

32.

APPROVAL, BONDS OF BROOKVILLE VILLAGE SCHOOL DISTRICT,
MONTGOMERY COUNTY, OHIO—\$9,900.00.

COLUMBUS, OHIO, January 18, 1933.

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

33.

APPROVAL, NOTES OF KILLBUCK VILLAGE SCHOOL DISTRICT,
HOLMES COUNTY, OHIO—\$3,000.00.

COLUMBUS, OHIO, January 18, 1933.

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

34.

COUNTY ROADS—PAYMENT OF COST OF MATERIALS USED IN CON-
STRUCTION OF SUCH CONTINGENT UPON APPROVAL OF
COUNTY SURVEYOR.

SYLLABUS:

Bills or estimates of cost for materials furnished by a contractor pursuant to a contract with the county for the construction of a road, must be presented to and approved by the county surveyor as required by Section 7187, General Code, before the same may be paid by the county auditor.

COLUMBUS, OHIO, JANUARY 18, 1933.

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

GENTLEMEN:—Your recent request for opinion, reads:

“Where the county commissioners have let a contract to the lowest bidder for furnishing stone, delivered on certain roads in the county, and after the stone has been delivered the county surveyor refuses to approve the bills for payment at the contract price, on the ground that the stone is not up to specifications, have the county commissioners authority to allow and order the auditor to pay for such stone, without the approval of the county surveyor?”

Section 6911 of the General Code, in so far as is material to your inquiry, reads as follows:

“The board of county commissioners may by resolution, which said resolution shall be adopted by a unanimous vote, find that the public con-

venience and welfare require the improving of any public road or part thereof by grading, draining, paving, straightening or widening the same and constructing or reconstructing any bridges and culverts necessary for such improvement, and in said resolution shall fix the route and termini of such improvement, and shall apportion the cost thereof, which apportionment may be made upon different bases for various portions of any road to be improved, which shall be apportioned and paid in any one of the methods provided for by Section 6919 of the General Code.

They shall in said resolution order the county surveyor to prepare the necessary surveys, plans, profiles, cross-sections, estimates of cost and specifications for said improvement as may be necessary, * * *."

Section 6947-1, General Code, relative to road construction and improvement by county commissioners, reads in part as follows:

"The payment of the cost of the construction of such improvement shall be made as the work progresses upon estimates made by the county surveyor."

Section 6947-1a, General Code, provides in part:

"In addition to the estimates provided for by section 6947-1 of the General Code, the county surveyor may also, if he deem it proper and under such conditions as he may prescribe, allow and pay to a contractor a sum not exceeding ninety per cent of the value of material delivered by such contractor, and safely stored at a railroad station or siding, or other point in the vicinity of the work."

Section 7187, General Code, reads in part as follows:

"* * * The county surveyor shall approve all estimates which are paid from county funds for the construction, improvement, maintenance and repair of roads and bridges by the county. * * *"

It is clear from the provisions of section 7187, supra, that the county surveyor must approve the estimates for the construction of roads by the county before the same can be paid from county funds.

I am not unmindful of the fact that section 7203, General Code, authorizes, among other things, the purchase by the county commissioners from any public institution within the state of any road material, etc., quarried, mined, etc., by such institution. However, section 7187, General Code, is clear in its import and before any estimate may be paid from county funds, the same must be approved by the county surveyor. Of course if such consent is withheld capriciously, adequate legal remedy is afforded through sections 12283, et seq., and section 2790, General Code.

In view of the foregoing and in specific answer to your inquiry, I am of the opinion that bills or estimates of cost for materials furnished by a contractor, pursuant to a contract with the county for the construction of a road, must be

presented to and approved by the county surveyor as required by section 7187, General Code, before the same may be paid by the county auditor.

Respectfully,

JOHN W. BRICKER,
Attorney General.

35.

APPROVAL, NOTES OF COLERAIN TOWNSHIP RURAL SCHOOL DISTRICT, BELMONT COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, January 18, 1933.

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

36.

APPROVAL, BONDS OF VILLAGE OF UNIVERSITY HEIGHTS, CUYA-HOGA COUNTY, OHIO—\$19,500.00.

COLUMBUS, OHIO, January 19, 1933.

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

37.

APPROVAL, BONDS OF ALLIANCE CITY SCHOOL DISTRICT, STARK COUNTY, OHIO—\$28,000.00.

COLUMBUS, OHIO, January 19, 1933.

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

36.

APPROVAL, NOTES OF BARBERTON CITY SCHOOL DISTRICT, SUMMIT COUNTY, OHIO—\$42,000.00.

COLUMBUS, OHIO, January 19, 1933.

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