

the rear thereof, that lies immediately in front of Lot No. 6, of the F. S. Lahm Addition, Portage Lakes; said lot having a frontage of thirty-six feet and being in Section 12, Franklin Township, Summit County, Ohio.

Upon examination of this lease, I find that the same has been properly executed by the Conservation Commissioner and by the above named lessee. I also find, upon an examination of the terms and provisions of this lease and of the conditions and restrictions therein contained, that the same are in conformity with section 471, General Code, under the authority of which this lease is executed, and with other sections of the General Code relating to leases of this kind.

I am accordingly approving this lease as to legality and form as is evidenced by my approval endorsed upon the lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,
 JOHN W. BRICKER,
Attorney General.

219.

ROAD CONSTRUCTION—COUNTY COMMISSIONERS NOT REQUIRED TO HAVE COMPETITIVE BIDDING WHERE THEY PURCHASE MATERIALS—COUNTY SURVEYOR SELECTS MATERIALS ONLY WHERE WORK DONE BY FORCE ACCOUNT.

SYLLABUS:

1. *The county commissioners are authorized by section 7214, General Code, to purchase materials for road repairs and construction, and in making such purchases, they are not required to let the contract therefor by competitive bidding.*

2. *The county surveyor has nothing to do with the kind of such materials so determined to be purchased, except where the county commissioners have authorized the surveyor to make the purchases for work that is to be done by force account.*

COLUMBUS, OHIO, March 17, 1933.

HON. A. L. CHATFIELD, *Prosecuting Attorney, McArthur, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“The commissioners of this county have referred to me the following question:—‘What is their authority in the purchasing of materials for road repairs and constructions?’

The question arises thus:—Our county contains limestone deposits, samples of which have been favorably passed upon by the authorities of the state as adaptable to the servicing repairs of roads. The commissioners desire to encourage the opening and continued existence of a quarry for the production of said limestone. They feel that by doing so, the cost of material as compared with former years will be lessened, and afford the additional advantage of giving employment to some of the many in this county who are seriously in need of relief. However, we do not have the capital to buy and operate such a plant. They wish to

encourage it as a private enterprise by purchasing such materials as is needed for road construction and repairs from this quarry. Unfortunately, the opinions of the attorneys general lack ten years of being up to date in this office, and I have been able to find but little authority on this subject. The material I have on hand leads me to believe, that the commissioners cannot enter a definite contract with the managers of said plant for the purchase of all their road material. If I am right in the opinion, can the commissioners purchase the material from them on jobs that are done by Force Accounts; and what, if any, limits as to the amounts exist as to Force Accounts wherein they have the privilege to buy this material without competitive bidding?

For some reasons as yet unknown, our surveyor does not seem to be in favor of this project. What, if any, authority can he exercise to prevent its being carried out?"

Section 7214, General Code, reads in part as follows:

"The county commissioners or township trustees may contract for and purchase such material as is necessary for the purpose of constructing, improving, maintaining or repairing any highways, bridges or culverts within the county, and also appropriate additional land necessary for cuts and fills together with a right of way to or from the same for the removal of material."

This section clearly gives the county commissioners the right to purchase materials for road repairs and construction. Section 7198, General Code, reads as follows:

"The county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account."

Under this section when work is done by force account, the county commissioners may authorize the county surveyor to purchase materials. Section 6948-1, General Code, provides when work may be done by force account. It reads as follows:

"Before undertaking the construction, reconstruction, widening, resurfacing, repair or improvement of a road, the county commissioners shall cause to be made by the county surveyor an estimate of the cost of such work, which estimate shall include labor, material, freight, fuel, hauling, use of machinery and equipment and all other items of cost and expense. If the county commissioners deem it for the best interest of the public they may, in lieu of constructing such work by contract, proceed to construct the same by force account. Where the total estimated cost of the work exceeds three thousand dollars per mile, the commissioners shall be required to invite and receive competitive bids for furnishing all the labor, materials and equipment and doing the work, as provided in section 6945 of the General Code, and to consider and to reject the same, before ordering the work done by force account. When such bids are received, considered and rejected, and the work done by force account; such work shall be performed in compliance with the

plans and specifications upon which the bids were based. The provisions of this section shall apply both to new construction and to repair work."

From these statutes it appears that county commissioners have the authority to purchase materials to be used in the construction of roads as well as the maintenance and repair thereof; that in work which they determine to do by force account, they either may purchase the materials themselves or may authorize the surveyor to make such purchases; and in making purchases of such materials, there is no requirement that they let the contract for such purchases by competitive bidding. This has been the consistent holding of this office. In Opinions of the Attorney General for 1916, Vol. I, page 882, the following is said:

"In so far as the repair of roads by the county commissioners is concerned, engineers, foremen, teams and laborers are to be employed by the county highway superintendent, the employment being first authorized by the county commissioners. County commissioners may purchase material for the repair of roads or they may authorize the county highway superintendent to make such purchase."

In Opinions of the Attorney General for 1927, Vol. III, page 2250, the following appears:

"Thus we find from the provisions of the sections of the code immediately above quoted (7198, 7200, 7214) that the county commissioners may purchase such machinery, tools, equipment, automobiles and material as may be necessary to construct, improve, maintain or repair the county roads, bridges and culverts, but nowhere in the statutes do we find authority vested in the county commissioners to employ laborers and teams.

It follows, then, that in the first instance the commissioners may exercise their discretion as to whether in proceeding under the provisions of Section 7198, supra, they will permit the county surveyor to purchase materials and lease equipment and tools or whether they themselves will purchase such materials and the machinery, equipment and tools that may be necessary in carrying on work by force account."

In Opinions of the Attorney General for 1928, Vol. IV, page 2564, it is held that county commissioners have legal authority to purchase materials for general use in connection with the construction of highways within their jurisdiction as well as to make such purchases for the improvement, maintenance and repair of such highways. In an opinion by my predecessor found in Opinions of the Attorney General for 1931, Vol. I, page 566, it is held that county commissioners have ample authority to purchase road materials such as stone and gravel without reference to the construction of any particular designated highway or improvement, and when such materials have already been so purchased and they later decide to construct a road, they may let a contract for the labor for a designated road construction at competitive bidding and stipulate that these materials be used by the successful bidder. The following opinions hold that there is no statutory provision which requires county commissioners in purchasing such materials to let the contracts for the same by competitive bidding: Opinions for 1916, Vol. I, pages 523 and 882, and for 1917, Vol. I, page 110. Of course,

before a valid purchase can be made, the fund should be properly provided and the auditor's certificate, as required by section 5625-33, General Code, should be furnished.

It should also be noted that section 2414, General Code, provides that where such purchase involves the expenditure of a thousand dollars or more twenty days must elapse after the introduction of the proposition before the expenditure can be made, unless such expenditure is agreed to by the unanimous consent of all the members present of the board. From the statutes above quoted, it also appears that the county surveyor has no part in the purchasing of such materials except where the county commissioners authorize him to purchase the same where the work is to be done by force account. Under sections 7184 and 7192, General Code, the surveyor has general charge of and supervises the construction and repair of roads, and under section 7187, he must approve all estimates which are paid from the county funds for the construction and repair of roads. This latter section was construed in my Opinion No. 32, addressed to the Bureau of Inspection and Supervision of Public Offices. These statutes, however, do not empower the surveyor to determine what materials must be purchased by the commissioners, but rather make it his duty to see that the materials so purchased comply with the contract. The commissioners may use their discretion as to the kind of materials to be purchased even though this does not meet the approval of the surveyor. In Opinions of the Attorney General for 1929, Vol. I, page 665, it was held that the commissioners, in the purchase of road machinery, tools and equipment, may use their discretion as to the make thereof, even though such make does not meet the approval of the county surveyor.

I am of the opinion therefore that,

1. The county commissioners are authorized by section 7214, General Code, to purchase materials for road repairs and construction, and in making such purchases, they are not required to let the contract therefor by competitive bidding.

2. The county surveyor has nothing to do with the kind of such materials so determined to be purchased, except where the county commissioners have authorized the surveyor to make the purchases for work that is to be done by force account.

Respectfully,

JOHN W. BRICKER,

Attorney General.

220.

COUNTY EDUCATIONAL EQUALIZATION FUND—HOW DISTRIBUTED
—DISTRIBUTION NOT AFFECTED BY A SUBSEQUENT REDUCTION
IN SALARY OF TEACHERS.

SYLLABUS:

1. *The distribution of the "county educational equalization fund" as directed by Section 7600 of the General Code of Ohio, in so far as the distribution attributable to teachers and other educational employes in a school district during any school year is concerned, should be based on the salary schedule adopted by the county board of education, and the number of teachers and employes fixed by said board in pursuance of its survey conducted by authority of said Section 7600, General Code, prior to the preceding first day of April, and certified to the several school districts of the county school district.*