

contract price and the estimates allowed, exceeds by more than fifteen per cent. the estimated cost of completing the work, as determined by the director, the director may, if he deems it proper, pay to the contractor all or any part of said excess sum, retaining not less than the estimated cost of completing the work, as determined by him, plus fifteen per cent, thereof. When a portion of a highway covered by a contract is completed and opened to traffic all retained percentages held in connection with such highway shall be forthwith released and paid to the contractor."

From the last sentence of this section, when read with other portions of the statute, it would seem that the legislature has contemplated that part of a road project may be legally accepted and such road opened for traffic before the entire contract for the construction thereof is completed. It would thus seem to follow that if the road and bridge in question, being held by the engineers to be fully completed according to plans and specifications, were formally accepted at this time by the State Highway Director, the contractor and bondsmen would thereupon be released from any subsequent damage to the highway and bridge caused by the travelling public.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6064.

TOWNSHIP CLERKS—ENTITLED TO EXPENSES IN ADDITION TO REGULAR SALARY, WHEN ATTENDING ANNUAL MEETING CALLED BY COUNTY ENGINEER—PAYABLE BY COUNTY TREASURER FROM ROAD AND BRIDGE FUND.

SYLLABUS:

Township clerks who are called by the county engineer to attend the annual meeting provided for by Section 7189, General Code, are entitled to their actual and necessary expenses in addition to their regular per diem or salary, the same to be paid by the county treasurer from the road and bridge fund of the county on itemized vouchers approved by the county engineer.

COLUMBUS, OHIO, September 10, 1936.

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

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

“Section 7189, General Code, makes it the duty of the county surveyor to annually call a meeting within the county at a time and place to be approved by the State Highway Commission, of all township and county authorities having directly to do with the construction and repair of roads and bridges within the county.

QUESTION: Is the township clerk a township authority having directly to do with the construction and repair of roads and bridges within the county, even though he has been employed by the township trustees in capacities in connection with roads which are approved in Attorney General's Opinion No. 798, dated November 19, 1919; and may he be paid his actual and necessary expenses in addition to his regular per diem or salary, same to be paid by the county treasurer from the road and bridge fund of the county on itemized vouchers approved by the county surveyor?”

In your letter you refer to the county surveyor. I assume that you mean county engineer in view of the fact that the title of “county surveyor” has been changed to that of “county engineer”.

Section 7189, General Code, referred to in your letter, reads in full as follows:

“It shall be the duty of the county surveyor to annually call a meeting, within the county, at a time and place to be approved by the state highway commissioner, of all the township and county authorities having directly to do with the construction and repair of roads and bridges within the county. Such meeting shall be open to the general public. At such meeting, the county surveyor or such other person as may be designated by the state highway commissioner, shall instruct the proper authorities as to the best and most economical methods for repairing and maintaining the roads and bridges of the county, so as to provide a uniform system of highway work for the county. Each official attending such meeting shall receive for attending such meeting his actual and necessary expenses in addition to his regular per diem, or salary, the same to be paid by the county

treasurer from the road fund of the county on itemized vouchers approved by the county surveyor."

In your letter you state that the township clerk is performing work upon the roads and that this was approved by a former opinion of this office. The opinion referred to is to be found in the Opinions of the Attorney General for 1919, Volume II, Page 1474. The first two branches of the syllabus of that opinion read as follows:

"1. Sections 12910 and 12912 G. C. do not prohibit the employment of a township clerk by the trustees of his township for the rendition of personal services on township road work, ditch work and miscellaneous work.

Whether such employment is prohibited if it involves the furnishing by the clerk of material. *Quaere.*

2. The limitation of section 3308 G. C. upon maximum annual compensation of the township clerk does not apply to services outside the scope of his official duties."

From your letter it might be inferred that the controlling factor is that the township clerk is working on the roads and that such work is authorized by law. However, it should be noticed that Section 7189, General Code does not provide that all persons who work on roads shall attend the annual meeting but only the county and township officials who are called by the county engineer and who have directly to do with the construction and repair of roads and bridges within the county. In other words, the question is presented whether or not a township clerk who works upon the roads and is called by the county engineer to attend the annual meeting, is such a township authority as is contemplated by Section 7189, General Code *supra*.

While Section 7189, General Code provides that such officials must be directly concerned with the construction and repair of roads and bridges, it is nevertheless necessary to determine just what the intent of the legislature was by the enactment of this statute. No doubt the legislature felt that in the interest of uniformity in the execution of these duties, the county engineer should call together the county and township officials who are directly responsible for the construction and repair of roads and bridges. There is no question but that the township trustees are such township officials as are contemplated by Section 7189, General Code. However, it is necessary to determine just what are the duties of the township clerk in reference to the construction and repair of roads in order to arrive at a proper determination of your question.

The following excerpts from various sections of the General Code

proper forms for maps and reports, and the auditor of state is hereby authorized to prescribe all necessary and proper forms for the keeping of the cost records by county surveyors, township trustees, county auditors and township clerks. All county auditors and township clerks may at any time be required by the state highway commissioner to transmit to him in such form as he may prescribe the cost records pertaining to roads, bridges and culverts within their counties or townships."

Section 3371-1, General Code, reads as follows :

"In the maintenance and repair of roads the township trustees and any township highway superintendent, appointed by them, shall be subject to the general supervision and direction of the county surveyor. They shall follow the direction of the county surveyor as to methods to be followed in making repairs and all expenditures made by them for maintenance and repair purposes shall where the amount involved exceeds fifty dollars receive the approval of the county surveyor before payment is made."

Section 5541-8, General Code, which inter alia, provides for the distribution and use of the township's share of the gasoline tax, reads in part as follows :

"* * * ; provided further that no portion of such funds shall be used for the purchase of road machinery or equipment ; and, provided further that all such improvement of roads shall be under the supervision and direction of the county surveyor as provided in section 3298-15k of the General Code ; and provided further that no obligation against such funds shall be incurred unless and until plans and specifications for such improvement, approved by the county surveyor, shall be on file in the office of the township clerk ; and provided further that all contracts for material and for work done by contract shall be approved by the county surveyor before being signed by the township trustees and all disbursements of such funds shall be upon vouchers of the township trustees approved by the county surveyor. * * *"

The above sections have been quoted, not that they in and of themselves answer your inquiry, but rather because they indicate the importance of the duties of the township clerk in reference to the construction

and repair of roads. Likewise they indicate how closely the work of a county engineer is linked with that of a township clerk. In this connection it is significant that the county engineer is to call the township officials to this annual meeting and it may very well be that he would want the various township clerks to be present in the interest of uniformity of accounts and records in reference to the construction and repair of roads.

Reference has already been made to the fact that the duties of the county engineer in this respect are closely allied to those of the township clerk and the county engineer in determining who the township authorities are that he wishes to be present at this meeting, could very properly determine that the township clerk should be present. It is a known fact that the various county engineers do feel that the township clerks should attend these annual meetings. The determination of the county engineer in the absence of fraud or an abuse of discretion, should be controlling in reference to this question.

It is, therefore, my opinion in specific answer to your inquiry that township clerks who are called by the county engineer to attend the annual meeting provided for by Section 7189, General Code, are entitled to their actual and necessary expenses in addition to their regular per diem or salary, the same to be paid by the county treasurer from the road and bridge fund of the county on itemized vouchers approved by the county engineer.

Respectfully,

JOHN W. BRICKER,
Attorney General.

6065.

APPROVAL—CERTIFICATE OF TITLE, ETC., TO LAND IN
GREEN TOWNSHIP, SUMMIT COUNTY, OHIO—MYRTIE
PROVENS.

COLUMBUS, OHIO, September 11, 1936.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certificate of title, warranty deed and encumbrance record No. 9, relating to the purchase of a parcel of land which is owned of record by one Myrtie Provens in Green Township, Summit County, Ohio, and which is more particularly described in the deed which has been tendered by said grantor to the state of Ohio as follows: