

1402.

HIGHWAY IMPROVEMENT—STATE AND COUNTY CO-OPERATING—
FORM OF CONTRACT, PRESCRIBED.

SYLLABUS:

For of co-operative contract prescribed under Section 1200 of the General Code.

COLUMBUS, OHIO, January 13, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads:

“Please permit me to refer you to the proposed improvement of Section ‘A’ of the Jerusalem Road, State Highway No. 56, in Lucas County, Ohio, which this Department contemplates placing under contract during the month of January, 1930.

Inasmuch as this will be the first contract to come within the provisions of House Bill No. 195, the following papers leading up to this contract are herewith respectfully submitted for your approval as to form:

1. Resolution of county commissioners applying for state aid.
2. Letter of director to county commissioners granting aid, etc.
3. Letter of director to county commissioners approving application.
4. Survey order.
5. Resolution approving plans, etc.
6. Approximate estimates for proposals 1, 2 and 3—Types B and C.
7. County auditor’s certificates for Proposals 1, 2 and 3—Types B. and C.
8. Final resolutions for Proposals 1, 2 and 3—Types B and C.
9. Contracts for Proposals 1, 2 and 3—Types B and C.”

The first instrument you mention is a resolution whereby the county commissioners propose to co-operate under Section 1191, General Code, as amended by the 88th General Assembly (113 O. L. 604), which is very similar as to substance and form to the original application for state aid.

The second instrument is a letter from the Director of Highways purporting to grant state aid, and the third instrument is a copy of the Director’s journal showing such action, which undoubtedly is a substantial compliance with Section 1195, General Code, wherein it is provided:

“If upon the receipt of a proposal to co-operate the director approves of the same, he shall enter such approval thereof upon his journal and shall certify his approval thereof to the county commissioners; and he shall cause to be transmitted to the county commissioners copies of such maps, plans, profiles, specifications, and estimates as he may prepare for the construction of the work covered by such proposal. Upon receipt of the maps, plans, profiles, specifications and estimates for the proposed improvement, the county commissioners may, by resolution, adopt the same and provide for the cooperation of the county in the construction of the work. A certified copy of such resolution shall be transmitted to the director.”

From the above it will be seen that the director, technically speaking, should “approve” of the proposal as made by the county commissioners under existing law rather than grant state aid, and certify said action to the county commissioners.

The fourth instrument is simply an order from you to the resident engineer to proceed to make a survey of the project contemplated, and which, of course, is the means adopted by you in order to carry out the provisions of Section 1195, *supra*, in causing maps, plans, profiles, specifications and estimates for the construction of the work covered by such proposal to the county commissioners. Instrument number six is a copy of the estimate of cost of said construction.

The fifth instrument which you list is a copy of the resolution of the county commissioners adopting plans, specifications, estimates, etc., which is to be transmitted to the director under Section 1195, *supra*.

Number seven is the county auditor's certificate as to the existence of the funds as required under Sections 1200 and 5625-33, General Code.

The instrument designated as number eight is a copy of the final resolution of the county commissioners determining to co-operate on the basis of their proposals and requesting the director to proceed with the work under Section 1200, General Code.

In my opinion all of the heretofore mentioned instruments are sufficient as to form.

Consideration will now be given to instrument number nine which you enclosed and which is a form of contract between the county and state relative to such project, providing for the agreed proportion of expense as provided in Section 1200, General Code. Said section further provides:

“ * * * the form of such contract shall be prescribed by the Attorney General, and all such contracts shall be submitted to the Attorney General and approved by him before the director shall be authorized to advertise for bids. * * * ”

From the language above quoted, it seems the mandatory duty of the Attorney General to prescribe a form for such contract. In accordance with such duty, I hereby prescribe the form of contract marked “Exhibit A”, attached hereto, and made a part hereof.

In passing, your attention is called to the fact that each contract must be individually approved by the Attorney General before the advertisement is begun. Inasmuch as this proceeding involves a county having a tax duplicate of more than three hundred million dollars, of course, by the terms of Section 1191, General Code, as amended in 113 O. L. 605, there is no restriction as to the extent of the county's co-operation with respect to the width of the proposed improvement. It is further noted that this proceeding involves a road that is partly situated within a municipality, and by the terms of Section 1191, General Code, the consent of said municipality should be given to the performance of the work within its limits.

There is being returned herewith all of the papers which you have submitted.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1403.

APPROVAL, FINAL RESOLUTIONS AND CONTRACTS ON ROAD IMPROVEMENTS IN LUCAS COUNTY.

COLUMBUS, OHIO, January 13, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval as to form and legality, the