

First Tract. Being the southwest quarter of the southwest quarter of section No. 11, township No. 11, range No. 18, containing 40 acres, more or less.

Second Tract. Being the west half of the northwest quarter of section No. 14, township No. 11, range No. 18, except 15 acres, more or less, heretofore sold and conveyed to Lewis Huffines, leaving 66 acres, more or less.

Third Tract. Being the north half of the east half of the northeast quarter of section No. 15, township No. 11, Range No. 18, containing 40 acres, more or less.

Upon examination of said abstract, I am of the opinion that same shows a good and merchantable title to said premises in Jacob C. Bainter and Lavona Bainter, his daughter, unmarried. The abstract indicates that the taxes for the entire year of 1924 have been fully paid, and no other assessments or liens of any kind appear.

The warranty deed as submitted appears to be in proper form, and already executed by said Jacob C. Bainter and Lavona Bainter. However, it will be noted that the warranty deed does not indicate anything with reference to the wife of Jacob C. Bainter, and I am advised that Jacob C. Bainter has a wife now living, and that she declines to sign the deed or in any way release her right or expectancy of dower in the premises conveyed.

In view of this situation, and to cure same, it has been suggested that said grantor, Jacob C. Bainter, be required to execute to the state of Ohio a good and sufficient bond to protect the state against the possible future assertion of the dower right of said wife of Jacob C. Bainter. In accordance with this suggestion, this department has prepared and had executed a bond to cover this situation, the bond in question being attached to the abstract herewith returned to your department.

The encumbrance estimate submitted bears No. 5645, is dated January 26, 1925, and covers 146 acres of land situated in Benton township, Hocking county, Ohio, at an estimated cost of \$4,000.00 and is certified in regular form by Wilbur E. Baker, director of finance, under date of January 28, 1925.

The abstract, with the above referred to bond attached, the warranty deed and encumbrance estimate submitted by you, are herewith returned.

Respectfully,

C. C. CRABBE,

Attorney General.

2572.

HIGHWAYS—STATE AID ROAD LAW (GREEN LAW) CONSTRUED.

SYLLABUS:

1. *The provisions of section 6971 of the General Code, relating to the amount which shall be appropriated for the use of each township, under the provisions of the Green Law, sections 6965 to 6972, both inclusive, of the General Code, 110 Ohio laws, 267, are modified by the provisions of the appropriation act contained in enacted amended house bill No. 517 of the eighty-sixth general assembly.*

2. *Under the provisions of said appropriation act, no township may receive in excess of one thousand dollars per year as state aid.*

3. *The amount of state money available annually per township for aid under the Green law is to be determined by dividing the appropriation by the total number of townships in the state.*

4. *The appropriation for the secondary highway system is made to or for the use and benefit of the township.*

5. *In the event the proceedings are not had whereby the appropriation is made available for the use of a part of the townships during the first year of the biennium covered by the appropriation, the counties in which proceedings are had whereby the appropriation is made available for the use and benefit of the townships during the first year of the biennium may not draw, during such first year, the proportion of the appropriation for the second year of the biennium to which such counties would be entitled.*

6. *Counties which make no application for aid during the first year of the biennium will be entitled, upon application, to the full proportion of both the first year appropriation and second year appropriation during the second year of the biennium.*

7. *That part of the appropriation which would be available for the use in the townships of a county, but for which no application is made, may not be divided among the counties making application.*

COLUMBUS, OHIO, June 17, 1925.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads:

“Your opinion is desired on certain points concerning the operation of what is known as ‘The Green Law,’ dealing with state aid on a county system of highways. This law was passed by the 85th general assembly and is contained in sections 6965 to 6972 of the General Code.

“The following points are those on which your ruling is now desired:

“1. Section 6971 states * * * there shall be appropriated—in no event less than one thousand dollars or more than two thousand dollars per township per annum. The appropriation bill enacted by the 86th general assembly appropriates \$350,000 for each year for the biennium. The following language is used in the appropriation: ‘to be distributed in manner provided by sections 6965 to 6972, General Code, (110 O. L. 267). No township to receive in excess of \$1,000 per year as state aid.’

Does the appropriation act modify the general law to the extent of limiting the amount to be spent out of the present appropriation to \$1,000 per township per annum?

“2. Is the amount of state money available annually per township to be determined by dividing the appropriation by the total number of townships in the state, or by dividing the appropriation by the total number of townships in the counties who elect to operate under the provisions of this law, or by dividing the appropriation by the total number of participating townships in the counties who proceed to improve the roads under this statute?

“3. In the event that only a part of the counties in the state qualify for state funds during the first year of the biennium, can the eligible counties draw all the funds during the first year, which will accrue to them during the two year period, providing neither the limit per township per annum or the total annual appropriation are exceeded? If a county does not desire

to operate under this law during the first year of the biennium but does desire to do so the second year, can its first year's funds be held for it until the second year and the two years money be paid by the state during the second year of the appropriations period?"

The Green law, referred to by you, is contained in enacted house bill No. 47 of the eighty-fifth general assembly, entitled "An act to afford relief to townships by providing for the creation of a system of county highways in each county of the state and authorizing state aid in the construction thereof." This act is contained in code sectional numbers from section 6965 to 6972, both inclusive, of the General Code, and is found in 110 Ohio laws, page 267. The appropriation to which you refer is found in the general appropriation bill, being enacted amended house bill No. 517 of the eighty-sixth general assembly, passed April 15, 1925.

The first paragraph of section 6965 of the General Code reads:

"There shall be created in each county within the state a system of county highways, which system shall be selected and determined in the following manner, to-wit: * * *."

The section then provides for setting forth, among other things, the relative value of each road in each township by the township trustees, upon the request and under the direction of the county commissioners, in the form of a report, which report shall be made within sixty days after taking effect of the act. The section further provides:

"It shall be the duty of all boards of county commissioners to request the report herein provided for from each board of township trustees within their county as soon after the taking effect of this act as the necessary blank forms and maps may be conveniently prepared, and it shall be the duty of all boards of township trustees to promptly make the reports herein provided for, it being the intent and purpose of this section that all the duties herein required to be performed by county commissioners and township trustees shall be completed within sixty days after the taking effect of this act."

The first part of section 6966 of the General Code reads:

"It shall be the duty of the board of county commissioners of each county to determine from the statistics and information furnished by the several boards of township trustees within such county the relative importance and value for traffic of the various public highways of the entire county. They shall begin work as soon as the necessary information is furnished by the several boards of township trustees within the county, and after a careful review and consideration of the information furnished by such trustees, shall select and designate a connected system of county highways of such mileage as they may deem proper and expedient * * *. Such system of highways when selected and designated by the commissioners in the manner herein prescribed shall be known as the system of county highways of said county and all the roads composing such system shall thereafter be known and designated as county roads."

The section then provides for the preparation of a map showing the system of county highways as selected and designated, a copy of which shall be transmitted

to the director of highways and public works, who, if he finds that the terms of the act have been substantially complied with, shall approve such system and certify his approval to the board of county commissioners.

The section further provides that

“The system of roads designated upon said map shall thereupon become the system of county roads of said county.”

Section 6967 of the General Code in substance provides: (1) For the application in writing to the county commissioners for the construction, reconstruction or improvement of any section of highway in the county system; (2) That if the application is approved by the county commissioners, they shall direct the county surveyor to make the necessary plans and estimates; (3) That if the plans and estimates are approved, the costs shall be paid in the following manner; (a) The county shall pay not less than five hundred dollars per mile; (b) The township shall pay not less than five hundred dollars per mile; (c) Subject to the limitations contained in (a) and (b), the exact proportions of the cost to be paid by the county and township shall be determined by agreement between the commissioners and trustees; (d) Fifty per cent of the cost, but in no event more than two thousand dollars per mile, shall be specially assessed.

Under the provisions of section 6968, General Code, there is a procedure outlined leading up to the execution of a contract for the improvement.

Section 6970 of the General Code reads:

“Immediately upon the execution of any contract under the provisions of this act the county commissioners shall cause to be made a certificate setting forth the number and section designations of the road covered by such contract, the mileage of such section to be improved, the contract price for such improvement, and the name of the township in which such improvement is situated, together with such other facts as the auditor of state of the state of Ohio may prescribe. Each such certificate shall be forthwith transmitted to the auditor of state of the state of Ohio, together with a written endorsement thereon by the prosecuting attorney of the county that the contract in question has been let in conformity with the provisions of this act. Upon receipt of such certificate with the endorsement of the prosecuting attorney thereon, the auditor of state shall draw his warrant upon the treasurer of state against any appropriations from the general revenue fund made by the general assembly for state aid in the construction, reconstruction or improvement of county highways and apportioned to said county and unexpended, and shall make said warrant payable to the treasurer of said county and forthwith transmit the same to him. The amount so remitted shall be by the county treasurer placed in a special fund for the construction of said improvement and shall be expended for that and no other purpose. The certificate required to be made by section 5660 of the General Code of Ohio shall not be required as to any funds in the state treasury appropriated to aid counties in the construction, reconstruction or improvement of county highway systems and apportioned to any particular township, and designated by the county commissioners of a county for use therein. Where work is done by force account, the certificate to the auditor of state herein provided for shall be issued after the county, township and property owners' shares of the funds have been provided, and at the time the order to do the work is made by the county commissioners.”

Section 6971 of the General Code reads:

"For the purpose of encouraging the construction of a secondary or county system of highways and rendering effective the foregoing sections and extending necessary state aid in the construction, reconstruction or improvement of the several systems of county highways, there shall be appropriated by the general assembly out of the general revenue fund of the state for use annually in each township within the state of Ohio under the provisions of this act such sum as shall be deemed just and reasonable, but in no event less than one thousand dollars or more than two thousand dollars per township per annum. All aid furnished by the state under the provisions of the foregoing sections shall be paid from such appropriations."

The appropriation to which you refer follows a general sub-heading "Secondary Highway System" and is contained in an item entitled "H-S, Contributions," and appropriated in each the first year and second year column the sum of \$350,000, and is followed by the following provision:

"To be distributed in manner provided by sections 6965 to 6972, General Code, (110 Ohio laws, 267), no township to receive in excess of one thousand dollars per year as state aid."

As hereinbefore noted, the appropriation act referred to is a later enactment than the Green law and its provisions, which conflict with the former enactment, are controlling and, to the extent to which there is a conflict, the later enactment modifies the provisions of the former.

Your attention is also directed to the last sentence of the first paragraph of section 1 of the appropriation act. The sentence reads:

"The sums herein appropriated in the column designated 'first year' or in the column designated 'biennium' shall not be expended to pay liabilities or deficiencies existing prior to July 1, 1925, or incurred subsequent to June 30, 1927; those so appropriated in the column designated 'second year' shall not be expended prior to July 1, 1926, nor to pay liabilities incurred subsequent to June 30, 1927."

The appropriation involved is a first year and a second year appropriation and while, under the provisions of the above quotation, the appropriation in the second year column is not available during the first year of the biennium, the appropriation in the first year column is available at any time during the biennium. This conclusion is in no way modified by the provisions of section 6971 of the General Code, the provisions of this section going to the amount per annum to be appropriated to each township rather than to the time of the expenditure of the appropriation.

It is believed that the Green law contemplates that a county system of highways be designated and established in each of the counties of the state. As hereinbefore noted, the first sentence of the act provides that "there shall be created in each county within the state a system of county highways."

Section 6966 of the General Code prescribes a series of mandatory duties upon the county commissioners and other officials leading up to the designation and establishment of such system. These provisions apply to the county commissioners and other officials in each county of the state.

It is further believed that the appropriation is made to or for the use and benefit of each township in the state.

It will be noted, by reference to section 6971 of the General Code, hereinbefore quoted, that it is provided that

"There shall be appropriated by the general assembly, out of the general revenue fund of the state, *for use annually in each township within the state of Ohio*, under the provisions of this act, such sum as shall be deemed just and reasonable."

The provision of the appropriation act, quoted above, recognizes the township as the unit.

While by the provisions of section 6967 of the General Code it is discretionary with the township trustees whether or not the particular township shall make application for an improvement, and by the provisions of section 6969, General Code, discretionary with the county commissioners whether or not they proceed independent of township cooperation in the event that the township trustees fail to make application under the provisions of the act, there is no provision of the act whereby that part of the appropriation to which a township failing to so apply would have been entitled had application been made, or to which such township would have been entitled had the county commissioners determined to and had proceeded independent of township cooperation, shall be distributed to other townships of the state which have, in either of the two methods referred to, proceeded in such manner under the provisions of the act whereby such other townships are qualified to receive state aid under the act.

It would follow and you are advised that the provision of the general appropriation act referred to modifies the provisions of section 6971 relating to the amount which shall be appropriated for the use of each township under the provisions of the Green law, to the extent that the amount of state money made available per township is limited in any event to one thousand dollars per annum; that the amount of state money available annually per township is to be determined by dividing the appropriation by the total number of townships in the state; that a county may not draw the whole part of the appropriation for both the first year and the second year during the first year of the biennium, but that a county making application for state aid during the first year will be limited in amount of state aid to the proportion to which such county would be entitled of the appropriation available during the first year of the biennium.

On the other hand, a county which made no application for and was not awarded state aid during the first year of the biennium would be entitled to receive its full proper proportion of both the first year and the second year appropriation, upon such application, during the second year of the biennium. That part of the appropriation which would be available for use in the townships of a county, but for which no application is made, may not be divided among the counties making application.

Respectfully,
C. C. CRABBE,
Attorney General.