

special assessments and said notes have become due, bonds may be sold in anticipation of the collection of such assessments as are unpaid, even though a portion thereof are past due.

Respectfully,
JOHN W. BRICKER,
Attorney General.

3799.

COUNTY SURVEYOR—AUTHORIZED TO PURCHASE LUBRICANTS FOR USE ON COUNTY HIGHWAY TRUCKS IN MAKING EMERGENCY ROAD OR BRIDGE REPAIRS.

SYLLABUS:

When the money required therefor is appropriated by the county commissioners and a certificate furnished by the county auditor as required by section 5625-33, General Code, the county surveyor has the authority to make purchases of lubricants to be used on county highway trucks needed in making emergency road or bridge repairs.

COLUMBUS, OHIO, January 12, 1935.

HON. KENNETH KREIDER, *Prosecuting Attorney, Newark, Ohio.*

DEAR SIR:—This will acknowledge receipt of a communication of recent date from your predecessor in office, which reads as follows:

“The benefit of your opinion is requested with regard to the following situation:

At a time when the Board of County Commissioners was not in session, a chief deputy surveyor, who by reason of the illness of the county surveyor had been acting in his stead for a period of several months, immediately prior to the date of ordering, ordered a quantity of grease to be used in the operation of county highway trucks. It was specified that such grease should be delivered at once, for the reason that, as the deputy surveyor is said to have stated at the time, it was necessary to have this lubricant on hand for use within the next two or three days, as such supply was running low and the trucks were then being used daily in connection with repairs on a certain bridge.

This grease was, accordingly delivered within seventy-two hours after placing of this order by the acting surveyor. But before the date of delivery, the surveyor died, a successor was promptly named by the Board of County Commissioners and he discharged the former chief deputy and refused to accept said grease when delivered. The cost of this grease was \$75.00 and the auditor's certificate was attached to the original order.

Subsequently the grease was accepted and used. Our question is whether the County may legally pay for the same.”

Section 2792-1 of the General Code reads as follows:

"For the purpose of this act, necessary repairs, the total cost of which is not more than two hundred dollars, shall be deemed emergency repairs. The county surveyor shall make all emergency repairs on all roads, bridges and culverts in the county, including state highways, and shall keep on hand at all times a supply of material for the purposes of making such repairs. Upon report to the county surveyor of any road or bridge in the county needing immediate attention, the county surveyor shall, if he deems it an emergency repair, proceed at once to make such repair by force account, without preparing plans, specifications, estimates of cost or forms of contract.

The county commissioners are hereby authorized to appropriate a sum of money each year sufficient to enable the county surveyor to carry out the purposes of this section. Such sum shall constitute the 'county surveyor's emergency repair fund.' All expenses incurred in employing extra help or in purchasing materials used in such repairs shall be paid from such fund on vouchers signed by the county surveyor."

Section 5625-33, General Code, reads in part as follows:

"No subdivision or taxing unit shall:

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(b) Make any expenditure of money unless it has been appropriated as provided in this act (G. C. §§5625-1 to 5625-39).

(c) Make any expenditure of money except by a proper warrant drawn against an appropriate fund which shall show upon its face the appropriation in pursuance of which such expenditure is made and the fund against which the warrant is drawn.

(d) Make any contract or give any order involving the expenditure of money unless there is attached thereto a certificate of the fiscal officer of the subdivision that the amount required to meet the same (or in the case of a continuing contract to be performed in whole, or in part, in an ensuing fiscal year, the amount required to meet the same in the fiscal year in which the contract is made), has been lawfully appropriated for such purpose and is in the treasury or in process of collection to the credit of an appropriate fund free from any previous encumbrances. Every such contract made without such a certificate shall be void and no warrant shall be issued in payment of any amount due thereon. * * *

In an opinion rendered by my predecessor appearing in Opinions of the Attorney General for 1931, Vol. III, page 1457, it was held that under the provisions of the above sections the county surveyor has authority to purchase materials needed in the making of emergency repairs, provided that the money required therefor has been lawfully appropriated for such purpose and the certificate of the auditor, as required by section 5625-33, furnished.

In my opinion No. 368, found in Opinions of the Attorney General for 1933, Vol. I, page 371, it was declared:

"1. The county surveyor has the authority to make purchases of road materials for emergency repairs, as the same are defined in section 2792-1, General Code.

2. Before such purchases can be made, the money required therefor must first be appropriated by the county commissioners and a certificate

furnished by the county auditor that the amount needed for such purchases has been lawfully appropriated therefor and is in the treasury, or in the process of collection to the credit of an appropriate fund, free from any previous encumbrance.”

The questions presented in both of the above opinions, dealt with the purchase of road material by the county surveyor for emergency projects. The facts set out in your inquiry, however, present a question which is two-fold. It must first be determined whether an emergency existed and if such question is answered in the affirmative, it must then be considered whether or not grease to be used on highway trucks, engaged in the work of making emergency repairs, is embodied within the term “material used in such repair.” You state in your communication that the trucks were being used daily in connection with repairs on a bridge and that it was necessary to have on hand the lubricant ordered as the present supply was running low, and that it was specified in the order that such grease should be delivered at once. From these facts it would appear that the repairs in question were emergency repairs and that to insure uninterrupted use of the trucks in connection therewith it was necessary to have a sufficient quantity of lubricant on hand.

The rule of construction of statutes is well expressed in the case of *Cochrel* vs. *Robinson, et al.*, 113 O. S., 526, the fourth paragraph of the syllabus of which reads as follows:

“In the construction of a statute the primary duty of the court is to give effect to the intention of the Legislature enacting it. Such intention is to be sought in the language employed and the apparent purpose to be subserved, and such a construction adopted which permits the statute and its various parts to be construed as a whole and give effect to the paramount object to be attained.”

Clearly, the paramount purpose of section 2792-1, supra, was to enable the county surveyor to purchase all necessary material, employ all necessary help and proceed forthwith in the repairing of a road, bridge or culvert when an emergency exists so that the life and property of the traveling public might be safeguarded. While language more expressive might have been employed, yet the intention of the legislature to enact a law for such purpose is clear and manifest.

Certainly the use of trucks or some other means of hauling material to the place where repairs are necessary, is essential and to take the position that the county surveyor is limited to the purchase of material used directly on the road or bridge in making such emergency repairs is untenable.

I am therefore of the opinion that when the money required therefor is appropriated by the county commissioners and a certificate furnished by the county auditor that the amount needed for such purchase has been lawfully appropriated therefor and is in the treasury or in the process of collection to the credit of an appropriate fund, free from any previous encumbrance, the county surveyor has the authority to make purchases of lubricants to be used on county highway trucks needed in making emergency road or bridge repairs.

Respectfully,

JOHN W. BRICKER,
Attorney General.