

"When it is deemed necessary by the director to perform extra work in connection with any project and the proposal of the contractor contains no unit price bid covering the item or items involved in such extra work and the cost of such work does not exceed two thousand dollars, the director may enter into a contract covering such extra work without advertising for and receiving bids therefor."

In all probability the question you have in mind does not arise by reason of an extra work contract. If it should, then clearly the county would be bound by the contract as made by the Directors of Highways. In other words, when a contract has been let for a given project irrespective of whether there is co-operation, an extra work contract is authorized to cover situations that arise in connection with the completion of a project and such contracts are entered into by the Director of Highways and it is unnecessary to go through the formalities of an original contract before making the extra work contract.

Apparently, when a contract has been entered into pursuant to co-operation by the Director of Highways and county commissioners for a separation of a grade crossing, such a contract contemplates the construction of such project as indicated by the plans and specifications and there will be included therein all necessary work or things to be done which are incidental to the main construction. Whether or not the given undertaking, such as the moving of a railroad track, is a necessary incident to the main construction, is a question of fact to be determined in the first instance by the Director of Highways and his judgment in this respect will not be disturbed in the absence of fraud or collusion or abuse of discretion.

As hereinbefore indicated, what is and what is not a necessary incident is a question of fact that must be determined in each case from all of the circumstances. It is, therefore, my opinion that a more specific answer to your inquiry cannot be given.

It perhaps should be mentioned that House Bill No. 195, as enacted by the 88th General Assembly, amended some of the sections hereinbefore referred to, and became effective on July 25, 1929. No doubt the question you present arises in view of situations coming into existence prior to said amendment and, therefore, no consideration has been given herein to the provisions of the amended law.

Respectfully,

GILBERT BETTMAN,
Attorney General.

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APPROVAL, ABSTRACT OF TITLE TO LAND OF SOPHIA STICKNEY,
IN CARTHAGE, CINCINNATI, HAMILTON COUNTY, OHIO.

COLUMBUS, OHIO, August 12, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—There has been submitted for my examination and approval, an abstract of title, warranty deed, encumbrance estimate No. 5058, and Controlling Board's certificate, relating to a certain parcel of land and the appurtenances thereunto belonging owned of record by one Sophia Stickney, in Carthage, Cincinnati, Ohio, and which property is more particularly described as follows:

"Situate in Section 12, Millcreek Township, Fractional Range No. 2 in

the Miami Purchase, Hamilton County, State of Ohio, in the village of Carthage now part of the city of Cincinnati; beginning at a point on the west line of Franklin Street, now Longview Street, in said village of Carthage, one hundred sixty (160) feet southwardly from the south line of Second Street, now 71st Street; thence westwardly on a line parallel with the south line of Second Street, now 71st Street, one hundred fifty (150) feet, more or less to the westwardly line of grantors premises; thence southwardly with the westwardly line of grantor's premises sixty (60) feet, more or less to a point; thence eastwardly on a line parallel to the south line of Second Street, now 71st Street, one hundred fifty (150) feet more or less to the west line of Franklin Street, now Longview Street; thence northwardly with the west line of said Franklin Street, now Longview Street, sixty (60) feet more or less to the place of beginning; and being the same premises conveyed to the said Sophia Stickney by William W. Stickney as recorded in Deed Book 1105, at page 179, Hamilton County Ohio Records."

An examination of the abstract of title submitted shows that said Sophia Stickney has a good and indefeasible fee simple title to the above described parcel of land and the appurtenances thereunto belonging, free and clear of all encumbrances whatsoever, except the undetermined taxes for the year 1929, which will amount to probably sixty-five or seventy dollars.

An examination of the warranty deed tendered by said Sophia Stickney, a widow, shows that the same has been signed and otherwise properly executed and acknowledged by said grantor and that said deed is in form sufficient to convey to the State of Ohio a fee simple title to the above described property, free and clear of all encumbrances "except as to taxes due and payable after June, 1929."

It will be thus noted that the grantor does not warrant against the taxes for the year 1929, the first half of which will be due and payable in December, 1929, and the second half of which will be payable in June, 1930.

An examination of encumbrance estimate No. 5058 shows that same has been properly executed and that there are sufficient balances in a proper appropriation account to pay the purchase price for the above described premises. It is likewise noted from the certificate of the Controlling Board, that the moneys necessary to purchase this property have been released by said board for the purpose.

The abstract of title, warranty deed, and other files relating to the purchase of this property are therefore accordingly approved, and I am returning to you herewith said warranty deed, encumbrance estimate and Controlling Board's certificate. It is necessary for me to retain the abstract of title submitted, for the reason that the same relates as well to a small parcel or strip of land adjoining that above described, standing in the name of Sophia Stickney, as to which further information is required to be secured and made a part of said abstract.

I am advised that it is desirable that the transaction relating to the purchase of the property described in the caption of this opinion be closed at once and not be made to depend upon the acquisition of the ten foot strip, above referred to. As soon as I obtain additional information which will warrant me in approving the title of Sophia Stickney to said ten foot strip of land, the abstract of title, as well as other files pertaining to said strip of land will be forwarded with my opinion to you.

Respectfully,

GILBERT BETTMAN,

Attorney General.