

2740.

APPROPRIATION—ROAD IMPROVEMENT—DEPARTMENT OF PUBLIC WORKS—TRANSMISSION OF FUNDS TO PICKAWAY COUNTY ILLEGAL.

SYLLABUS:

*There is no lawful authority for the Department of Public Works to turn over to Pickaway County, to enable said county to move, construct and improve such road, the appropriation of \$6,000.00 made to such department in the appropriation act of the 87th General Assembly for the purpose of moving, constructing and improving a road through state lands at Orient.*

COLUMBUS, OHIO, October 17, 1928.

HON. E. A. BROWN, *Prosecuting Attorney, Circleville, Ohio.*

DEAR SIR:—Acknowledgment is made of your communication of October 13th, which reads:

“Please give me an opinion as to just what can be done by way of improving the road from the Franklin-Pickaway County line, near Orient, in our county, insofar as the appropriation of \$6,000.00, state’s share, as provided at page 66 of The Appropriation Acts of the 87th General Assembly of Ohio, year 1927.

We have had this matter up with the General Welfare Department, also the Department of Public Works of Ohio; these two departments are inclined to want to do the right thing but there is an uncertainty. We would like to have the state’s share turned over to our County Commissioners, and we will improve the road. Can that be done, or will there have to be two separate contracts?”

The appropriation act to which you refer is a part of the General Appropriation Act of the 87th General Assembly, being House Bill No. 502. The item to which you refer is found under the sub-head and was appropriated to the “Division of Public Works—Administration” under the general heading “Department of Highways and Public Works” and as you state, appears on page 66 of said appropriation act. The language making said appropriation reads as follows:

“To move, construct and improve road from the Franklin-Pickaway County line near Orient, and extending through state lands to the C. C. C. Highway at or near Harrisburg, Pickaway County to pay an amount equal to that paid by the state—state’s share, \$6,000.00.”

In analyzing the appropriation act it will be seen that moneys appropriated are to be used by the proper departments, offices and institutions for the uses and purposes indicated by the Legislature. (See Section 1.)

In view of the language above quoted, the intent would appear to be clear that the sum was appropriated to the Department of Highways and Public Works, Division of Public Works (now the Department of Public Works), to move, construct and improve the road mentioned therein. In other words, the language indicates that it was the Legislature’s intent that the state was to take the initiative in accomplishing the things mentioned in the section, and that Pickaway County is to make a contribution equal to the amount paid by the State as a condition precedent to the State taking

action. If your county were to proceed upon the theory that the state would make a donation of the sum mentioned in the section, such a proceeding in my opinion would be taking the opposite course intended by the Legislature.

In this connection, in view of existing law and the language of the appropriation act it would be necessary for the Division of Public Works to proceed in accordance with the statutes governing the awarding of public contracts with reference to advertisements, competitive bidding, etc., before any fund of the state could be expended. In Opinion No. 340 issued April 18, 1927, and reported in the Opinions of the Attorney General for said year, Vol. I, page 573, this proceeding was fully outlined. The above statement with reference to awarding the contract after competitive bidding, however, is subject to the exception provided in Section 6 of House Bill No. 502, to the effect that improvements may be made by force account when plans, specifications, bills of material and estimates of cost have been presented to the Controlling Board and filed with the Auditor of State, if the Controlling Board consents to such method and certifies such consent in writing to the Auditor of State and the Director of Finance, as required therein.

In any event, it is my opinion that the state is not authorized to turn the fund over to your county for the purpose of permitting said county to proceed with the project. On the other hand, the appropriation act, read in connection with the statutes, contemplates that the Division of Public Works shall supervise and accomplish said construction.

In specific answer to your inquiry, you are advised that it is my opinion that there is no lawful authority for the Division of Public Works to turn over to Pickaway County the appropriation of \$6,000.00, which item is found on page 66 of the General Appropriation Act of the 87th General Assembly, and is to be used for the purpose of moving, constructing and improving a road through state lands at Orient, to enable said county to improve and construct said road.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2741.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND HERMAN C. WELLER, COLUMBUS, OHIO, FOR THE CONSTRUCTION OF FARM HOUSE, OHIO STATE UNIVERSITY, COLUMBUS, OHIO, AT AN EXPENDITURE OF \$8,200.00—SURETY BOND EXECUTED BY THE GLOBE INDEMNITY COMPANY.

COLUMBUS, OHIO, October 17, 1928.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for and on behalf of the Board of Trustees of the Ohio State University, Columbus, Ohio, and Herman C. Weller, of Columbus, Ohio. This contract covers the construction and completion of general contract, Farm House, and accepting Alternate No. 5, providing for block foundation in place of poured concrete, at a deduction of \$200.00, and calls for an expenditure of eight thousand two hundred dollars (\$8,200.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the