

things, authorizes the Conservation Council to acquire lands for park and reservoir purposes, subject to the approval of the Attorney General. Inasmuch as no reason is seen why the purchase of this property by the Conservation Council for and in the name of the State of Ohio should not be approved by me, I am accordingly approving the purchase and acquisition of this property as is evidenced by my approval endorsed upon the deeds above referred to.

I am herewith returning to you said abstract of title, the warranty deed of Etta C. Henson, the deed of Etta C. Henson, as administratrix of the estate of her deceased husband, Orlan A. Henson, contract encumbrance record No. 18 and other files relating to the purchase of this property.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

540.

COUNTY ENGINEER—ROAD REPAIRS—FORCE ACCOUNT—
EXCEPTION TO GENERAL STATUTES—EMERGENCY
REPAIRS—APPROPRIATION BY COUNTY COMMISSIONERS—
SALARY—ROAD SUPERINTENDENT.

SYLLABUS:

1. *Section 2792-1, General Code, authorizing the county engineer to undertake certain road repairs by force account as emergency repairs, total cost of which is not more than \$200.00, is an exception to the general statutes placing control of county highways in the board of county commissioners.*

2. *Section 2792-1, General Code, authorizes the purchase of materials and the employment of labor by the county engineer for the making of emergency repairs, the total cost of which is not more than \$200.00 in any one instance.*

3. *It is not necessary when the county engineer determines the same to be an emergency repair and needing immediate attention, in the exercise of his sound discretion, that he prepare plans, specifications, estimates of cost or forms of contract, but he may make such repairs by force account.*

4. *Payments for emergency repairs by the county engineer are made by authority of the county engineer from the fund appropriated*

for such purpose by the county commissioners. Salary or wages of a road superintendent are not properly payable from such fund so appropriated.

COLUMBUS, OHIO, April 28, 1937.

HON. BENSON L. OWENS, *Prosecuting Attorney, Jackson, Ohio.*

DEAR SIR: Your letter of recent date reads as follows:

"The Board of County Commissioners of Jackson County, Ohio, at one of their first meetings in January, 1937, made an appropriation of five thousand (\$5000.00) dollars to the county engineer for emergency repairs under Section 2792-1.

Question 1. What basis or yard stick is to be used in determining what constitutes an emergency repair?

Question 2. When the county engineer submits a pay roll for payment out of the emergency fund is it the duty of the commissioners and county auditor to prepare and issue vouchers for the payments called for on said pay roll or may they pass upon the question as to whether such payments are legitimate emergency repair fund items?

Question 3. Would the salary or wages of the road superintendent employed by the county engineer be properly chargeable to and payable out of the emergency repair fund?

Question 4. What limitation, if any, is to be placed upon the phrase 'Necessary repairs, the total cost of which is not more than two hundred (\$200.00) dollars', as such phrase is used in Section 2792-1.

(A) In determining the maximum of two hundred (\$200.00) dollars, may the engineer include repairs to roads in different localities?

(B) Where a road is badly in need of repair for several miles and the cost of repairing the entire continuous distance would be more than two hundred (\$200.00), would it be possible for the county engineer to consider the road as divided into several units, the separate cost of which would be less than two hundred (\$200.00) dollars and thus perform the improvement as an emergency repair or in such case would it be necessary for him to submit plans, specifications and estimates to the county commissioners and thus give them the chance to say whether such work shall be done by contract or by force account?

The purpose of the above questions is to secure as complete

and definite a ruling as possible as to what can legally be considered and carried out as emergency repairs. In other words, just what can be done by the county engineer as an emergency repair without submitting plans, specifications and estimates to the board of county commissioners?

I would appreciate a general consideration of this section in relation to Section 6948-1.

Question 5. What would be the dividing line between the duties of section men under Section 6960 and the duties of the county engineer under Section 2792-1."

As suggested by the first paragraph on Page 2 of your letter, you desire an opinion that will clarify the application of Section 2792-1, General Code to the repair of roads and to designate the relative positions of the county engineer and the board of county commissioners acting in their official capacities in the repair and improvement of county roads.

I will not answer each of the five questions contained in your letter separately but will treat your inquiry as suggested by the paragraph above referred to.

Section 2792-1, General Code, reads as follows:

"For the purpose of this act, necessary repairs, the total cost of which is not more than \$200.00, shall be deemed emergency repairs. The county surveyor shall make all emergency repairs on all roads, bridges and culverts in the county, including state highways, and shall keep on hand at all times a supply of material for the purposes of making such repairs. Upon report to the county surveyor of any road or bridge in the county needing immediate attention, the county surveyor shall, if he deems it an emergency repair, proceed at all times to make such repair by force account, without preparing plans, specifications, estimates of cost or forms of contract.

The county commissioners are hereby authorized to appropriate a sum of money each year sufficient to enable the county surveyor to carry out the purposes of this section. Such sum shall constitute the 'county surveyor's emergency fund'. All expenses incurred in employing extra help or in purchasing material used in such repairs shall be paid from such fund on vouchers signed by the county surveyor."

This section was enacted in 1923 as a supplemental section to Section 2792, General Code, thereby imposing additional duties and responsibilities on the county surveyor.

It may be noted that in 1935 Section 2782-1 of the General Code was enacted, which provides as follows:

“The title of county surveyor shall be changed to that of county engineer. Whereby the words ‘county surveyor’ are found in any section of the General Code, not herein amended or repealed, they shall, after taking effect of this act, be read ‘county engineer.’”

The authority and duty to construct and improve highways is in general distributed between the state highway department and the board of county commissioners and township trustees of the various counties and townships in accordance with the classification of such highways as State, County or Township roads respectively. However, the duties of the various officers overlap to a certain extent.

In the enactment of the above quoted section, it is evident that the Legislature intended that the purchase of materials and the employment of labor for the making of emergency repairs should be exercised by the county engineer, rather than by the county commissioners and by this enactment vested in the county engineer the discretion to determine what repairs he would classify as emergency repairs. This section is found under the chapter of the General Code with the general title ‘county engineer.’ It is separate and apart from the numerous sections of law pertaining to construction, improvement, etc. of roads. The phrase ‘emergency repair’ is just a convenient term to designate the class of repairs described in that section. A distinction between emergency repairs and construction or improvement of a road may be made in this way. Construction or improvement of a road changes the general condition of the entire road. It is a major operation. It is undertaken with more idea of permanency and for longer duration. It involves more consideration and applies to much greater length of road. Emergency repair contemplates the general condition of the entire road, to be approximately the same after the emergency repair is made as before. It applies to a small part of a given road. It is of a minor nature made with less thought as to the length of time the same will last. As suggested by the word “emergency,” it is a repair made in a pinch or in a crisis and of pressing necessity for the time being.

Applying this section to bridges and culverts, if it be reported to the engineer that a plank in the floor of a bridge is broken, the same might be replaced as a matter of emergency repair for safety to the travelling public, but if it be reported that a bridge has given way and fallen into the stream, although the emergency would be much greater, yet a new bridge could not be built as an emergency repair. Nor could

a vitrified tiled culvert be torn out and replaced by a small cement culvert or bridge, although the repair of a small wash-out at a culvert would fall in the category of emergency repair as a temporary correction of the existing situation.

The limitation of the phrase "repair not to exceed \$200.00 in cost" indicates the temporary correction of roads, bridges and culverts. Since our general statutes provide that county commissioners have control of county highways, and since this is an exception to the general rule, authorizing the county engineer to undertake certain road repairs, the limitation of \$200.00 cost is to point out the dividing line as between the jurisdiction of county engineer and jurisdiction of county commissioners under the existing condition in question.

Now upon the report of the condition of a road or bridge to the engineer, it is for him to determine whether or not he deems it requiring an emergency repair in so long as he does not abuse the discretion given him in such matters. He is limited, however, by the amount of money appropriated by the county commissioners to the fund known as "county surveyor's emergency repair fund" in his expenditures for labor and materials in making such emergency repairs. The payments are made by authority of the county engineer, the board of county commissioners and the auditor having no discretion or authority in determining such payments. However, the salary or wages of a road superintendent are not properly chargeable against this fund.

You make specific inquiry as to whether or not the county engineer would be justified in dividing up a road several miles long into several units in order to improve said road from the emergency repair fund.

As suggested heretofore, your question contains the answer when you state that such method would be used in performing the *improvement*, that is to say, a road in that condition and improved throughout could not be classed as an emergency repair. It would be possible for the county engineer to repair certain small portions of the worst part of this highway to make the same passable for traffic and thereby take care of the emergency until such time as an improvement of the entire road would be made, providing he, in the exercise of his sound discretion, determined such expenditure to be necessary and proper.

Section 6948-1, General Code, is not in conflict with Section 2792-1, General Code. Section 6948-1 applies to road construction and improvement. There may be isolated conditions whereby certain repairs or improvements might be made in accordance with either of the two above mentioned sections. Construction, improvement and repair of roads may be undertaken under more than one provision of law oftentimes, but when commenced the same must proceed to a final conclusion under the method provided by law, selected to be used at the beginning of the

improvement. As indicated by your letter and the last paragraph thereof, a repair may be made by section men under Title 4, Chapter 9, General Code, and additional repair to practically the same portion of the highway might be made as an emergency repair by the county engineer and a general improvement of the entire road might be made by the county commissioners all in the same year.

The general thought in this general discussion, as requested by you, and the controlling legal principle to be applied is that related sections of the General Code, providing for location, construction, maintenance and repair of roads must be followed through in detail as the same may apply to the particular improvement being made.

I believe this opinion answers every inquiry in your letter and will apply to any question your board of county commissioners may have as to their supervision of roads in your county.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

541.

TAX LEVY — DETAIL INFORMATION, BALLOTS — 5625-18a,
MANDATORY.

SYLLABUS:

Under the provisions of Section 5625-18a, General Code, it is mandatory that the detailed information therein required, be placed on the ballot submitted to the voters at an election.

COLUMBUS, OHIO, April 29, 1937.

HON. WILLIAM J. KENNEDY, *Secretary of State, Columbus, Ohio.*

DEAR SIR: I am in receipt of your letter of recent date requesting my opinion which reads as follows:

“Kindly note enclosed form of ballot submitting the question of a tax levy outside the ten mill limitation. This ballot also submits a proposed bond issue, but with reference to the latter proposal, we have no inquiry to make.

You will note that the tax levy proposal is presented in the following manner:

‘The question of levying all of the tax levies required to be