

2296.

ROAD IMPROVEMENT—COUNTY COMMISSIONERS MAY BEGIN AFTER RESOLUTION ADOPTED BY UNANIMOUS VOTE—FILING OF PETITION NOT PREREQUISITE UNDER SECTION 6911, GENERAL CODE.

SYLLABUS:

A board of county commissioners may, under the provisions of Section 6911, General Code, as amended by the 87th General Assembly (112 v. 488) proceed by resolution adopted by unanimous vote without the filing of a petition, as authorized by Sections 6907, 6908 and 6909 of the General Code, to grade, drain, pave, straighten or widen roads under their jurisdiction, and to construct or reconstruct any bridges and culverts necessary for such an improvement.

COLUMBUS, OHIO, June 30, 1928.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your communication of recent date reading as follows:

“You are respectfully requested to render this department your written opinion upon the following matter:

Section 6910 of the General Code, prior to its repeal in 112 O. L. 501, provided that the county commissioners might proceed without the presentation of a petition to take the necessary steps to construct, reconstruct, improve or repair a public road or part thereof.

Section 6906, G. C., as amended in 112 O. L. 487, provides that the county commissioners of any county shall have power as hereinafter provided to construct a public road and Sections 6907, 6908 and 6909, G. C., which were not amended in 112 O. L., provide for the filing of a petition for the construction of a road.

Question: Do the provisions of Section 6911, G. C., as amended, 112 O. L., page 488, authorize the county commissioners to proceed with the construction or improvement of a road without the filing of a petition?

As stated in your letter, former Section 6910, General Code, which was repealed by the 87th General Assembly (112 v. 501), provided that the county commissioners might proceed by unanimous vote, to take the necessary steps to construct, reconstruct, improve or repair a public road or part thereof, without a petition. The repeal of this section does not however affect the right of a board of county commissioners to proceed by resolution passed by unanimous vote, to improve a road under its jurisdiction, since the Legislature in the same act repealing Section 6910, General Code, amended Section 6911 of the General Code, (112 v. 488) the section as amended reading as follows:

“The board of county commissioners may by resolution, which said resolution shall be adopted by a unanimous vote, find that the public convenience and welfare require the improving of any public road or part thereof by grading, draining, paving, straightening or widening the same

and constructing or reconstructing any bridges and culverts necessary for such improvement, and in said resolution shall fix the route and termini of such improvement, and shall apportion the cost thereof, which shall be apportioned and paid in any one of the methods provided for by Section 6919 of the General Code.

They shall in said resolution order the county surveyor to prepare the necessary surveys, plans, profiles, cross-sections, estimates of cost and specifications for said improvement as may be necessary, together with an estimated assessment, based upon the estimate of cost so made, upon the real estate to be charged therewith, of such part of the estimated damages, costs and expenses of such improvement as are to be specially assessed, which estimated assessment shall be according to the benefits which will result to such real estate. In making such estimated assessment, the surveyor may take into consideration any previous special assessment made upon such real estate for road improvements. The county commissioners may order the county surveyor to make alternate surveys, plans, profiles, cross-sections, estimates and specifications, providing therein for different widths of roadway, different materials or other similar variations. The county surveyor may, without instructions from the county commissioners, prepare and submit to the county commissioners alternate surveys, plans, profiles, cross-sections, estimates and specifications, providing therein for different widths of roadway, different materials or other similar variations. Where alternate surveys, plans, profiles, cross-sections, estimates and specifications are approved by the county commissioners or submitted by the county surveyor on his own motion, the county commissioners and county surveyor acting together, shall constitute a board for the selection of the particular plan, profile, cross-sections, estimate and specifications to be used and shall, after the opening of bids, determine, by a majority vote of such board which of said surveys, plans, profiles, cross-sections, estimates and specifications shall be finally adopted for said improvement. After the passage of the resolution provided for in this section, all subsequent proceedings of the county commissioners with respect to said improvement may be had by a majority vote." (Italics the writer's.)

It is quite clear, from the provisions of the foregoing section, that a board of county commissioners may, by resolution, adopted by unanimous vote, improve any public road or part thereof under its jurisdiction,

"by grading, draining, paving, straightening or widening the same and constructing or reconstructing any bridges and culverts necessary for such improvement."

Section 6911, General Code, as amended, is a part of a series or group of statutes pertaining to the improvement of roads under the jurisdiction of the county commissioners, beginning with Section 6906, General Code, and ending with Section 6950, General Code, and these sections, being in *pari materia*, must be construed together to carry out the intent of the Legislature and to accomplish the purposes for which said statutes have been enacted.

As pointed out in your communication, Section 6906, of the General Code, as amended (112 v. 487), provides that the county commissioners of any county shall have power, as thereafter provided, to construct a public road. It is quite

clear that one of the ways in which a public road may be improved by the county commissioners, as referred to in Section 6906 of the General Code, is in the manner provided in Section 6911, *supra*, i. e., by resolution passed by the unanimous vote of the board of county commissioners without a petition.

The fact that Sections 6907, 6908 and 6909 of the General Code, were not amended in House Bill No. 67, and that said act amended certain other sections, as Section 6911, General Code, pertaining to road improvements under the jurisdiction of the county commissioners, has no bearing upon the question which you present, since it is quite clear that inasmuch as the Legislature did not amend or repeal Sections 6907, 6908 and 6909 of the General Code, it was intended that the county commissioners might proceed by a petition as provided in said sections, as well as by resolution adopted by unanimous consent, as provided in Section 6911, of the General Code.

From the foregoing discussion, and answering your question specifically, it is my opinion that a board of county commissioners may, under the provisions of Section 6911 of the General Code, as amended by the 87th General Assembly (112 v. 488), proceed by resolution adopted by unanimous vote without the filing of a petition, as authorized by Sections 6907, 6908 and 6909 of the General Code, to grade, drain, pave, straighten or widen any road under their jurisdiction, and to construct or reconstruct any bridges and culverts necessary for such an improvement.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2297.

TRANSCRIPT—TESTIMONY IN CRIMINAL CASE OF ONE JOINT DEFENDANT—MUST BE PAID FOR BY OTHER WHEN TRIED SEPARATELY AT LATER DATE.

SYLLABUS:

A joint defendant in a criminal case dismissed therefrom on a plea in abatement and subsequently separately indicted for the same offense is not entitled to receive a transcript of the testimony taken in the trial of the other defendant or defendants, the costs thereof to be taxed as costs in the case of such other defendants and collected as other costs.

COLUMBUS, OHIO, June 30, 1928.

HON. HERMAN F. KRICKENBERGER, *Prosecuting Attorney, Greenville, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date reading as follows:

“A controversy has arisen here in connection with a criminal case in which the defendant’s attorney and I cannot agree on the construction to be placed on a certain statute. The facts in the case are these:

A and B were jointly indicted for an offense; A moved for a separate trial, was tried separately and convicted, and the indictment as to B was dismissed on a plea in abatement. B was re-indicted by the next Grand Jury, and is now to be tried on this new indictment for the same offense. Counsel for B has ordered a transcript of the testimony in the trial of A, and contends that, under Sections 1552 and 1553 of the General Code, the