

be, in my judgment, regarded as a mother, within the meaning of the act, even though her situation satisfies the other conditions enumerated therein."

Under the doctrine of the foregoing opinion, you are advised that a foster-mother is not a mother within the meaning of section 1683-2 G. C.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1001.

ROADS AND HIGHWAYS—WHAT ROADS ARE TO BE CONSIDERED IN CALCULATING SALARY OF COUNTY SURVEYOR UNDER SECTION 7181 G. C.—PUBLIC WAYS IN MUNICIPAL CORPORATIONS NOT INCLUDED IN MILEAGE CALCULATION.

The public roads to be taken into account in calculating the salary of the county surveyor as directed by the provisions of section 7181 G. C. are state roads, county roads and township roads within the county as defined by section 7464 G. C. The mileage of public ways within a municipal corporation is not to be included in such calculation, but the mileage of streets in unincorporated villages within the county is to be included.

COLUMBUS, OHIO, February 10, 1920.

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

GENTLEMEN:—You have recently submitted to this department the following question:

"What roads are considered in basing the county surveyor's salary under section 7181 G. C., as amended, 107 O. L. 110? Does this include streets in cities and villages, and does it include township roads?"

It is unnecessary to quote in full the provisions of section 7181. That section relates to the salary of the county surveyor, and provides that such salary shall be computed by taking into account the mileage of the public roads, the population, and the tax duplicate of the county. Your question concerns only the first of these elements, and in that respect the statute reads:

"One dollar per mile for each full mile of the first one thousand miles of the public roads of the county."

Your question may be answered by quoting section 7464 relating to state, county and township roads, on the one hand; and section 3714 relating to municipal streets on the other.

Said section 7464 (106 O. L. 648) reads as follows:

"The public highways of the state shall be divided into three classes, namely: State roads, county roads and township roads.

(a) State roads shall include such part or parts of the inter-county highways and main market roads as have been or may hereafter be constructed by the state, or which have been or may hereafter be taken over by

the state as provided in this act, and such roads shall be maintained by the state highway department.

(b) County roads shall include all roads which have been or may be improved by the county by placing brick, stone, gravel or other road building material thereon, or heretofore built by the state and not a part of the inter-county or main market system of roads, together with such roads as have been or may be constructed by the township trustees to conform to the standards for county roads as fixed by the county commissioners, and all such roads shall be maintained by the county commissioners.

(c) Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships; and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act."

Section 3714 G. C. reads as follows:

"Municipal corporations shall have special power to regulate the use of the streets, to be exercised in the manner provided by law. The council shall have the care, supervision and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts, within the corporation, and shall cause them to be kept open, in repair, and free from nuisance."

Very clearly from a comparison of these two sections, the mileage to be taken into consideration in calculating the surveyor's salary as directed in section 7181 is the mileage of those public roads named in section 7464, to-wit, state roads, county roads and township roads. The county surveyor is not concerned with the care, supervision, control or repair of public ways within municipal corporations, for by the express terms of section 3714 such matters are the concern of the municipal council. Therefore, there is no reason for supposing that it was contemplated in the enactment of section 7181 that the mileage of public ways within municipal corporations should be taken into account in calculating the surveyor's salary. In this connection, it should be noted that the salary plan embodied in said section 7181 was first incorporated into the statute as part of the so-called Cass Highway Act (106 O. L. 574); and in that act section 7464, as above quoted, was also enacted.

It is proper to call attention to the provisions of sections 1193-1 and 6949 to 6951-1. These sections provide that under certain circumstances the state highway commissioner or the county commissioners may extend a road improvement into or through a village. However, one of the conditions precedent to such authority in the state highway commissioner or county commissioners is the consent of the village council. The evident purpose of these sections is to provide a method whereby a state or county road improvement may be made continuous through a village, and there is nothing either in the sections themselves, or elsewhere in the General Code, to indicate that the village is relieved of the control and supervision of the portion of highway within its limits, in any such sense as to bring said portion within the purview of section 7181.

It is proper also to add that the general classification in section 7464 is broad enough to include within the class "township roads," streets within an unincorporated

village, and such streets therefore are to be included in calculating the mileage of public roads mentioned in section 7181.

Answer to your question is therefore given as follows:

The public roads to be taken into account in calculating the salary of the county surveyor as directed by the provisions of section 7181 G. C. are state roads, county roads and township roads within the county as defined by section 7464 G. C. The mileage of public ways within a municipal corporation is not to be included in such calculation, but the mileage of streets in unincorporated villages within the county is to be included.

Respectfully,
JOHN G. PRICE,
Attorney-General.

1002.

CORPORATIONS—WITHOUT AUTHORITY TO ENTER INTO CONTRACTS WITH SUBSCRIBERS TO COMMON STOCK WHEREBY SUBSCRIBERS AGREE TO FIRST OFFER THEIR SHARES TO CORPORATIONS AT MARKET VALUE BEFORE SELLING THEM TO OTHERS.

A corporation organized under the general corporation laws of this state is without authority, as between it and the state, to enter into a contract with subscribers to its common capital stock whereby the latter bind themselves to first offer their shares to the corporation at market value before selling them to others.

COLUMBUS, OHIO, February 10, 1920.

Department of Securities, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date making inquiry concerning the authority of a corporation organized under the general corporation laws of this state, to enter into an executory contract with subscribers to its common capital stock whereby the subscribers bind themselves to offer their shares to the company at market value before selling them to others, was duly received.

While your question, as I understand it, does not involve the validity or effect of an executed transaction or purchase, that phase of the subject must necessarily be referred to in considering the Ohio cases dealing with an executory agreement.

In *Coppin vs. Greenlees & Ransom Co.* 38 O. S. 275, which involved an executory contract on the part of the corporation to purchase its own shares, the court held that:

“An executory agreement between a manufacturing corporation of this state and one of its stockholders, for the purchase of the stock of such corporation, by the former from the latter, cannot be enforced either by action for specific performance or for damages.”

Previous decisions of the Supreme Court of this and other states were referred to in the opinion and summed up by the court as follows:

“The power of a trading corporation to traffic in its own stock, where no authority to do so is conferred upon it by the terms of its charter, has been a subject of much discussion in the courts; and the conclusions reached by different courts have been conflicting. Of course, cases, wherein the power is found to exist by express or implied grant in the charter, furnish no aid in the solution of the question before us; * * *