

Finding said lease in proper legal form, I hereby approve it and am returning it, together with all other papers submitted in connection therewith.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2106.

COUNTY ROADS—MAINTENANCE AND REPAIR WORK WITHOUT
CONTRACT—LABORERS HIRED BY SURVEYOR.

SYLLABUS:

In the maintenance and repair of county roads which is authorized by the county commissioners to be done by force account and without contract, the employment of the necessary laborers for the prosecution of the work rests with the county surveyor and not with the county commissioners.

COLUMBUS, OHIO, July 18, 1930.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—This acknowledges your recent communication as follows:

“A dispute has arisen between our county commissioners and surveyor over the employment of men for road work. The surveyor has been employing truck drivers and laborers who work under his general supervision in maintaining and repairing county roads, but the commissioners make the claim that they have the authority to employ these men. They claim that G. C. 2410 gives them authority to employ men to look after bridges and other property coming under their jurisdiction and control, and that the maintenance and repair of county roads is included in the phrase ‘other property under its jurisdiction and control.’ They concede the right of the surveyor to employ labor and teams to construct, reconstruct, maintain, improve and repair roads and bridges by force account, but contend that the general repair and maintenance of roads and bridges is under their supervision and truck drivers and laborers hired by the year to repair and maintain roads and bridges should be hired by them.

I have advised them that the surveyor has the power to employ these men and the only authority the commissioners have is to authorize their employment. They are not satisfied with this construction of the law and ask that the matter be submitted to you for your opinion.”

I believe that your inquiry is answered by an opinion of my predecessor found in Opinions of the Attorney General for 1927, at page 466. It was there held, as disclosed in the first branch of the syllabus:

“In the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account, the county surveyor may when authorized by the county commissioners, employ such laborers and teams as may be necessary.”

If you will examine that opinion, you will note that it refers to various earlier opinions of Attorneys General to the same effect, and these opinions clearly negative the right of the county commissioners to employ laborers and foremen direct.

While it is true that these opinions do not give consideration to the provisions of Section 2410, which apparently is relied upon by the county commissioners, I do not feel that that section is applicable. It provides as follows:

"The board may employ a superintendent, and such watchman, janitors and other employes, as it deems necessary for the care and custody of the court house, jail, and other county buildings, and of bridges, and other property under its jurisdiction and control."

While the general language here employed might, in the absence of other provisions of law, be construed as broad enough to include the employment of persons engaged upon road work, the specific provisions of Section 7198 are controlling with respect to maintenance and repair work. Section 7198 of the General Code is as follows:

"The county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account."

It is true that this refers to work by force account only, but I am of the view that it contemplates all maintenance and repair work which is carried on except through contract let pursuant to competitive bidding. Since the ordinary maintenance and repair of roads is generally of such character as to be more appropriately done by the employment of labor and the purchase of materials rather than through contract, it follows that this must be under the supervision of the county surveyor who has the authority, when authorized by the county commissioners, to employ the necessary personnel.

Accordingly, by way of specific answer to your inquiry, I am of the opinion that in the maintenance and repair of county roads which is authorized by the county commissioners to be done by force account and without contract, the employment of the necessary laborers for the prosecution of the work rests with the county surveyor and not with the county commissioners.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2107.

APPROVAL, LEASE BETWEEN BROAD THIRD REALTY COMPANY AND STATE OF OHIO FOR OFFICE SPACE IN ROWLANDS BUILDING, COLUMBUS, OHIO, FOR USE OF DEPARTMENT OF PUBLIC WELFARE.

COLUMBUS, OHIO, July 19, 1930.

HON. ALBERT T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date re-submitting for my examination and approval a certain lease and copies thereof, executed by the Broad-Third Realty Company, whereby it leases to A. T. Connar, Superintendent of Public Works, as Director of Public Works, for the use and benefit