses would arise if said funds had been anticipated by bond issues, or if by popular vote under section 6926-1 G. C. the commissioners had been directed to use the whole or a part of said funds in improving *county roads* and the whole or a part of said funds in maintaining *county roads*. A further preferred use of said funds might, as pointed out in said opinion, grow out of the fact that said funds were in part needed to make up the mandatory maintenance and repair fund for *improved county highways* as mentioned in section 6956-1 G. C.

It should be said here that the county commissioners are without authority to use in assisting township trustees in maintaining and repairing township roads, any part of the funds accruing from levy under section 6956-1 G. C. Said section and its accompanying section, 6956-1a, are quoted in full in Opinion No. 959, and need not be here repeated; but as was pointed out in Opinion No. 1264 of this department, directed to Hon. A. R. Taylor, state highway commissioner, under date of May 20, 1920 (copy of which is enclosed), the levy authorized by section 6956-1 is to provide funds for the maintenance and repair of *improved county roads*, and is peculiarly the maintenance and repair levy for county road purposes, just as the levy named in section 3298-18 G. C. hereinafter referred to, is peculiarly the maintenance and repair levy for township road purposes.

However, for the purposes of your inquiry, we will now assume that your county commissioners have arranged for the full amount of maintenance and repair fund for improved county roads as described in section 6956-1a G. C. either by levy under authority of section 6956-1 or by levy under section 6926 and 6927 G. C. and that over and above said mandatory maintenance and repair fund named in sections 6956-1 and 6956-1a, county commissioners have funds arising from the levy under section 6926 G. C. which have not been anticipated by bond issue and which have not been directed by popular vote under sections 6926-1 et seq., to be put to the use of constructing or maintaining county roads. May such excess be used in assisting township trustees to maintain township roads? Clearly, yes.

It is equally plain, however, that such use may not be made on the broad scale which the trustees of the several townships desire, as shown in their petition to your

board of county commissioners. The highway laws do not contemplate any bodily turning over of funds in an arbitrary amount by county commissioners to township trustees. The correctness of this latter statement is clearly demonstrated by the fact that the trustees themselves under authority of section 3298-18 (108 O. L. Part I, p. 498) may make a levy for the maintenance and repair of township highways,—in fact, there is a mandate in said section reading:

“The board of township trustees of each township shall provide annually by taxation under the provisions of this section or under the provisions of section 3298-15d of the General Code or under both sections an adequate fund for the maintenance and repair of township highways. The maintenance and repair fund so provided shall not be less than one hundred dollars for each mile of improved township highways in the township and twenty dollars for each mile of unimproved township highway within the township.”

Furthermore, the levy authorized by section 6926 G. C. is purely a county levy for the primary purpose of constructing, improving, maintaining and repairing *county roads*; and such primary purpose would be defeated if the commissioners were held to be at liberty to turn over to the township trustees an arbitrary portion of said funds. In short, the township trustees themselves are bound in the first instance to maintain township roads, and to provide funds for that purpose under authority of section 3298-18; but in specific instances if they need additional help, sections 7464 and 7467 G. C. are available.

Hence, the conclusion follows that if the county commissioners have on hands a surplus, as above described, of funds arising from levy under section 6926 G. C., the mode of exercise of their authority in using such funds to assist township trustees in maintaining township roads is the making of an agreement between commissioners and trustees providing for a contribution of a specified sum of money to be applied by the trustees in maintaining township roads, the proportion of aid granted the several townships making application to be governed primarily by their respective needs and not by an arbitrary percentage applying equally to all townships.

The statutes are not at all specific as to the form of the agreement; but careful procedure would dictate that the trustees pass and enter upon their minutes a resolution reciting their general needs, requesting the county commissioners for aid in a sum to provide for such needs, and directing that a certified copy of the resolution be transmitted to the county commissioners; whereupon the county commissioners upon receiving such certified copy should order it recorded and by appropriate resolution take such action upon the request as may be consistent with the public interest in the way of granting the request in whole or in part, or refusing it.

From the foregoing considerations, the specific answer to your inquiry is that your county commissioners are without authority to adopt a general plan of returning to one or more of the townships of the county the amount of money raised and procured in such township or townships by county levies under section 6926 G. C. (as supplemented by section 6926-1 et seq., G. C.) and section 6956-1 G. C. However, the county commissioners and township trustees may by virtue of sections 7464 and 7467 G. C. enter into an agreement whereby the commissioners may contribute to the township trustees of one or more townships making application for aid, a sum proportionate to their respective needs in the maintenance of township highways, which contribution may be made out of funds not otherwise appropriated arising from levy under section 6926 G. C. to the extent that such funds are not subject to the preferred uses pointed out in opinion of this department (No. 959), dated January 23, 1920. The commissioners, however, in so assisting township trustees, may not resort to funds accruing from levy under section 6956-1 G. C.

Respectfully,

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Attorney-General.