

1958

COUNTY COMMISSIONERS, BOARD OF—AUTHORITY TO PARTICIPATE WITH STATE HIGHWAY DEPARTMENT AND WITH CITY IN COUNTY TO SHARE COST OF TOPOGRAPHIC SURVEY TO BE MADE BY SERIAL PHOTOGRAMMETRIC METHODS AND PRODUCTION OF TOPOGRAPHIC MAPS—PURPOSE, HIGHWAY, STREET, FREEWAY AND COMMUNITY PLANNING.

SYLLABUS:

A board of county commissioners of a county has authority to participate with the state highway department and with a city located in such county, in the cost of a topographic survey of such county to be made by aerial photogrammetric methods, and the production of topographic maps, for the purpose of highway, street, freeway and community planning.

Columbus, Ohio, June 9, 1947

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

I have before me your request for my opinion, such request reading as follows:

“We are enclosing herewith copies of an agreement and resolution adopted by the board of county commissioners providing for the county’s participation in a project to secure certain basic material for the preparation of topographic maps by aerial photogrammetric methods.

May we respectfully request your opinion whether the county commissioners may legally expend public funds to participate in this geodetic survey.”

Attached to your communication, is a copy of a proposed form of agreement between the Board of County Commissioners of Cuyahoga County, the City of Cleveland, and the State of Ohio, the purpose of which is to provide for the making of a topographic survey of the city and county, by aerial photography, for the joint use and at the joint expense of the three parties. There is also a resolution adopted by the Board of County

Commissioners of Cuyahoga County on May 2, 1947, approving the agreement and authorizing the clerk of the board to prepare a voucher payable to the Treasurer of the State of Ohio for an amount of \$12,000, which is one-third of the estimated cost of said survey.

The background and purpose of the proposed contract will be best shown by setting forth its contents. It reads as follows:

“ A G R E E M E N T

This agreement made this —— day of ——, 1947, by and between the County of Cuyahoga, Ohio, acting by and through its Board of Commissioners, as First Party, hereinafter referred to as the County, and the City of Cleveland, acting by and through its Director of Public Service, as Second Party, hereinafter referred to as the City, and the State of Ohio, acting by and through the Director of Highways, State of Ohio, as Third Party, hereinafter referred to as the State.

WITNESSETH-WHEREAS, the County, the City and the State desire in the interest of public convenience and welfare, to cooperate in the securing of certain basic material for the preparation of topographic maps, and the securing of certain topographic maps, by aerial photogrammetric methods, for the purpose of highway, street, freeway and community planning, and for purposes of allied nature, and,

WHEREAS, the County, City and State have participated in geodetic surveys to obtain similar information by other methods which have now been determined to entail costs and to require time for completion beyond that necessary to produce topographic maps by the aerial photogrammetric method, and,

WHEREAS, the securing of the above mentioned material and maps by aerial photogrammetric method is estimated to cost approximately \$36,000.00, and,

WHEREAS, it is necessary to secure this material and these maps in accordance with definite specification of aerial photogrammetric methods by entering into a contract after inviting bids:

Now, therefore, in consideration of the premises and the several promises to be faithfully performed by each, as hereinafter set forth, the County, the City and the State do hereby mutually agree:

Section 1—The County and the City shall furnish to the State for its concurrence specifications and the conditions of the contract for the work to be performed.

Section 2—The County shall participate to the extent of one-third of the total cost of the contract and shall pay into the Treasury of the State of Ohio the sum of \$12,000.00 prior to the advertising for bids. Said \$12,000.00 representing one-third of the estimated cost.

Section 3—The City shall participate to the extent of one-third of the total cost of the contract and shall pay into the Treasury of the State of Ohio the sum of \$12,000.00 prior to the advertising for bids. Said \$12,000.00 representing one-third of the estimated cost.

Section 4—The State shall participate to the extent of one-third of the total cost of the contract and shall allocate \$12,000.00 therefor. The State shall advertise for the performance of said contract after receiving acceptable specification as outlined in Section 1. The State before making the award of the contract shall receive concurrence in such proposed action by the County and the City.

Section 5—Upon completion of the contract in accordance with specifications therefore, the film negatives shall be delivered to the Cleveland Regional Geodetic Survey and shall be available to each of the three parties of this Agreement for purpose of preparing prints, maps, etc., as may be required by the requesting party. All costs incident to such use shall be borne by the requesting party.

In Witness Whereof, the parties hereunto have caused this Agreement to be executed in triplicate as of the day and year, first above written.

THE COUNTY OF CUYAHOGA
BY

.....

 Board of County Commissioners
 of Cuyahoga County, Ohio.”

THE CITY OF CLEVELAND
BY

.....
 Director of Public Service

THE STATE OF OHIO
BY

.....
 Director of Highways

Your letter raises the specific question, “whether the county commissioners may legally expend public funds to participate in this geodetic sur-

vey.” For the sake of clearness we should observe that a “geodetic survey” is usually understood to relate to a survey of large portions of the earth’s surface where the measurement of distances over lands must take into consideration the spherical shape of the earth. There is nothing in the proposed agreement which contemplates a geodetic survey, although there is in the preamble a reference (probably mistaken) to former geodetic surveys which, it is recited, entailed too great cost and too much time for completion. Accordingly, we say dismiss from this opinion any attempt at a discussion of geodesy or geodetic surveys.

What the parties to the proposed contract are really seeking to do is apparently to acquire a topographic map of Cuyahoga county, produced by a method of aerial photography referred to as the photogrammetric method. While this method of producing maps and surveys differs considerably from the time honored process of surface surveys by civil engineers, it would appear that it has, or can have very great value in furnishing a comprehensive map in the nature of a visual picture of the lands and many features of the landscape in a given area. The practicability and value of aerial maps were certainly demonstrated in the recent war, in which accurate maps showing a remarkable degree of detail not only as to natural features but also as to railroads, highways, buildings and other structures were made by aerial photography of every portion of enemy lands, in anticipation of their invasion.

From a study of the dictionary definitions of “topographic” and its derivations, it appears that a topographic map is one made on a large enough scale and with such detail as to show lands and the natural features such as comparative elevations, streams, lakes, forests, etc., to which might well be added artificial features such as railroads, highways and buildings. At least, aerial photography would be able to add to the ordinary matters shown on a topographic map all of these artificial structures, which might greatly enhance its value from the standpoint of intelligent planning by the public authorities.

Section 1178, General Code, outlines in general terms the functions of the department of highways. It may be noted that the language of this section as amended by the 96th General Assembly (121 O. L., 456) shows a material enlargement of the scope of the work of this department, and an indication of the intention of the General Assembly to introduce modern

procedure into the old methods relating to highway construction and maintenance. That section, in so far as pertinent, reads as follows :

“The functions of the department of highways shall be to establish state highways on existing roads, streets and new locations and to construct, reconstruct, widen, resurface, maintain and repair the state system of highways and the bridges and culverts thereon; to co-operate with the federal government in the establishment, construction, reconstruction, improvement, maintenance and repair of post roads and other roads designated by the federal authorities; *to conduct research and to cooperate with organizations conducting research, in matters pertaining to highway design, construction, maintenance, material, safety and traffic; to cooperate with the counties, municipalities, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance and repair and improvement of the public roads and bridges of the state; * * **” (Emphasis added.)

All of that portion of the section relating to the conducting of research and cooperation with research organizations in matters pertaining to highway design, construction, maintenance, material, safety and traffic was added by this latest amendment. In the same act Section 1178-43, General Code, was enacted as a new section, reading in part as follows :

“The commissioners of any county may cooperate with the director in the elimination of railway grade crossings on the state highway system and in the construction or reconstruction of bridges and viaducts, together with the approaches thereto, and shall be authorized to pay such portion of the cost of any such work as may be agreed upon between said commissioners and the director. Said commissioners shall also be *authorized to cooperate* with the director in *establishing*, constructing, reconstructing, resurfacing or widening a state highway, and the commissioners shall under such circumstances be authorized to pay *all or any agreed portion of the cost* of such work. * * *” (Emphasis added.)

The authority thus given to counties and municipalities to cooperate with the state highway department is not new, for almost identical language was used in former Section 1191, General Code, which was repealed.

There are, however, one or two slight verbal changes in the new enactment one of which appears to me to have much significance. The word “establishing” was not in the old but appears in the new, thus evidencing the intention of the General Assembly to encourage cooperation in

planning for new highways as well as improving the old. It is true that the procedure outlined both in the old and the new law, contemplates that when a county proposes to cooperate, the preliminary surveys, plans and specifications are to be made by the state highway director and presented to the county commissioners for their approval and adoption, whereupon the work of the improvement shall proceed. It might, therefore, be argued that the county could not assume any part of the cost of these preliminary surveys and plans. That question was directly before one of my predecessors in an opinion reported in 1927 Opinions of the Attorney General, p. 2600, where in construing Section 1191, newly enacted and to become effective January 2, 1928, it was held:

“After the second day of January, 1928, the county may pay a portion or all of the cost and expense of surveys and other preliminary expenses incident to the improvement of a state highway only in those instances where the improvement is being constructed under the provisions of Section 1191, General Code, 112 O. L., 469.”

In the course of the opinion it was said:

“There is no question but that it is necessary to have preliminary surveys made prior to the undertaking of a highway improvement. Such preliminary engineering as may be necessary to the drafting of plans is a necessary incident to all road improvement projects.”

But it appears to me that by reenacting this provision in connection with the new powers of the department of highways, the general assembly may be said to have contemplated that cooperation might extend further than the mere construction and reconstruction of highways. If research and broad planning are legitimate parts of the work of establishing highways, then it appears to me evident that county commissioners as well as municipal authorities are authorized to cooperate with the state department of highways in the planning and establishment of these highways. Further light is thrown upon the modern trend of legislative action in the provision found in Section 2293-37b, General Code, (121 O. L., 532) authorizing the issuance of bonds for the purpose of preparing plans, etc., for the construction of public improvements as a post war project. This section reads as follows:

“The taxing authority of any sub-division shall have power subject to the provisions of Sections 2293-1 to 2293-37, both

inclusive, of the General Code of the state of Ohio, except as hereinafter provided, and in addition to all other provisions of law, to issue bonds of such subdivision for the purpose of paying the cost of any and all plans, the total amount of bonds outstanding for such planning shall not at any time exceed one-tenth of one percent of the amount of the total tax duplicate of said subdivision, specifications, drawings, profiles or estimates which may be required for the construction of post war projects of permanent improvements which such subdivision is authorized to construct. * * *

Another matter which has been specifically covered by somewhat recent legislation is the authority given by Section 7464-2, General Code, to the director of highways, county commissioners and municipal authorities to lay down, establish, construct, maintain and regulate the use of free highways in the same manner in which the said authorities are authorized by law to lay out, establish, construct and regulate other roads and highways. This class of highways, therefore, which is specifically mentioned in the proposed contract, would be included within the matters as to which the local subdivisions are authorized to cooperate. Section 6860, General Code, gives the county commissioners general authority as to the location, alteration and vacation of roads. That section reads as follows:

“The county commissioners shall have power to locate, establish, alter, widen, straighten, vacate or change the direction of roads as hereinafter provided. This power extends to all roads within the county, except that as to roads on the state highway system the approval of the director of highways shall be had.”

It will be noted that the authority here given is general enough to include roads in the state highway system, with the approval of the director. Likewise, Section 6906, General Code, grants to the county commissioners somewhat similar powers, but considerably elaborated, and makes the same provisions as to their authority over roads which are a part of the state highway system. It is evident, upon examination of all the statutes relating to streets, roads and highways, that the General Assembly has intended to encourage the fullest possible cooperation between the state and its various subdivisions in the matter of road establishment, building and maintenance. Accordingly, it appears to me that no serious question can be raised as to the right of a county to join with the state and a municipality where their interests are closely interwoven,

in making such general surveys and maps as will enable all of them to lay down, build and maintain a system of highways, freeways, boulevards, bridges and viaducts which will most efficiently contribute to the convenience and safety of the traveling public. That is apparently what is contemplated and desired by the contract which you have submitted. Its particular difference from other plans which have probably been followed for a long time, is that it contemplates a survey of more comprehensive character, and a different method of making it. I do not consider that the newness of the method has anything to do with the general propriety or the authority to make the surveys, as a necessary preliminary to the intelligent treatment of the problems that are before these several authorities. These problems as suggested in the contract submitted, relate to the acquisition of information "for the purpose of highway, street, freeway and community planning and for purposes of allied nature."

The conclusion which I have indicated in the foregoing discussion may seem to be in conflict with an opinion of one of my predecessors who held, as shown by 1931 Opinions of the Attorney General, page 665:

"A county is not authorized to issue bonds to pay the cost of a cadastral survey."

He rested his opinion on the ground that the General Assembly had made other provisions for making tax maps for the county and also for engineering services in connection with roads, ditches, etc., and had not authorized by any express grant the making of cadastral maps or surveys. In two previous opinions the same attorney general had held that a municipality had authority to make such survey and could issue bonds to pay the cost thereof. (1931 Opinions of the Attorney General, pages 345 and 755.) In denying this same right to counties, he pointed out that the uniform bond law in Section 2293-2, General Code, authorizes bonds to be issued by any subdivision "for the purpose of acquiring or constructing any permanent public improvement which such subdivision is authorized to acquire or construct." He argued that while a cadastral survey is a permanent improvement within the meaning of Section 2293-2, yet it was not a public improvement which the county is specifically authorized by the statutes to acquire or produce, while a municipality, having a broader grant of power from the home rule provision of the constitution, could acquire or produce such survey.

The effect of that opinion on the question which we are here considering, if it has any effect, grows out of the fact that a topographic survey and a cadastral survey might be quite similar, perhaps identical, the principal difference lying in the differing purposes for which they are made, and the differences in use to which they are put. A cadastral survey map or plans is defined in Webster's International Dictionary as follows:

"Cadastral Survey, Map or Plan. Strictly, a survey, map, or plan for the purpose of making a cadastre; hence, commonly, one made on a large scale (usually of 1-2500, that is, about twenty-five inches to the mile or a square inch to the acre) so as to represent exactly the relative positions and dimensions of objects and estates."

Turning to the definition of cadastre we find:

"Cadastre or Cadaster. An official statement or register of the quantity, value, and ownership of real estate for the apportionment of taxes."

Having in mind the purposes of the proposed topographical survey as evidenced by the contract submitted, and what seems to me to be a broadened policy of legislation in reference to planning for public improvements, particularly highway systems, I find no difficulty in distinguishing the opinion just referred to.

Accordingly, in specific answer to your inquiry it is my opinion that a board of county commissioners of a county has authority to participate with the state highway department and with a city located in such county, in the cost of a topographic survey of such county to be made by aerial photogrammetric methods, and the production of topographic maps, for the purpose of highway, street, freeway and community planning.

Respectfully,

HUGH S. JENKINS,
Attorney General.