

pendent of that of any other building, except as provided in section 2; and wherever available every building shall have an independent connection with a public or private sewer."

The express provision in the foregoing section, that every building shall have an independent connection with a public or private sewer whenever such sewer is available, is in my opinion dispositive of your inquiry. The reference is to "every building," and this manifestly includes private dwellings.

It is accordingly my opinion that section 12600-171, General Code, requires buildings used for residential purposes, abutting upon a street where a public sewer is accessible, to have connection with such sewer.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3139.

COUNTY SURVEYOR—POSSESSES SOLE RIGHT TO FIX WAGE SCALE OF LABORERS HIRED BY HIM TO CONSTRUCT OR IMPROVE A ROAD BY FORCE ACCOUNT, AFTER COUNTY COMMISSIONERS AUTHORIZE SUCH IMPROVEMENT.

SYLLABUS:

When the county commissioners have authorized the surveyor to construct or improve a road by force account, under the provisions of Section 7198 of the General Code, the surveyor has the sole power to contract with laborers with reference to the construction of such improvement, and the approval of the county commissioners is not required as a condition precedent to the payment of such wages.

COLUMBUS, OHIO, April 10, 1931.

HON. F. H. BUCKINGHAM, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"Please refer to your Opinion numbered 2106, dated July 18, 1930, regarding right of surveyor to employ necessary laborers for the prosecution of work done by force account; also your letter dated September 29, 1930, addressed to George E. Schroth, Jr., Prosecuting Attorney, Tiffin, Ohio, regarding the same question.

The surveyor and county commissioners of Sandusky County have a like controversy, but dissimilar in the following particulars:

The surveyor contends that he not only has the right to employ necessary laborers for the prosecution of the work done by force account as shown in your Opinion numbered 2106, dated July 18, 1930, but that he also has the right to fix the wage scale, or the amount of money that is paid to said employees.

It has been the practice of the county commissioners of this county in the past, to pass a resolution fixing the amount of the wages to be paid to all employees in the surveyor's office doing this kind of work, and they contend that they have the right to fix the schedule of wages to be paid the said employees, and that is the schedule of wages that must be adopted by the surveyor.

As a result of this controversy the county commissioners have passed a resolution reducing the schedule of wages ten cents per hour, and the county surveyor has refused to reduce the wages as directed by the commissioners, and has submitted his pay-roll on the same schedule of wages as in the past, which pay-roll the county commissioners have refused to sign and O. K., and the money of the employees is thereby held up.

Will you kindly advise as possible who is right, in your opinion, and what should be done to straighten out this controversy?"

In Opinion 2106, to which you refer, it was held as disclosed by the syllabus:

"In the maintenance and repair of county roads which is authorized by the county commissioners to be done by force account and without contract, the employment of the necessary laborers for the prosecution of the work rests with the county surveyor and not with the county commissioners."

This conclusion was in accordance with an opinion found in Opinions of the Attorney General for 1927 at page 466, in which it was held, as disclosed by the syllabus:

"1. In the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account, the county surveyor may when authorized by the county commissioners, employ such laborers and teams as may be necessary.

2. The word 'laborers' as used in Section 7198, General Code, should be liberally construed to effect the purpose intended, and includes such foremen, laborers, engineers, mechanics and other persons as may be necessary efficiently to accomplish the road work in question."

In view of the thoroughness of opinion 2106, to which you refer, it is believed unnecessary to discuss in detail the various statutes considered in connection with the conclusion reached.

It is very apparent that under the circumstances noted above, the county surveyor employs the necessary laborers for the prosecution of the work and the county commissioners have nothing to do with the making of such a contract. As pointed out in Opinion 2106, the compensation would of course have to be paid from an appropriation made by the county commissioners for such purpose.

The question your letter presents, however, is whether under the provisions of section 2460, General Code, the county commissioners must allow such payroll before it may be paid. Said section reads:

"No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal, in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim. No public money shall be disbursed by the county commissioners, or any of them, but shall be disbursed by the county treasurer, upon the warrant of the county auditor, specifying the name of the party entitled thereto, on what account, and upon whose allowance, if not fixed by law."

In view of the section last quoted, the question presented by your inquiry, is whether or not the contracts entered into by the surveyor in employing laborers under the provisions of section 7198, General Code, constitute an exception to

the general provisions of said Section 2460. In other words, is the amount due on such a contract "authorized to be fixed by some other person or tribunal" than the county commissioners within the meaning of the section? In connection with this question, you are referred to Ohio Jurisprudence, Volume 11, page 587, which contains a comprehensive discussion of the subject. The following appears in Section 315 thereof:

"The grant of power to county commissioners to pass upon claims is somewhat narrow, despite its general character. * * * * * They have no authority to intervene if the amount due is fixed by law, or if, under the law, the claim is to be fixed by some other person or tribunal, and a warrant for its payment issued upon the certificate of such person or tribunal."

In the case of *Clark County v. The A. Bentley & Sons Company*, 103 O. S., 443, the question was raised as to the necessity of the allowance by the county commissioners in connection with the payment for a public building being constructed in pursuance of a contract made by the memorial building trustees. The following is quoted from said opinion:

"It is urged that it was necessary under the provisions of Section 2460, General Code, to present the claim sued upon to the county commissioners for allowance or rejection. That section can have no application to the situation here presented, for we are here dealing with a contract duly made and executed by the memorial trustees under express authority of particular and definite provisions of the statute, which must be regarded as constituting an exception to the provisions of Section 2460, General Code. The memorial building trustees were expressly authorized and empowered to act in the matter and they did determine the amount of the claim and the same was approved and allowed by them. There could be no reason for requiring the presentation of a claim based upon such express contract clearly authorized as a condition precedent to bringing action thereon."

It is obvious that if the county commissioners should by resolution determine the wage scale and refuse to approve a claim which is not in accordance with their demands, such action is in effect, the making of the contract. Section 7198, General Code, expressly authorizes the surveyor when authorized by the county commissioners, to employ such laborers.

In view of the foregoing, it is believed that a fair construction of the statute requires the conclusion that the county surveyor has the sole power to enter into contracts with laborers for such purpose and when the same have been properly made, the county commissioners have nothing to do with the allowance of the claim. Of course, as hereinbefore indicated, the county commissioners must make an appropriation for the surveyor and in the absence of the same, the surveyor would be unauthorized to enter into a contract. Moreover, the commissioners must authorize the construction or improvement by force account before the surveyor may proceed by that method. However, when the authority has been given the sole power is left with the surveyor as to how much shall be paid.

Based on the foregoing, and in specific answer to your inquiry, it is my opinion that when the county commissioners have authorized the surveyor to construct or improve a road by force account, under the provisions of Section 7198 of the General Code, the surveyor has the sole power to contract with laborers

with reference to the construction of such improvement, and the approval of the county commissioners is not required as a condition precedent to the payment of such wages.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3140.

BRIDGES—POWER OF COUNTY COMMISSIONERS TO RECONSTRUCT
AND REPLACE BY FORCE ACCOUNT UNDER SECTION 7198, GEN-
ERAL CODE.

SYLLABUS:

Power of county commissioners to construct bridge by force account under section 7198, General Code, discussed.

COLUMBUS, OHIO, April 10, 1931.

HON. SAM J. HETZLER, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads:

“The County Commissioners of Shelby County, O., have on hand the reconstruction and the replacing of two bridges, the reconstruction job is one involving the sum of \$3500.00.

The Commissioners have been offered, what seems to be in their opinion, an extraordinary value in a second-hand or used bridge, to be used on the replacement location and can be done for about \$6,000.00. The Commissioners feel that this is a particular instance where it would be impracticable to proceed under General Code, Secs. 2343 to 2361, and that it would be to the best public interest to proceed under Sec. 7198. (The County Surveyor advises that to build the same projects new it would cost between \$18,000.00 and \$20,000.00.)

There is no emergency existing in these bridge cases and there is no particular public demand for the reconstruction of these bridges, so in the face of these facts, I desire to be advised whether or not the Attorney General's Department considers it legal to proceed under Sec. 7198.”

Section 7198 of the General Code, to which you refer, reads:

“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.”

It would seem that the exercise of the power granted in the section above quoted is not dependent upon there being an emergency. In other words, the commissioners in their discretion determine whether the surveyor may proceed by force account. In this connection, it may be noted that the Attorney General in an opinion found in Opinions of the Attorney General for 1921, at page 822, in considering section 7198, *supra*, recommended that public authorities follow the competitive bidding system unless adherence thereto is in particular instances either impracticable or against the public interest. It would therefore appear that it is in the discretion of the commissioners as to whether or not they will