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COUNTY COMMISSIONERS—AGREEMENT TO REPAIR AND IMPROVE TOWNSHIP ROADS—AUTHORITY TO ACQUIRE AND UTILIZE NECESSARY MATERIALS—TOWNSHIP TRUSTEES TO PAY COST OF MATERIALS INCIDENT TO PERFORMANCE.

SYLLABUS:

When the county commissioners, acting under the provisions of Section 307.15, Revised Code, enter into and perform an agreement to repair and improve township roads, such board of county commissioners may acquire and utilize the necessary materials for such repair and improvement, and the board of township trustees may pay the cost of such materials as well as the other cost incident to the performance of the agreement.

Columbus, Ohio, December 7, 1956

Hon. Dean James, Prosecuting Attorney
Mercer County, Celina, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of County Commissioners of Mercer County have entered into agreements with various townships in said county for the purpose of improving and repairing township roads. Said agreements are made by virtue of authority granted in Section 307.15 of the Ohio Revised Code. The townships purchase the stone used in such improvements and repairs. The county charges the townships an agreed upon rate for trucking, rolling and grading.

“However, the bituminous material used in said repairs and improvements is purchased by the county from private suppliers and applied to the township roads. The county then bills the townships, under terms of the above mentioned agreement, for

the cost of said bituminous material plus 1¢ per gallon which is charged for each gallon applied. The additional 1¢ per gallon is charged to cover the cost of operating the distributor.

“My question is as follows: Can the County Commissioners enter into and perform an agreement to repair and improve said township roads, when in performing said services said County Commissioners supply any materials required for the repair and improvement of said road, or does the supplying of said materials in this instance constitute a sale to the township by the county which is not authorized under Ohio laws.”

Section 307.15, Revised Code, reads:

“The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, school district, library district, health district, park district, soil conservation district, water conservancy district, or other taxing district, or with the board of any other county, and such legislative authorities may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render.

“Upon the execution of such agreement and within the limitations prescribed by it, the board may exercise the same powers as the contracting subdivision possesses with respect to the performance of any function or the rendering of any service, which, by such agreement, it undertakes to perform or render, and all powers necessary or incidental thereto, as amply as such powers are possessed and exercised by the contracting subdivision directly. In the absence in such agreement of provisions determining by what officer, office, department, agency, or authority the powers and duties of the board shall be exercised or performed, the board shall determine and assign such powers and duties. Sections 307.14 to 307.19, inclusive, of the Revised Code, or any agreement authorized by such sections, shall not suspend the possession by a contracting subdivision of any power or function exercised or performed by the board in pursuance of such agreement. Nor shall the board, by virtue of any agreement entered into under this section, acquire any power to levy taxes within and in behalf of a contracting subdivision unless otherwise provided for by law.” (Emphasis added.)

Under the terms of that section, the board of county commissioners can exercise all of the powers of township trustees with regard to such a township function or service as the improvement of roads. The township

powers relative thereto are enumerated in Chapters 5571. and 5573., Revised Code. Section 5571.01, Revised Code, grants the general powers of boards of township trustees with regard to roads. It reads:

“The board of township trustees may construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction or any county road, intercounty highway, or state highway within its township. In the case of a county road the plans and specifications for the proposed improvement shall first be submitted to the board of county commissioners of the county and receive its approval, and in the case of an intercounty or state highway, plans and specifications shall first be submitted to the director of highways and receive his approval. The board of township trustees may widen, straighten, or change the direction of any part of a road in connection with the proceedings for its improvement.”

Under Section 307.15, supra, the board of county commissioners can perform for a board of township trustees its road improvement function and may exercise its powers relative thereto. Reasonably, in the performance of this function the board of county commissioners may acquire and utilize necessary materials; and, the cost of such materials being a part of the cost of the services performed by the board of county commissioners for the board of township trustees, the agreement between them may provide for payment by the board of township trustees of the cost of such materials.

Since under the terms of your letter it appears that the board of county commissioners is proceeding by force account, I have assumed for the purposes of this opinion that the limitations on work done by force account have been complied with. I refer principally to the necessity for bids and the rejection thereof in cases where the cost of the improvement exceeds three thousand dollars per mile. That limitation applies equally to work done by force account by boards of county commissioners and by boards of township trustees. See Sections 5555.71 and 5575.01, Revised Code.

I am of the opinion and advise you that when the county commissioners, acting under the provisions of Section 307.15, Revised Code, enter into and perform an agreement to repair and improve township roads, such board of county commissioners may acquire and utilize the necessary materials for such repair and improvement, and the board of

township trustees may pay the cost of such materials as well as the other cost incident to the performance of the agreement.

Respectfully,
C. WILLIAM O'NEILL
Attorney General