

In view of the foregoing and answering your question specifically, I am of the opinion that a board of county commissioners has authority to purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highway, bridges and culverts under their jurisdiction as they may deem necessary, as authorized by Section 7200, General Code, without resorting to advertising or competitive bidding. While there is no legal requirement as to purchasing such equipment by competitive bidding, it is my opinion that under ordinary circumstances the interests of the public will be best served by inviting bids and awarding the contracts to the lowest responsible bidder.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2110.

COUNTY COMMISSIONERS—COMPELLED TO ACQUIRE RIGHT OF WAY
UNDER SECTION 1201, GENERAL CODE—FILING OF APPLICATION
FOR STATE AID IS PROCEEDING PENDING—NORTON-EDWARDS
ACT NOT APPLICABLE.

SYLLABUS:

Where an application for state aid has been filed under the provisions of Section 1191, General Code, prior to the effective date of House Bill No. 67 (112 O. L. 430) the filing of such application constitutes a proceeding which is pending within the meaning of Section 26 of the General Code of Ohio so that in all instances where it is necessary to acquire right of way for a road improvement it is the duty of the board of county commissioners to proceed under the provisions of former Section 1201, General Code, to acquire the requisite right of way.

COLUMBUS, OHIO, May 17, 1928.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication of recent date reading as follows:

“The State of Ohio is building a highway in Paulding County, participating in Federal Aid, and the same being a part of the Scenic Road from Toledo to Fort Wayne following the course of the Maumee River.

The proceedings to build this road started some time last year and a part of the work has been done at different points in Paulding County. It was the understanding between the commissioners of Paulding County and the State Highway Department that Paulding County was to furnish the right of way, this is to say, pay the expense of securing what extra right of way was needed.

At a certain point in Paulding County the road runs rather close to a high bank on the Maumee River where the river washes a great deal and it is desired to put the road back a little ways from the river close to a farmer's residence. This will crowd the premises in the vicinity of the farmer's house and the authorities are unable to agree as to the price to be paid for the lands to be taken which will be about one and a half acres.

Section 1201 provides the method of condemnation. Last year this section provided the county commissioners pass the resolution and make the finding and deposit the money in the Probate Court. This section has been amended so that beginning in January, 1928, the director is to do this instead of the county commissioners.

Question: Under these circumstances which law should govern as to the method of procedure in condemning this land? That is to say the present law or the law that was in force last year.

I am enclosing you a letter received from F. A. Daum, Division Engineer, which is self-explanatory and he seems to think that the commissioners and not the director should make the finding and start the proceedings, while it is my opinion that the present law governs and that the director should make the finding as to the amount to be paid and start proceeding in the Probate Court and causing notice to be given as therein provided.

The State Highway Department may call upon you for an opinion on this and in order to hasten matters I would request that you give me the opinion of your office on this point at an early date so that we can more promptly take action.

There is no controversy as to who is to buy the right of way as it is understood Paulding County is to furnish the money to pay for this."

It is noted that you state that the proceedings for the building of the road in question were started some time last year and that a part of the work upon different portions of the road has already been accomplished. From this statement, I am assuming that proceedings for the improvement of the portion of the road in question were instituted prior to the effective date of the Norton-Edwards Act. The question then arises whether under this state of facts the county commissioners should institute proceedings to acquire the necessary right of way or whether since the Norton-Edwards Act (House Bill No. 67) became effective, this duty is incumbent upon the Director of Highways.

Section 1201 of the General Code, in effect prior to the going into effect of the Norton-Edwards Act, provided as follows:

"If the line of the proposed improvement deviates from the existing highway, * * * the county commissioners or township trustees making application for such improvement must provide the requisite right of way. If the board of county commissioners or township trustees are unable to agree with the owner or owners of such land or property as may be necessary for such change or alteration, or if additional right of way is required for the same, and the county commissioners or township trustees are unable to agree with the owner or owners of the land or property in question, then the board of county commissioners or township trustees, as the case may be, may by resolution declare it necessary to condemn and appropriate for public use such land or property, and shall proceed to fix what they deem to be the value of such land or property sought to be condemned or appropriated, together with the damages to the residue, if any, and deposit the value thereof together with such damages with the Probate Court of the county for the use and benefit of such owner or owners, and thereupon the board of county commissioners or township trustees shall be authorized to take immediate possession of and enter upon said lands for the purpose aforesaid. The probate judge shall forthwith notify such owner or owners of the amount of

money deposited with him on account of the land or property sought to be condemned or appropriated and upon application of such owner or owners he shall turn over to them the amount of moneys so deposited with him on account of the land or property sought to be taken. The probate judge may cause notice of such action to be served upon such owner or owners by the sheriff or any other person that he may direct. Proof of service shall be made by affidavit of the person making such service. In case the owner or owners are non-residents, the probate judge shall give notice of the deposit of such money by publication for one week in some newspaper of general circulation in said county. A copy of such newspaper shall be forthwith mailed to such non-resident owner or owners, if their address is known to the Probate Court. If the address of such non-resident owner or owners is known, the date of mailing shall be considered the date of service, and if the address of such non-resident owner or owners is unknown, the date of publication shall be considered the date of service for the purpose of fixing the time for appeal. If the owner or owners of such land or property are not satisfied with the amount fixed by such county commissioners or township trustees, they shall, within ten days after the service of such notice of the allowance aforesaid, appeal to the Probate Court of the county in which such land or property, or some part thereof is located, and the Probate Court upon the filing of such appeal shall fix the appeal bond which shall be furnished within five days after the same is fixed by the court, and thereupon a jury shall be had in the manner provided for appeals in road cases.

* * * "

This section is a part of a series or group of statutes pertaining to state aid in the matter of improvement of inter-county highways and main market roads, beginning with Section 1178, General Code. Proceedings for the improvement of the road in question were instituted by the board of county commissioners by filing an application for state aid, as provided in former Section 1191, General Code. The matter of acquiring right of way is necessarily incident to and a part of the proceedings under this group of statutes in those instances where it is necessary to acquire right of way.

In passing upon the question of when a proceeding was pending so that all steps should be taken under the former law regardless of the provisions of the Norton-Edwards Act, this department in Opinion No. 776, addressed to Hon. George F. Schlesinger, Director of Highways and Public Works, on the 25th day of July, 1927, held:

"1. A proceeding is 'pending' within the meaning of Section 26 of the General Code when a board of county commissioners makes application for state aid under the provisions of Section 1191 of the General Code, and such a proceeding may be completed under the present law after the effective date of House Bill No. 67, passed by the Eighty-seventh General Assembly (Norton-Edwards Act).

2. A board of county commissioners or a board of township trustees contracts an obligation within the meaning of Section 91 of House Bill No. 67 at such time as it files an application under Section 1191 of the General Code for state aid, in that by filing such application a board of county commissioners or a board of township trustees agrees to pay one-half of the cost of surveys and other preliminary expenses incident to the construction, improvement, maintenance or repair of an inter-county highway or main market road."

It follows, therefore, that in the present case, inasmuch as the county commissioners filed an application for state aid prior to the going into effect of the Norton-Edwards Act, it is the duty of the board of county commissioners to institute the necessary proceedings in the Probate Court for the acquiring of the necessary right of way. It is observed under the provisions of Section 1201, supra, the following language is used:

"If the line of the proposed improvement deviates from the existing highway * * * , the county commissioners or township trustees must provide the requisite right of way."

The Supreme Court of Ohio in the case of *Uncapher vs. Curl, et al.*, 116 O. S. 705, in considering the meaning of this section, held as follows:

"When in the construction of an inter-county highway by state aid under Section 1191 et seq., General Code, it becomes necessary to widen the existing highway by taking property of an adjoining landowner, the commissioners of the county in which such highway is located must provide the requisite right of way for such deviation from the boundaries of the existing highway, and are authorized by Section 1201, General Code, to pay 'the owner or owners of such land or property as may be necessary for such change or alteration' the value of such land or property so taken."

On pages 708 and 709 of this opinion, appears the following discussion:

"Under the construction that we give Section 1201, General Code, it should not be confined to simply the straightening of curves and the changing of the line around hills or other obstructions; but the intent of the Legislature was to require the county commissioners to provide the requisite right of way for the proposed improvement if additional land outside the existing highway was required to complete such improvement. Whenever the boundaries of the existing highway were departed from, that was a deviation from such highway, in a broad and liberal sense of the word, and to give it any more restricted meaning and confine the word 'deviate' to a change in the line of the road for the purposes of eliminating curves, angles, or grades is to give the section too narrow a construction. If such a construction is given as does not permit paying compensation for property taken in placing the line of the proposed improvement at some other point outside the existing highway and property is so taken without compensation, there is clearly a violation of a constitutional right.

It is our duty to attribute to the Legislature an intention to enact a valid and constitutional law, and to give such construction to its enactments as will not be inconsistent with constitutional guaranty. Our conclusion, therefore, is that under Section 1201, General Code, power is granted to the commissioners in providing a requisite right of way for the improvement in question to make proper compensation to the owner of private property taken for such public purpose. We are not unmindful of the rule that a board of county commissioners is not liable for its acts 'in * * discharge of its official duties, except in so far as such liability is created by statute, and such liability shall not be extended beyond the clear import of the terms of the statutes.' *Weiher vs. Phillips*, 103 Ohio St., 249, 133 N. E., 67."

Therefore, answering your question specifically, it is my opinion that where an application for state aid has been filed under the provisions of Section 1191, General

Code, prior to the effective date of House Bill No. 67, to wit, the second day of January, 1928, the filing of such application constitutes a proceeding which is pending within the meaning of Section 26 of the General Code, so that in all instances where it is necessary to acquire right of way for a road improvement, it is the duty of the board of county commissioners to proceed under the provisions of former Section 1201, General Code, for the acquiring of the requisite right of way.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2111.

CHIROPRACTOR—CITY MAY PAY LICENSED CHIROPRACTOR FOR SERVICES RENDERED TO INDIGENT POOR—MAY NOT PAY UNLICENSED CHIROPRACTOR—SECTION 3480, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *A city may legally pay a licensed chiropractor for services rendered to indigent poor under the provisions of Section 3480, General Code, provided the services rendered fall within the limitations of the practice of such limited branch of medicine as prescribed by the General Code of Ohio.*

2. *A city may not legally pay a non-licensed chiropractor for rendering such services.*

COLUMBUS, OHIO, May 17, 1928.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication, which reads as follows:

“Section 3480, G. C., authorizes the employment of a physician or surgeon in connection with the relief of indigent persons in a township or municipal corporation.

Question 1. May a city legally pay for services rendered to indigent (poor) by a licensed chiropractor?

Question 2. May a city legally pay for services rendered to indigent (poor) by a non-licensed chiropractor?”

Section 3480, General Code, to which you refer, provides:

“When a person in a township or municipal corporation requires public relief, or the services of a physician or surgeon, complaint thereof shall be forthwith made by a person having knowledge of the fact to the township trustees, or proper municipal officer. If medical services are required, and no physician or surgeon is regularly employed by contract to furnish medical attendance to such poor, the physician called or attending shall immediately notify such trustees or officer, in writing, that he is attending such person, and thereupon the township or municipal corporation shall be liable for relief and services thereafter rendered such person, in such amount as such trustees