

## OPINION NO. 70-076

**Syllabus:**

The provisions of Sections 307.86 to 307.92, Revised Code, or Section 5555.71, Revised Code, do not permit the board of county commissioners to let by competitive bidding labor and equipment items for road construction separately, while specifying that materials to be purchased by the county are to be used.

Opinion No. 3170, Opinions of the Attorney General for 1931, is not applicable under statutes now in effect and is hereby overruled.

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**To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio**  
**By: Paul W. Brown, Attorney General, July 1, 1970**

With regard to road construction, you have requested my opinion as to whether or not it is lawful for the board of county commissioners to let labor and equipment only by competitive bidding with materials to be furnished by the board.

Section 5555.71, Revised Code, reads as follows:

"Before undertaking the construction, reconstruction, widening, resurfacing, repair, or improvement of a road, the board of county commissioners shall cause to be made by the county engineer an estimate of the cost of such work, which estimate shall include labor, material, freight, fuel, hauling, use of machinery and equipment, and all other items of cost. The board may, in lieu of constructing such improvement by letting the work by contract, proceed by force account. When the total estimated cost of the work exceeds ten thousand dollars per mile, the board shall invite and receive competitive bids for furnishing all the labor, materials, and equipment and doing the work, as provided in section 5555.61 of the Revised Code, and shall consider and reject such bids before ordering the work done by

force account. When such bids are received, considered, and rejected, and the work done by force account, such work shall be performed in compliance with the plans and specifications upon which the bids were based. This section applies to new construction and repair work." (Emphasis added.)

Section 5555.61, Revised Code, effective December 9, 1967, was enacted in House Bill No. 428, which also contained Sections 307.86 to 307.92, Revised Code, inclusive, to which it refers, as well as the section quoted immediately above. Section 5555.61, supra, reads as follows:

"After the board of county commissioners decides to proceed with the improvement, it shall do so in accordance with sections 307.86 to 307.92, inclusive, of the Revised Code. No contract for any improvement shall be awarded at a greater sum than the estimated cost."

The above-mentioned House Bill defined a new set of rules to follow in the construction of improvements by the county or any of its agencies. Said Bill amended former Section 5555.61, Revised Code, which contained the following:

"The board may let the work as a whole or in convenient sections as it determines, \* \* \*. Such contract shall be let upon the basis of lump sum bids. Unless the board orders it let upon the basis of unit price bids."

The statutes now in effect do not permit unit price bids to allow the acceptance of labor and equipment, and the rejection of material which in the instant case the county commissioners wish to furnish. To use materials they have on hand or wish to purchase, the county commissioners must do the work by force account pursuant to the provisions of Section 5555.71, supra.

It is, therefore, my opinion and you are advised that the provisions of Sections 307.86 to 307.92, Revised Code, or Section 5555.71, Revised Code, do not permit the board of county commissioners to let by competitive bidding labor and equipment items for road construction separately, while specifying that materials to be purchased by the county are to be used.

Opinion No. 3170, Opinions of the Attorney General for 1931, is not applicable under statutes now in effect and is hereby overruled.