

4409.

COUNTY COMMISSIONERS—UNAUTHORIZED TO CONSTRUCT DAMS FOR WATER CONSERVATION PURPOSES UNLESS IN CONNECTION WITH HIGHWAY, BRIDGE OR CULVERT CONSTRUCTION.

SYLLABUS:

*County commissioners have no authority to construct dams for the purpose of water conservation unless said construction is done in connection with the construction of highways, bridges and culverts under authority of Sections 2421, 2432 and 6860 to 7574, General Code, under the procedure outlined in Sections 412-16 to 412-23; inclusive, General Code.*

COLUMBUS, OHIO, July 11, 1935.

HON. A. L. CHATFIELD, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“At the urgent request of the county commissioners of this county and of the local administrators of the State Relief Administration, I submit for your opinion the following question.

It is desired by the State Relief Administration to consummate a proposed project calling for the construction of dams on the property of various individuals in this county, with their approval, certain dams on streams or ditches running through the said properties. The object of said construction being, as I understand it, to conserve water or moisture in the soil on and adjacent to the land on which the proposed dams are erected. The object of the Relief Administration is to furnish employment to men needing relief.

The Relief Commission, however, requires certain instruments to be executed by the land owner on whose property the dams are to be built. Their form PC-16 called a GRANT OF RIGHT AND EASEMENT to construct and maintain dam is executed to the Vinton County Commissioners. In addition to and supplemental thereto Form LO-21 known as RELEASE FROM LIABILITY is executed by the man on whose property the dam is to be constructed, and this too is in favor of the Vinton County Commissioners. I enclose herewith copies of the forms mentioned.

I have been able to find no authority for the County Commissioners to enter into such a project by accepting such grants, or

releases from liability; nor can I find any authority to guide me in advising the said county commissioners concerning possible liability or disadvantage to which they might fall heir by attempting to cooperate with the Relief Administration in these matters.

Will you please advise me as to: 1. What authority the county commissioners have to accept such grants, or bring to a conclusion negotiations therefor? 2. What, if any, would be the liability in the way of damages or maintenance of said dams by the county should such projects be consummated?"

The only authority that I am able to find for county commissioners to construct dams for the purpose of water conservation is that contained in Sections 412-16 to 412-23, inclusive, General Code. Sections 412-16 and 412-17 read as follows:

Sec. 412-16.

"The director of highways in constructing highways, bridges and culverts under authority of sections 1178 to 1230 inclusive, of the General Code; the county commissioners in constructing highways, bridges and culverts under authority of sections 2421, 2432 and sections 6860 to 7574, inclusive, of the General Code; the trustees of any township in constructing highways, bridges and culverts under authority of sections 3295 and 3298-1 to 3298-53a, inclusive, of the General Code; and any municipality of the state, constructing or improving viaducts, bridges and culverts under authority of section 3939 of the General Code, are authorized, either severally or jointly, upon request of the superintendent of public works, as director thereof, and with the approval of the director of highways, to construct and maintain slack water dams in connection with said highway, highway bridge or culvert so as to create reservoirs, ponds, water parks, basins, lakes or other incidental works to conserve the water supply of the state."

Sec. 412-17.

"The superintendent of public works may request the public authority having charge of construction of state, county or township highways, highway bridges and culverts or municipal streets, for the construction of slack water dams in connection with the construction of any such highway, street, highway bridge or culvert whenever, in his opinion, the construction of such dam is desirable and feasible for the economical creation and construction of reser-

voirs, ponds, water parks, basins, lakes or other incidental works for the conservation of the water supply of the state.

The public authority having charge of such construction may approve such request when, in its opinion, the construction of such dam or dams will not unnecessarily delay or hinder the construction of the highway, street, highway bridge or culvert, or will not interfere with the value or use of same for highway purposes.

If such request is approved the superintendent of public works, in cooperation with the department of highways and the public authority participating in the project, shall make a survey and prepare plans, specifications and estimates for the construction of such dam or dams and the reservoir, pond, water park, basin, lake or other incidental works in connection therewith.

Upon approval of the plans and specifications, and determination to proceed with the project, the superintendent of public works shall enter into an agreement with the public authority on the distribution of the cost and expense of the construction of such dam or dams and incidental works in connection therewith. The portion of the cost to be paid by the department of public works shall be paid from any funds appropriated for or paid into the department and available for such purpose; provided, however, no public authority shall proceed with the construction of such a project unless the certificate as provided by section 2288-2 of the General Code has been filed with the agreement.

Such dams shall be constructed under and subject to any laws governing the construction of state, county or township highways, bridges or culverts. Any public authority undertaking construction under this act, shall proceed in the same manner as provided for the construction of highway or street improvements."

It is clear from a reading of these sections, as well as the subsequent sections, that any such dam construction must be in connection with the construction of highways, bridges and culverts and consequently I am of the view that unless the projects which you mention are connected with such highway, bridge or culvert construction, the county commissioners would have no authority to construct said dam and acquire by easement or otherwise the real estate necessary therefor.

Answering your question, therefore, I am of the opinion that county commissioners have no authority to construct dams for the purpose of water conservation unless said construction is done in connection with the construction of highways, bridges and culverts under authority of Sections 2421,

2432 and 6860 to 7574, General Code, under the procedure outlined in Sections 412-16 to 412-23, inclusive, General Code.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

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4410.

APPROVAL, CONTRACT FOR HEATING FOR PROJECT KNOWN AS T. B. COTTAGE, HAWTHORNDEN FARM, CLEVELAND STATE HOSPITAL, CLEVELAND, OHIO, \$11,-168.00, SEABOARD SURETY COMPANY OF NEW YORK, SURETY-SPOHN HEATING AND VENTILATING COMPANY.

COLUMBUS, OHIO, July 12, 1935.

HON. T. S. BRINDLE, *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 the Department of Public Welfare, and the Spohn Heating and Ventilating Company of Cleveland, Ohio. This contract covers the construction and completion of contract for Heating for a project known as T. B. Cottage, Hawthornden Farm, Cleveland State Hospital, Cleveland, Ohio, in accordance with Item No. 3, and Item No. 11 (Alternate H-1) of the form of proposal dated April 23, 1935. Said contract calls for an expenditure of eleven thousand one hundred and sixty-eight dollars (\$11,168.00).

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 obligations of the contract. You have also submitted a certificate of the Controlling Board showing that said board has released the moneys appropriated for this project in accordance with section one of House Bill No. 69 of the second special session of the 90th General Assembly.

In addition, you have submitted a contract bond upon which the Seaboard Surety Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.