

tion improved or repaired, is a question of intention to be determined from the facts in each particular case.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1452.

DITCHES—NEW DITCH CODE—SECTION 6495 G. C. (108 O. L. 926)—APPLIES TO JOINT COUNTY IMPROVEMENTS AS WELL AS TO SINGLE COUNTY IMPROVEMENTS—NOTICE PROVIDED BY SAID SECTION.

1. *Section 6495, G. C. (being section 54 of the New Ditch Code, 108 O. L. (Part I, 926), applies to the joint county improvements mentioned in said code (section 6515, et seq.), as well as to single county improvements.*

2. *The notice provided for in said section 6495, G. C. is, as to joint county improvements, to be given by the auditor of the county or counties the member or members of whose board or boards of county commissioners own lands shown to be affected by the improvement petition, to the judge of the common pleas court of such county; and such judge is to make the appointments mentioned in said section from disinterested freeholders of that county.*

COLUMBUS, OHIO, July 23, 1920.

HON. LEWIS F. HALE, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—The communication of recent date, signed by Hon. Robert E. Marshall, prosecuting attorney, Sidney, Ohio, Hon. Lewis F. Stout, prosecuting attorney, Wapakoneta, Ohio, and yourself, has been received, reading as follows:

“Section 74 of the act to codify, consolidate and clarify the ditch laws passed on June 10, 1919, makes the first reference to an improvement proposed in two or more counties. Section 79 provides that ‘if a petition is granted by a joint board of county commissioners, such board shall proceed under the provisions of this act for single boards of county commissioners to complete necessary surveys, schedules and records, make awards of damages to property or compensation for property taken, and ascertain the entire cost of the joint county improvement.’

Section 54 provides: ‘If one or more commissioners of a county are petitioners or own lands shown to be affected by an improvement petition, the auditor shall notify the judge of the common pleas court of the county, who shall within five days appoint as many disinterested free holders of the county as may be necessary to take the place of such interested members * * *.’

Does section 54 provide for the appointment of free holders by the court to act in place of the commissioners who own lands shown to be affected apply to joint county improvements, and if so, what auditor must make the report to the court, and to what court must he report, and who can make the appointment?

A petition is now pending before the board of county commissioners of Logan, Auglaize and Shelby counties and the questions herein submitted are urgent and vital.”

The act to which you refer, commonly known as the New Ditch Code, appears

in 108 O. L. (Part 1), p. 926. You mention sections 54, 74 and 79 of said act, and said three sections, with the General Code numbers given them, read respectively:

"Section 6495. If one or more commissioners of a county are petitioners or own lands shown to be affected by an improvement petition, the auditor shall notify the judge of the common pleas court of the county, who shall within five days appoint as many disinterested freeholders of the county as may be necessary to take the place of such interested members. Such appointees shall not be related by blood or affinity to either of the interested commissioners. They shall before acting be sworn to faithfully and impartially perform the duties of commissioner in the matter of said improvement, which oath shall be signed by them and the officer before whom the same is taken and filed with the auditor of the county. Upon appointment on qualification, such appointees shall in the proceeding upon the petition and improvement perform all the duties of the disqualified commissioners, and shall receive, to be paid from the general ditch improvement fund five dollars per day for their services therein as shown by the record of the matter, for which sum the auditor shall draw a proper warrant."

Section 6515. "When the improvement proposed is located in, or affects lands in two or more counties, and neither county is a petitioner, the proceedings in this chapter shall be conducted by a joint board of county commissioners, consisting of the members of the boards of commissioners of the several counties, and in such case the auditor of the county with whom the petition is filed shall give notice of such filing with a copy of the petition to the auditor or auditors of the several other counties interested, who shall forthwith notify the boards of commissioners of each county in which lands are by the petition shown to be affected by the improvement petitioned for, and in such notice, the auditor shall call a joint meeting of said boards at one of the county seats at a date not less than ten, nor more than twenty days from the date of the notice. On the date so fixed, said boards shall meet and organize a joint board, by electing one of their number president and one clerk, but president and clerk shall not be from the same county, if the commissioners of two or more counties attend, and so organized they shall have and exercise, as a joint board, the same jurisdiction and authority that in this chapter is conferred on single boards of county commissioners. A quorum of such joint board at each meeting thereof shall consist of such of the commissioners in office in all said counties as may attend such meeting, and all its decisions shall be by a numerical majority of those present at its sessions, except as herein otherwise provided, and its actions, except for adjournments and dates of meetings shall be by a recorded individual vote upon motion or resolution."

Section 6520. If a petition is granted by a joint board of county commissioners, such board shall proceed under the provisions of this act for single boards of county commissioners to complete necessary surveys, schedules and records, make awards of damages to property or compensation for property taken, and ascertain the entire cost of the joint county improvement."

By way of explanation of your statement that section 74 of the act (section 6515 G. C.) "makes the first reference to an improvement proposed in two or more counties." it is to be said that the revision embodied in the New Ditch Code, while repealing all previously existing ditch improvement statutes, follows the framework of the pre-existing statutes in that single county ditches are first dealt with, and later, by reference, the single county ditch procedure, speaking generally, is made applicable to joint county ditches, certain additional procedural steps being provided in con-

nection with joint county ditches. As a result of this arrangement, it may be observed that in a general way, the first sixty-three sections of the New Ditch Code (sections 6442 to 6504, G. C.) deal with single county ditches; sections 64 to 67 (sections 6505 to 6508, G. C.), with cleaning, repair and replacement; sections 69 to 73 (sections 6510 to 6514, G. C.) with certain duties imposed on the superintendent of public works in connection with ditch improvement; and sections 74 to 90 (sections 6515 to 6531, G. C.) with joint county improvements.

However, while said section 6495 (referred to in your letter as section 54) appears among those sections which deal with single county ditches, it is not in its express terms confined to single county ditches. Its opening words are:

"If one or more commissioners of a county are petitioners or own lands shown to be affected by an improvement petition * * *"

And even less by implication is said section confined to single county ditches; for as will be seen by reference to the sections bearing on joint county ditches the members of the board of county commissioners of each interested county not only constitute the joint board which is to consider, pass upon and conduct generally joint county ditch improvement, but also as a separate board for their own county are charged with the same duties in the matter of making assessments and issuing bonds (sections 6522 and 6529) as in the case of single county ditches (sections 6472 and 6496), under which circumstances, it is plain that provisions such as are found in section 6495 are as necessary in the case of joint county improvements as of single county improvements. As against the broad consideration just stated, and the fact that both single and joint county ditches are dealt with in the same act, the mere matter of numerical order in which section 6495 appears is not of such moment as to have the effect of restricting the terms of said section.

Again, from the standpoint of the practical working of the New Ditch Code, there is no reason why the provisions of section 6495 may not be applied to joint county proceedings. It will be seen that by the provisions of section 6515, when an improvement is proposed which affects lands in more than one county, the auditor of the county with whom the petition is filed

"shall give notice of such filing *with a copy of the petition* to the auditor or auditors of the several other counties interested, who shall forthwith notify the boards of commissioners of each county in which lands are by the petition shown to be affected by the improvement petitioned for * * *"

Thus the auditors of all interested counties are supplied with as much information in the case of joint improvements as to whether a commissioner is interested in the improvement within the purview of section 6495, as is the auditor of a single county in the case of a single county improvement—for in the latter case the petition is also filed with the auditor (section 6443). The auditor of each affected county may then proceed as directed by section 6495—notify the judge of the common pleas court of that county, whereupon such judge is to make appointment of disinterested freeholders of that county. In short, since as already noted each board of county commissioners has certain duties to perform not only as to acting on the joint board, but also acting separately from the joint board, it follows that each county is to furnish its own *personnel* on the joint board, through proceedings in that county under section 6495, when one or more of the county commissioners of that county owns lands affected by the proposed improvement.

From what has been said, it is believed that the plain terms of the statutes themselves furnish answer to all of your questions. However, if resort to rules of construction were at all necessary, regard might be had to the following:

"Statutes should be so construed as to give effect to the intention of the legislature, and, if possible, render every section and clause effectually operative."

Pancoast vs. Ruffin, 1 Ohio, 381, 386.

"A statute should be so construed, that the several parts will not only accord with the general intent of the legislature, but also harmonize with each other and a construction of a particular clause, that will destroy or render useless any other provision of the same statute, cannot be correct."

Allen vs. Parish, 3 Ohio, 187, 193.

It is a settled rule of construction that the intention of the lawmaker is to be deduced from a view of the whole, and every part of the enactment, taken and compared together. He must be presumed to have intended to be consistent with himself throughout, and at the same time to have intended effect to be given to each and every part of the law.

State vs. Blake, 2 Ohio St., 147, 151."

In conformity with the foregoing, you are advised in specific answer to your questions:

1. Section 6495, G. C. (being section 54 of the New Ditch Code, 108 O. L. [Pt. 1.] 926), applies to the joint county improvements mentioned in said code (section 6515, et seq.), as well as to single county improvements.

2. The notice provided for in said section 6495, G. C. is, as to joint county improvements, to be given by the auditor of the county or counties the member or members of whose board or boards of county commissioners own lands shown to be affected by the improvement petition, to the judge of the common pleas court of such county; and such judge is to make the appointments mentioned in said section from disinterested freeholders of that county.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1453.

BRIDGES—CITY WITHOUT AUTHORITY TO MAKE ASSESSMENT AGAINST COUNTY ON ACCOUNT OF PAVING BY CITY A BRIDGE FLOOR, ALTHOUGH COUNTY COMMISSIONERS MAY BE UNDER DUTY OF KEEPING BRIDGE IN REPAIR, WHEN IT APPEARS COUNTY NOT OWNER OF LAND ABUTTING ON OR ADJACENT TO BRIDGE.

Even though a county through its board of county commissioners may be under the duty of keeping in repair a bridge within a municipality, such municipality is without authority to make an assessment against the county on account of the paving by the municipality of the floor of the bridge, when it appears that the county is not the owner of any land abutting on or adjacent to the bridge.

COLUMBUS, OHIO, July 23, 1927.

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

GENTLEMEN—You have recently submitted to this department the following statement and inquiry:

"A street extending through a city was originally a county road or turn-