

sary running expenses of the state and the improvements for which appropriations were made.

* * * * *

While there is no comma after the phrase in Section 12 of House Bill 502, supra, reading 'no monies herein appropriated or reappropriated for the purchase of real estate,' in view of the fact that the General Assembly has for the past several years required the approval of the Controlling Board before the expenditure of any monies appropriated for the purchase of real estate, regardless of amount, it is my opinion that such section should be construed as though a comma were placed after the words 'real estate.' That is to say, the section should be read to mean that no monies whatever, appropriated or reappropriated in the act in question, should be expended for the purchase of real estate without the consent and approval of the Controlling Board and that no monies therein appropriated or reappropriated should be spent for the construction of new buildings or new structures or other public improvements to cost in excess of five thousand dollars."

In view of the plain provisions of Section 12, it is clear that none of the monies appropriated in the appropriation item, supra, may be spent for the purchase of the Morris farm or any other real estate until the consent and approval of the Controlling Board has first been obtained.

For the reasons above set forth, I am retaining the abstract of title and other papers submitted with your letter of October 12th until such time as proper evidence is furnished this department to the effect that the committee provided for in the appropriation item under consideration has been duly appointed, and until the Controlling Board has given its consent and approval to the expenditure of the funds appropriated for the purchase of real estate.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1146.

APPROVAL, BONDS OF THE CITY OF NILES, TRUMBULL COUNTY,
OHIO—\$3,500.00.

COLUMBUS, OHIO, October 14, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

1147.

COUNTY COMMISSIONERS—AUTHORITY TO BUILD ROADS AND
BRIDGES WITHIN LIMITS OF MUNICIPAL CORPORATION.

SYLLABUS.

1. A board of county commissioners may lay out and establish a county road over a street already established within the limits of a municipal corporation, if such street be a

continuation of a state or county road extending into or through such municipal corporation, or forms a continuous road improvement, in which case the consent of the council of said municipal corporation, evidenced by the proper legislation of council, must be first obtained. If a street within the limits of a municipal corporation be not a continuation of a state or county road, or does not form a continuous road improvement, county commissioners are without authority to lay out and establish such street.

2. *The county commissioners are without authority to expend county funds in building bridges upon a street within the limits of a municipal corporation, unless such street be a continuation of a state or county road extending into or through such municipal corporation or forms a continuous road improvement.*

COLUMBUS, OHIO, October 14, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENELEMEN:—I acknowledge receipt of your communication of recent date requesting my opinion, which reads as follows:

“We respectfully request your written opinion upon the following:

Question 1: May a board of county commissioners proceeding under Sections 6860 to 6889, General Code, lay out and establish a county road over a street already established within the limits of a municipality when such road is not a continuation of a state or county road extending into or through a municipality?

Question 2: If the county commissioners have no such authority, may they legally expend the county funds in building bridges upon a road so established in a municipality?”

1. While in the first question of your letter you confine your inquiry to the power of a board of county commissioners under Sections 6860 to 6889, General Code, a proper answer to this question requires a consideration of certain other sections of the General Code, viz., Sections 6949, 6952 and 6954, for the reason that, as heretofore held by this department (Opinions, Attorney General, 1920, Vol. II, p. 911), that series of sections beginning with Section 6906, General Code, “includes Section 6949, et seq. relating to improvement by commissioners into, within or through municipalities, and also includes * * * Section 6952.”

Sections 6949, 6952 and 6954, respectively provide *inter alia* as follows:

Sec. 6949. “The board of county commissioners may construct a proposed road improvement into, within or through a municipality, when the consent of the council of said municipality has been first obtained, and such consent shall be evidenced by the proper legislation of the council of said municipality entered upon its records, and said council may assume and pay such proportion of the cost and expense of that part of the proposed improvement within said municipality as may be agreed upon between said board of county commissioners and said council. If no part of the cost and expense of the proposed improvement is assumed by the municipality, no action on the part of the municipality, other than the giving of the consent above referred to, shall be necessary; and in such event all other proceedings in connection with said improvement shall be conducted in the same manner as though the improvement were situated wholly without a municipality”

Sec. 6952. “* * * The word ‘road’, as used in Sections 6906 to 6953 inclusive of the General Code, shall be construed to include any state or county road or roads, or any part thereof, or any state or county road or roads, and any city or village street or streets, or any part thereof, which form a continuous road improvement.”

Sec. 6954. “The board of county commissioners of any county may repair that portion of a county road extending into or through a municipal corporation, or a part of a county road and a city or village street or streets extending into or through a municipal corporation and forming a continuous road improvement, when the consent of the council of said municipal corporation has been first obtained and such consent shall be evidenced by the proper legislation of the council of said municipal corporation entered upon its records.”

I find that this department has heretofore rendered an opinion in which the answer to your first question may be found. This opinion was rendered under date of June 13, 1919, and is reported in Opinions, Attorney General, 1919, Vol. I, p. 661, the syllabus reading as follows:

“Section 6949, G. C., does not authorize county commissioners to undertake the improvement, or to join with a municipality in undertaking the improvement of a municipal street forming no part of a state or county highway.”

In the opinion my predecessor in office said:

“The particular statute involved in a consideration of your inquiry is Section 6949 G. C., which reads as follows:

(Here follows Section 6949, General Code, as quoted above.)

Previous to its amendment as appearing in 107 Ohio Laws said Section 6949 did not contain the word ‘within,’ the earlier form of the statute reading simply that the board of commissioners ‘may extend a proposed road improvement into or through a municipality,’ etc. * * *

In considering the effect of this amendment, we must bear in mind that while the word ‘road’ as a generic term is no doubt broad enough to include ‘street,’ yet our legislature has for many years past made use of the word ‘road’ in dealing with improvements outside of municipalities and the word ‘street’ in dealing with improvements within municipalities. In fact as a matter of common usage, the word ‘street’ is understood as referring particularly to public ways within municipalities and the word ‘road’ to like ways outside of municipalities. Hence, we find in the series of statutes providing for improvements by county commissioners (Sections 6906 to 6953 G. C.) that the word ‘road’ is used to the exclusion of the word ‘street’ except in Section 6952, hereinafter referred to.

It is therefore quite evident that the legislative intent in amending Section 6949 was not to confer general power on the commissioners to improve any street within a municipality, but merely to give them power to enter a municipality with the consent of the council thereof for the purpose of such road improvement as might be necessary to connect or complete county or state road improvements. In Section 6949 the terms ‘into, within or through’ are used conjunctively, and in that sense are certainly plainly to the effect that

the proposed road improvement must be such an improvement as the commissioners are authorized generally to construct, special power being conferred in certain necessary instances to conduct the improvement into, within or through the municipality. Further support for this construction, if any is needed, may be found in the last sentence of Section 6952, reading as follows:

(Here follows the paragraph of Section 6952, General Code, above quoted.)

This sentence means that Sections 6906 to 6953 are to be given a broad enough meaning to include either a state or county road or roads, or part thereof, which form a continuous road improvement; or a state or county road or roads, and a city or village street or streets, or any part thereof, which form a continuous road improvement.

It is hardly necessary to add that in our municipal code we have very comprehensive provisions for the improvement of municipal streets by the municipality itself. Certainly the provisions of Section 6949 are to be treated as exceptions to the general rule that the municipality shall have charge of improvements within its limits, rather than as conferring any general power on the commissioners to take up the improvement of streets within a municipality not connected with state or county highway improvements.

This construction of the law, of course, leads to a negative answer to your question, unless it appears that the part of Adams street proposed to be improved is part of a state or county highway improvement. The facts show that not even from the broadest viewpoint may said section or street be so considered; for even if Adams street were improved for its entire length from Third street to Lawson avenue, and then Lawson avenue improved from Adams street to Market street, the result would be simply an additional connecting link of improved road between Third street and Market street; because, as above noted, Market street intersects Third street and hence there is formed a direct connection between Inter-County Highway No. 26 and Inter-County Highway No. 7.

You are therefore advised in answer to your inquiry that the commissioners are without power either to undertake the improvement or to enter into an agreement with the city to make the improvement in conjunction with the city."

Section 6954, *supra*, became effective on August 26, 1919, after the date of the above quoted opinion. This section was construed by this department in an opinion rendered under date of July 24, 1922, reported in *Opinions, Attorney General, 1922, Vol. I, p. 715*, the syllabus of which reads as follows:

"Under Section 6954, G. C., county commissioners, with the consent of the municipal council, may resort to the county road repair fund and make repairs upon a municipal street directly connected with a county road by another municipal street running at right angles from the street proposed to be repaired. This is true even though there are other indirect routes connecting said county road with the street proposed to be repaired, and even though the latter street also constitutes a continuation of a state road entering and leaving the municipality at points other than where said county road enters it."

In the opinion the then Attorney General said:

"Said section was inserted into the highway laws as an original enactment in 108 O. L., part I, p. 503, as part of an act making somewhat extensive amendments to the Highway Code. Previously to the enactment of the section, there was in force the following:

(Here follows the paragraph of Section 6952, General Code, as above quoted.)

From the tenor of your letter, it is supposed that any doubts which you may have as to the right of the commissioners to proceed under Section 6954, arises from the question whether Main street is to be treated on the one hand as a continuation and part of a state road, that is to say, the Lincoln Highway; or on the other hand, as a continuation and part of a county road, that is to say, the Jennings road.

It is probable that even though Main street were treated as a continuation and part of the Lincoln Highway, the county commissioners would have a right to make repairs thereon even aside from Section 6854, G. C., especially in the light of Section 1203, G. C., when read with the provisions already quoted from Section 6952, G. C. See in this connection an opinion of this office dated June 25, 1921, Opinions of Attorney General, 1921, Vol. 1, page 556. However, that matter need not be here definitely passed upon, since your inquiry, in the belief of this department, is to be affirmatively answered by direct reference to Section 6954 itself.

That section provides for two situations, (1) the repair of that portion of a county road extending into or through a municipal corporation; and (2) the repair of a part of a county road and a city or village street or streets extending into or through a municipal corporation and forming a continuous road improvement. If the Jennings road does not come within the first of these classes, it clearly comes within the second class. The map which you have submitted with your letter shows that the Jennings road enters Wayne street at an acute angle practically midway between two city streets which intersect Wayne street at right angles. While of course other roads than Wayne street might be followed to get to Main street from the end of the Jennings road where it enters Wayne street, yet the natural and shortest route is over Wayne street. Moreover, Wayne street is not only the logical right of way south from Main street to the end of the Jennings road, but is also, as shown by your letter, the way used in getting from Main street north to the Lincoln Highway where such highway leaves the city on the east. There can be no question, then, that Main street is just as much a continuation of the Jennings road, from a practical standpoint, as it is of the Lincoln Highway.

The word 'improvement' as used in Section 6954 is not to be taken in the narrow sense that a proposed repair must be continuous, but rather in the sense that a road proposed to be repaired in whole or in part is a continuous road. In other words, the commissioners would not be bound, in order to bring themselves within the terms of Section 6954, to repair the whole of Main street and Wayne street; but as long as those streets join in making a continuous road, the commissioners are authorized to repair the whole or any part of such continuous road.

Looking at the matter from another angle, even admitting that there might be doubt on the question whether Main street and Jennings road constitute a continuous road, because of the fact that there are other available routes from Main street to Jennings road, the commissioners would certainly not

be going beyond the sphere of a sound discretion in treating Main street, Wayne street, and the Jennings road as a continuous road, since, as already indicated, Wayne street constitutes the logical and no doubt the most traveled connecting link."

I concur in the conclusions of my predecessors as set forth in the two opinions above quoted and, for the reasons therein stated, in specific answer to your first question, it is my opinion that a board of county commissioners may lay out and establish a county road over a street already established within the limits of a municipal corporation, if such street be a continuation of a state or county road extending into or through such municipal corporation, or forms a continuous road improvement, in which case the consent of the council of said municipal corporation, evidenced by the proper legislation of council, must be first obtained. If a street within the limits of a municipal corporation be not a continuation of a state or county road, or does not form a continuous road improvement, county commissioners are without authority to lay out and establish such street.

2. I also find that the question presented in your second inquiry has been answered in former opinions of this department, viz., Opinion No. 900, rendered under date of December 24, 1919, reported in Opinions, Attorney General, 1919, Vol. II, p. 1622, and Opinion No. 2634, rendered under date of July 1, 1925, reported in Opinions, Attorney General, 1925, p. 471. The syllabus of the opinion rendered on December 24, 1919, reads as follows:

"1. County commissioners are by virtue of Sections 2421 and 7557 under the duty of keeping in repair those necessary bridges within the cities of the state which are over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use; and they are under a like duty as to similar bridges within those villages which do not demand and receive a portion of the bridge fund as authorized by Section 2421-1 (108 O. L. 259). If a village does demand and receive a portion of the bridge fund from the county, then the village is under the duty of maintaining such of the bridges mentioned as are wholly within the village.

2. Municipal corporations, both cities and villages, are under the duty of maintaining bridges on streets established by the city or village for the use and convenience of the municipality and not a part of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road.

3. Section 2421-1 (108 O. L. 259), in so far as it purports to grant to cities of under fifteen thousand population the right to request from the county a portion of the bridge fund, is in contravention of Section 1 of Article XVIII of the Constitution of Ohio, and to that extent is unconstitutional and void."

The first four paragraphs of the syllabus of the other of the opinions above cited reads as follows:

"1. It is the duty of county commissioners to construct necessary bridges in cities on state and county roads over streams and public canals.

2. It is the duty of county commissioners to maintain and repair bridges in cities on state and county roads over streams and public canals.

3. County commissioners have no authority over, nor duty to perform in connection with either the construction or maintenance and repair of bridges on streets established by the city for the use and convenience of the city and not a part of a state or county road.

4. It is the duty of a city to construct and repair necessary bridges on streets established by the city for the use and convenience of the city and not a part of a state or county road."

In the opinion of the then Attorney General, after quoting Sections 2421 and 7557 of the General Code, which respectively provide:

Sec. 2421. "The commissioners shall construct and keep in repair necessary bridges over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property therein. If they do not demand and receive a portion of the bridge tax, the commissioners shall construct and keep in repair all bridges in such cities and villages. The granting of the demand, made by any city or village for its portion of the bridge tax, shall be optional with the board of commissioners."

Sec. 7557. "The county commissioners shall cause to be constructed and kept in repair, as provided by law, all necessary bridges in villages and cities not having the right to demand and receive a portion of the bridge fund levied upon property within such corporations, on all state and county roads, free turnpikes, improved roads, transferred and abandoned turnpikes and plank roads, which are of general and public utility, running into or through such village or city."

and further quoting Sections 3629 and 3714, General Code, relating to the powers of municipal corporations, said as follows:

"As a first proposition, it may be stated that it is the duty of county commissioners to construct and keep in repair necessary bridges over streams and public canals on state and county roads and within the limits of a city. This proposition is sustained by a long line of well considered cases and opinions. The first paragraph of the syllabus of the case of Interurban Railway & Terminal Co. vs. The City of Cincinnati, 94 Ohio St. 269, reads:

'It is the duty of county commissioners to construct and keep in repair necessary bridges in cities and villages on state or county roads of general public utility running into or through such cities or villages.'

On page 275 of the opinion, Matthias, J., says:

"The provisions of Section 2421, General Code, impose upon the county commissioners the obligation to 'construct and keep in repair necessary bridges over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use,' and the provisions of Section 7557, General Code, specifically require the county commissioners to construct and keep in repair 'all necessary bridges * * * on all state and county roads, free turnpikes, improved roads, transferred and abandoned turnpikes and plank roads, which are of general and public utility, running into or through such villages or city.'

Both of the above sections make exception of bridges within cities and villages having the right to demand, and which do demand and receive, a portion of the bridge fund levied upon property within such corporation. Such exception, however, is no longer of any force or effect for the reason that there is now no statute authorizing any city or village to demand or receive any portion of the bridge fund created by county levy. Provision is made by Section 5635, General Code, for making a levy on the taxable property within the county for road and bridge purposes, and the county commissioners are required to set aside such portion as they deem proper to be applied for the building and repair of bridges which is called a 'bridge fund.'

As a second proposition, it may be stated that county commissioners have no authority over nor duty to perform in connection with the construction or repair of bridges on streets established by a city for the use and convenience of the city and not a part of a state or county road. This proposition is supported by authorities. The syllabus in the case of *City of Piqua vs. Geist*, 59 Ohio St., 163, reads:

'Under the amendment made February 8, 1894, of Section 860, revised statutes (91 laws, 19), county commissioners are not required to construct and keep in repair bridges over natural streams and public canals, on streets established by a city or village for the use and convenience of the municipality, and not a part of a state or county road, though the city or village receive no part of the bridge fund levied on the property within the same. It is the duty of the city or village to construct and keep in repair such bridges, and is liable in damages to one injured by its neglect to do so.'

Also to the same effect is the case of the *City of Newark vs. Jones*, 16 C. C. 563, the syllabus of which reads:

'In villages and cities not having the right to demand and receive any portion of the bridge fund levied upon property within such corporation, the county commissioners have the authority and duty to construct and maintain all necessary bridges in state and county roads, free turnpikes and plank roads, which are of general and public utility, running into and through any such village or city, but they have no authority to construct bridges in the streets, as such, of such villages and cities.'

As a third proposition, it is the duty of the city to construct and repair necessary bridges on streets established by a city for the use and convenience of the city and not a part of a state or county road.

In the opinion in the case of *Interurban Railway and Terminal Co. vs. City of Cincinnati*, supra, on page 278, commenting on the case of *City of Piqua vs. Geist*, supra, it is said:

'As there pointed out, it is the exclusive duty of the municipal authorities to construct and keep in repair any bridge which forms a part of a street established by a city which is not a part of a state or county road, and the county commissioners have no duty or responsibility whatever in respect to the construction and the care and maintenance of any such bridge.'

Your attention is further directed to the case of *The State ex rel. Bushnell vs. County Commissioners*, 107 O. S. 465, the syllabus of which reads:

"Sections 2421 and 7557, General Code, do not authorize the board of county commissioners to build bridges other than on established roads. Such board is without power to connect two state or county roads by a bridge, without first laying out and acquiring a road connecting such state or county roads. But where such board has been authorized by a vote of the electors under Section 5638, General Code, to expend in excess of \$18,000 in the con-

struction of a bridge on a given site connecting two state or county roads, it may thereafter lay out and acquire a road on such site, and then construct the bridge within the limitations of the authorization."

In the opinion after quoting Sections 2421 and 7557, *supra*, the court speaking through Judge Robinson, said as follows:

"It is conceded by counsel for the board of county commissioners that these sections do not authorize the board to build bridges other than 'over streams and public canals on state and county roads, free turnpikes, improved roads,' and over 'transferred and abandoned turnpikes and plank roads, which are of general and public utility,' whether within or without a municipality; but it is the contention of the defendant in error that the site of the proposed Huron-Lorain bridge is substantially upon two state roads, in that the western terminus of the bridge will rest upon such a road and the eastern terminus will rest near another such road, * * *.

That the Legislature has the power to authorize the board of county commissioners to so connect two distinct or county roads, and to do so without the formality of first creating a state or county road, making such connection with proper provision for compensation and damages for property taken or depreciated, must be conceded; but the Legislature does not appear to have done so, for it has provided that the commissioners shall construct and keep in repair necessary bridges over streams and public canals on state and county roads and that 'the county commissioners shall cause to be constructed and kept in repair * * * bridges in villages and cities * * * on all state and county roads.' Beyond that it has not gone.

This contemplated bridge cannot, by any stretch of the imagination, be held to be on either a county road or on two county roads, but the most that can be said for it is that it is to be between two county roads, where no connecting road theretofore existed. * * *"

Specifically answering your second question, upon the authorities above referred to, it is my opinion that the county commissioners are without authority to expend county funds in building bridges upon a street within the limits of a municipal corporation, unless such street be a continuation of a state or county road extending into or through such municipal corporation or forms a continuous road improvement.

Respectfully

EDWARD C. TURNER,
Attorney General.

1148.

GENERAL ASSEMBLY—NO MEMBER HAS RIGHT TO REPRESENT PRIVATE CLIENT FOR HIRE IN ANY MATTER THAT MAY LEGALLY COME BEFORE LEGISLATURE—MONEY PAID UNDER ILLEGAL CONTRACT MAY NOT BE RECOVERED.

SYLLABUS:

1. *No member of the legislature has the right to represent a private client for hire in any matter that might legally come before the legislature.*