

1287.

ROAD IMPROVEMENT—AUTHORITY OF COUNTY COMMISSIONERS
IN EXTRA WORK CONTRACTS—SECTION 6948 CONSTRUED.

SYLLABUS:

1. Under section 6948 of the General Code, county commissioners may not divide nor split up extra work, arising from an unforeseen contingency, in connection with a road improvement project, and thereby evade the statutes requiring that such contracts be let by competitive bidding.

2. Under section 6948 of the General Code, if it be necessary, due to an unforeseen contingency, to enter into an extra work contract in connection with a road improvement project, and the estimated cost of such extra work is such an amount that competitive bidding might, under the statute, be dispensed with, and such extra work has been let by private contract, and thereafter, acting in good faith, the county commissioners discover that through some unforeseen contingency it is necessary to provide additional extra work in connection with such improvement project, and the estimated cost of such extra work is such an amount that competitive bidding might, under the statute, be dispensed with, the county commissioners would be authorized to let such extra work by private contract.

COLUMBUS, OHIO, March 19, 1924.

Department of Auditor of State, Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your recent communication, in which you submit the following question:

“Under section 6948 of the General Code, may the county commissioners let at private contract without publication or notice, two or more contracts for extra work, each one being less than five per cent of the original contract price, or if the aggregate of all extra work exceeds five per cent of the original contract, must the county commissioners advertise for bids?”

Section 6948, General Code, reads:

“In case of an unforeseen contingency not contemplated by the contract, allowances for extra work may be made by the county commissioners, but they must first enter into a new contract in writing, for such extra work. In all cases where the amount of the original contract price is less than ten thousand dollars, and the amount of the estimate for such extra work exceeds five hundred dollars, the preceding sections relating to advertising for bids shall apply to the letting of contracts for such extra work. If the amount of the original contract price is ten thousand dollars or more, the preceding sections relating to advertising for bids shall apply to all cases where the estimate for such extra work exceeds five per cent of the original contract price for such work.

If the estimate for such extra work is less than five hundred dollars, in all cases where the amount of the original contract price is less than ten thousand dollars, or if the estimate for such extra work is less than five per cent of the original contract price in all cases where the original contract price is ten thousand dollars or more, the contract for such extra work may be let by the county commissioners at private contract without publication or notice, but no contract shall be awarded for such extra work at any price in excess of the original contract unit price for the same class or kind

of work, if such there be, in connection with such contract. In case of any new class or kind of work the county commissioners and contractor shall agree as to the price to be paid. The contractor shall submit his bid in writing, and if accepted by the commissioners they shall immediately enter their acceptance on the journal. The costs and expenses of such extra work shall be paid by the county commissioners out of any funds available therefor, and the amount shall be charged to the cost of construction of said improvement and apportioned as the original contract price for the said improvement."

It will be noted that the pertinent parts of this section, in substance, provide:

1. In cases where the amount of the original contract is less than ten thousand dollars and the estimated cost of the extra work exceeds five hundred dollars, the county commissioners must advertise for bids:

2. In cases where the amount of the original contract price is ten thousand dollars or more, the county commissioners must advertise for bids if the estimated cost for such extra work exceeds five per cent of the original contract price.

3. In cases where the original contract price is less than ten thousand dollars and the estimated cost of such extra work is less than five hundred dollars, the county commissioners may let the contract for such extra work at private contract and without advertising for bids; and,

4. In cases where the original contract price is ten thousand dollars or more and the estimated cost of such extra work is less than five per cent of the original contract price, the county commissioners may let the contract for such extra work at private contract and without advertising for bids.

It is apparent that the purpose of these statutory provisions was to require competitive bidding in letting contracts for extra work under conditions hereinbefore set out under divisions one and two.

Statutes of this character, being designed for the protection of the public, must be strictly followed.

Knowlton vs. Board of Education, 13 Ohio App. 30.

I am of the opinion, and you are advised, that county commissioners would not be authorized to divide or split up extra work in connection with road improvement projects into two or more contracts and to such an extent as to lower the amount of the estimated cost of such extra work and thereby evade the statute requiring the letting of such a contract by competitive bidding. However, on page 573 of the opinion, in the case of *City of Lancaster vs. Miller*, 58 Ohio St. 558, Bradbury, J., in rendering the opinion, said:

"The contract related to two different and disconnected sections of the same sewer. One section was to be constructed at the intersection of Mill street and Broad street, the other section at the intersection of Mill and Columbus street; each to be supplied with catch basins. These two sections, however, were in the end to become component parts of a sewer extending along Mill street. When the balance of the sewer should be constructed, it would be joined to these two sections and the whole compose a single sewer along that street.

"While a municipality in this state should not be allowed to divide an improvement, which is in fact single and entire, into separate parts so as to make the cost of each part less than five hundred dollars, and contract separately for the construction of each part, thereby evading the provisions of section 2303, Revised Statutes, as to advertising for bids, nevertheless if,

in view of the circumstances under which the city was acting at the time this contract was made, it in good faith had elected to regard the construction of each section as a matter distinct and independent of the other, and had proceeded to contract separately for each section, neither would have originally involved an expenditure of five hundred dollars and, therefore, it might not have fallen within the provisions of section 2303 as to advertising for bids."

In this connection, I deem it pertinent to further advise you that if in the construction of a road improvement, due to some unforeseen contingency it were discovered that an extra work contract was necessary, and the estimated cost of such extra work was of such an amount that competitive bidding might, under the statute, be dispensed with, and such extra work was let by private contract, and thereafter, acting in good faith, the county commissioners discover that, through some unforeseen contingency, it is necessary to provide for additional extra work, the estimated cost of which would be such as to permit the dispensing with competitive bidding, under the statute, the county commissioners would be authorized to let such extra work by private contract.

Respectfully,
C. C. CRABBE,
Attorney General.

1288.

DISAPPROVAL, BONDS OF WASHINGTON TOWNSHIP SPECIAL
SCHOOL DISTRICT, MONROE COUNTY, \$20,000.00.

COLUMBUS, OHIO, March 19, 1924.

Re: Bonds of Washington Township Special School District, Monroe County. \$20,000.00.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

GENTLEMEN:—I have examined the transcript covering the foregoing bond issue and find that I am compelled to disapprove the same for the following reasons:

On October 17, 1923, the board of education of Graysville Village School District passed a resolution declaring the necessity of a bond issue as provided in section 7625 G. C. for the purpose of erecting and equipping a high school building, and presumably on the same date, the board of education of the Washington Township School District passed a similar resolution for the same purpose, and each providing for the calling of an election upon the question of issuing bonds in the sum of \$20,000.00 for said purposes.

Each district gave notice and held an election on November 6, 1923, for this purpose, and the issues were approved in each instance by a large majority of the electors.

On October 18, 1923, the county board of education by resolution under the provisions of section 4736 G. C. created "a new school from all the two aforesaid school districts to be known as the Washington Special School District, Monroe County, Ohio."

On November 20th, 1923, the county board of education by resolution declared that the said board of education created "a new district." On October 18, 1923,