

are in proper form, correctly computed and duly approved. As this question is not before me, however, I give it no consideration.

In view of the foregoing, and in specific answer to your inquiry, I am of the opinion that the Council of the City of Cleveland may legally delegate to the Director of Law authority to compromise and settle claims for damages against the city, and make a lump sum appropriation from which such claims may be paid.

Respectfully,

EDWARD C. TURNER,  
Attorney General.

2441.

STATE AID—PENDING PROCEEDING—OPINION NO. 2110 APPROVED  
AND FOLLOWED.

*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. (Opinion No. 2110, dated May 17, 1928, approved and followed.)*

COLUMBUS, OHIO, August 15, 1928.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

DEAR SIR:—This will acknowledge your letter of August 10, 1928, as follows:

“Prior to January 1, 1928, the board of county commissioners of Brown County made an agreement with the state department of highways to procure a right of way through said county for the state highway department.

Certain owners of land abutting upon said highway refused to waive claims of compensation and damages to their lands and no agreement could be reached between them and county commissioners.

Thereupon the state department of highways advised that they would not construct said road unless right of way was procured by county according to original agreement. The state department of highways, through their legal advisor, advised the board of commissioners to proceed under Section 1201, G. C., as it stood prior to January 1, 1928, when the Norton-Edwards act went into effect.

This question has arisen under said proceeding in the probate court: Does Section 1201, G. C., as passed in the Norton-Edwards act, wherein former Section 1201, G. C., was specifically repealed, apply to this action or, inasmuch as the agreement between the state highway department and the board of county commissioners was made prior to January 1, 1928, does the former Section 1201, G. C., yet apply?

The former Section 1201, G. C., gives the commissioners alone right to start condemnation proceedings while latter Section 1201, G. C., repeals for-

mer section and gives only the highway director the right to condemn private property for road purposes."

The precise question which you raise has already been passed upon by this department in Opinion No. 2110, dated May 17, 1928, addressed to Hon. Mervin Day, Prosecuting Attorney, Paulding, Ohio. Since this opinion sufficiently answers your inquiry, I shall not repeat the reasonings for my conclusion, but am enclosing herewith a copy thereof.

By way of specific answer to your inquiry, however, it is my opinion, where an application for state aid has been filed under the provisions of Section 1191, General Code, prior to the effective date of the Norton-Edwards Act, such filing constitutes a pending proceeding within the meaning of Section 26 of the General Code and it is the duty of the board of county commissioners, where it is necessary to acquire a right of way for a road improvement, to proceed under the provisions of Section 1201 of the General Code prior to its amendment in the Norton-Edwards act.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2442.

MAGISTRATE—DUTY WHEN PLEA OF GUILTY IS ENTERED TO VIOLATION OF SECTION 12819, GENERAL CODE.

*SYLLABUS:*

*When an accused is brought before a magistrate charged with the violation of the provisions of Section 12819, General Code, to which charge the defendant enters a plea of guilty, and it appears to the examining magistrate that the offense has been committed under the provisions of said section and there is probable cause to believe that the accused is guilty, it is the duty of the magistrate to bind the defendant over to the common pleas court to be disposed of by the consideration of the grand jury.*

COLUMBUS, OHIO, August 15, 1928.

HON. EARL D. PARKER, *Prosecuting Attorney, Waverly, Ohio.*

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

"I hereby request your opinion on the following proposition:

Under Section 12819, General Code, has a Justice of the Peace final jurisdiction, upon a plea of guilty, to impose a fine upon the offender, or is carrying a concealed weapon a felony, which would require the Justice of the Peace to recognize the accused to the grand jury regardless of whether he enters a plea of guilty or not guilty.

I have had requests from several Justices of the Peace throughout the county for an opinion on this proposition, and I have instructed them that the jurisdiction of a Justice of the Peace, under Section 12819, is limited to a preliminary investigation, and that in no case, under said section, has a Justice power to impose a fine, upon a plea of guilty."