

181.

DIRECTOR OF HIGHWAYS—WIDENING AND RELOCATION OF INTER-COUNTY HIGHWAY OR MAIN MARKET ROAD—CONSTRUCTION OF SECTION 1202, GENERAL CODE.

SYLLABUS:

When the Director of Highways and Public Works, without the co-operation of the county commissioners or township trustees, is proceeding under the provisions of Section 1202, General Code, to widen and relocate an inter-county highway or main market road and it is necessary to acquire additional land for that purpose, the cost of acquiring or appropriating said land and the damages incident thereto must be paid by the state.

COLUMBUS, OHIO, March 14, 1927.

HON. R. D. WILLIAMS, *Prosecuting Attorney, Athens, Ohio.*

DEAR SIR:—Receipt is acknowledged of your letter of February 21st, which reads as follows:

“Inter-county Highway No. 157 runs from Athens to Amesville in this county. This road is now and has been for some time past, within the charge of the state. The state is now relocating a portion of this road.

Query: Should the county or the state pay the damage to the owner of the property taken in such relocation?”

Your letter of March 7th supplements your letter of the 21st ultimo and furnishes information to the effect that the county commissioners had not made application for state aid in the widening and relocating of the road and that “the Director of Highways has by his own act entered upon the premises and widened and relocated the existing road.”

You inquire whether under these circumstances the county or the state shall pay the damage to the owner of the property taken for such widening and relocating of the state road referred to.

While Section 1201, General Code, provides that if the line of a proposed highway improvement deviates from the existing highway, “the county commissioners or township trustees making application for such improvement must provide the requisite right of way,” this section has to do with the improvement of inter-county highways by the state upon the application of county commissioners or township trustees as provided in Sections 1191, et seq., of the General Code.

Section 1202, General Code, applies where the Director of Highways and Public Works proposes to improve an inter-county highway or main market road without the co-operation of county commissioners or township trustees. This section reads in part as follows:

“If the Director of Highways and Public Works proposes to improve an inter-county highway or main market road without the co-operation of the county commissioners or township trustees, and it is necessary as a part of the proposed improvement of the said highway, bridge or culvert, to acquire or appropriate lands or property, and *such director is unable to agree with the owner or owners of such land or property as to the value thereof, he may proceed to condemn such land or property in the manner hereinbefore fixed for county commissioners and township trustees.* Such director may condemn materials for road purposes in like manner.

The Director of Highways and Public Works, in the maintenance, repair or reconstruction of inter-county highways and main market roads, shall be authorized to change the line of the improvement for that followed by the existing highway or road whenever such change is necessary, in his judgment, to eliminate dangerous curves, sharp angles or steep grades.

He shall also be authorized to widen the right of way occupied by such road or highway whenever in his judgment a wider right of way is needed. *For the purpose of acquiring any real estate that may be needed for any of such purposes, such director is authorized to pay to the owner or owners thereof, such reasonable sum as may be agreed upon between him and such owner or owners.* If such director is unable to agree with the owner or owners of such real estate as to the value thereof, he may proceed to condemn such real estate in the manner provided in Section 1201 of the General Code with respect to the condemnation by county commissioners or township trustees of right of way for state highway improvements. * * * "

You will note that the above quoted section provides that, in cases like the one under consideration, where the Director of Highways is proceeding of his own initiative to change and widen an existing highway, "*such director is authorized to pay to the owner or owners * * * such reasonable sum as may be agreed upon between him and such owner or owners,*" the statute further providing that if "*such director is unable to agree with the owner or owners,*" *he* may proceed to condemn in the manner provided in Section 1201, General Code, with respect to the condemnation by county commissioners or township trustees of right of way for state highway improvements. It is manifest that the section contemplates that the Director of Highways shall purchase the necessary right of way in cases like the one here involved, and since damages to the land remaining in the owner or owners are on the same plane as compensation for the land taken, such damages should be borne by the state.

Specifically answering your question, therefore, I am of the opinion that in the relocation of Inter-county Highway No. 157 by the Director of Highways and Public Works, who is proceeding with such improvement without application by and cooperation of the county commissioners or township trustees, it is the duty of such Director to pay such compensation and damages as may be necessary to the owner or owners for any land taken for such improvement.

Respectfully,
EDWARD C. TURNER,
Attorney General.

182.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO THROUGH DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS, WITH LEO HERMAN, BOWLING GREEN, OHIO, FOR REBUILDING 242' OLD TUNNEL, BOWLING GREEN STATE NORMAL SCHOOL, \$6,320.50—SURETY BOND EXECUTED BY THE NATIONAL SURETY COMPANY.

COLUMBUS, OHIO, March 14, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Highways and Public Works, for and on behalf