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BRIDGE—COUNTY COMMISSIONERS MAY AUTHORIZE COUNTY ENGINEER TO PURCHASE MATERIAL AND EMPLOY LABOR TO CONSTRUCT BRIDGE BY FORCE ACCOUNT—POWER WOULD INCLUDE RIGHT TO PURCHASE AND CONSTRUCT PREFABRICATED OR WELDED BRIDGE—WITHIN JUDGMENT AND DISCRETION OF OFFICIALS THAT SUCH IMPROVEMENT IS FOR BENEFIT OF COUNTY—SECTION 7198 G. C.

SYLLABUS:

The county commissioners under the provisions of Section 7198, General Code, may authorize the county engineer to purchase material and employ labor to construct a bridge by force account, and such power would include the right to purchase and construct a prefabricated or welded bridge if in the judgment and discretion of said officials the same is for the benefit of the county. Opinions of the Attorney General for 1931, page 530, approved and followed.

Columbus, Ohio, February 17, 1950

Hon. Harry C. Johnson, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir:

Your communication requesting my opinion reads as follows:

“Guernsey County is anticipating the erection of a bridge on the county highway system and a legal question arises as to the interpretation of Section 7198 of the Ohio General Code.

“We are desirous of having your opinion on the following questions :

“1. May the County Surveyor or Engineer, on the basis of Section 7198, purchase prefabricated or welded bridges delivered and erected upon a proposed bridge site by force account without advertising?

“2. If the County Surveyor or Engineer is given permission by unanimous consent of the Board of County Commissioners to purchase a bridge, as described in paragraph 1, hereof, and provide for the erection of same by force account, is there a dollar limit as to the cost or purchase price of said bridge project?”

Section 7198, General Code, to which you refer in your communication, is as follows :

“The county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account.”

It should be noted with reference to this section that it excludes any plan for competitive bidding as contained in Sections 2343 to 2361, General Code, and the question thus arises whether or not Section 7198 is controlling in the light of the facts contained in your communication.

This question was discussed in Opinions of the Attorney General for 1921, at page 822, where the second branch of the syllabus reads as follows :

“Said sections 7198, 7200 and 7214 do not repeal by implication sections 2343 to 2361, G. C. providing among other things for the construction and repair of bridges upon the competitive bidding plan. The two groups of sections provide distinct methods of bridge construction and repair; and when one group is resorted to for procedure, it must be followed to the exclusion of the other.”

Although this opinion does not expressly so state, it unquestionably considered Section 7198, General Code, an exception to the general laws (Section 2343 et seq.) which govern the construction of bridges, and such a statutory interpretation is not without judicial authority in Ohio. See *State, ex rel. Jaster, Director of Highways v. Court of Common*

Pleas of Jefferson County, et al., 132 O. S. 93, where the first branch of the syllabus reads as follows :

“Where a later specific statute is enacted on the same subject covered by an existing general statute, without express or implied intention to repeal the existing statute, such specific statute must be held to have been intended by the Legislature to be engrafted upon the general statute as an exception thereto.”

In another opinion rendered in Opinions of the Attorney General for 1931, at page 530, one of my predecessors decided a question upon facts very similar to those contained in your communication, and concluded as follows :

“By way of specific answer to your inquiry, it is my opinion that the county commissioners under the provisions of section 7198, General Code, may authorize the county surveyor to purchase material and employ labor to construct a bridge by force account, and such power would include the right to purchase and re-construct a second-hand bridge if in the judgment and discretion of said officials the same is for the benefit of the county.”

Certainly a prefabricated or welded bridge would, from the standpoint of legal principle, fall into the same category as a second-hand bridge.

It is accordingly my opinion then, in specific answer to your first question, that the county commissioners under the provisions of Section 7198, General Code, may authorize the county engineer to purchase material and employ labor to construct a bridge by force account, and such power would include the right to purchase and construct a prefabricated or welded bridge if in the judgment and discretion of said officials the same is for the benefit of the county.

With reference to your second question, I am unable to find any statutory or judicial authority restricting the cost of a bridge project conducted by force account pursuant to Section 7198, and again invite your attention to Opinions of Attorney General for 1921, page 822, supra, which says in part in the first branch of the syllabus :

“In the construction or reconstruction, as well as the repair, of a bridge by a county, the method commonly known as force

account may be followed, whatever may be the estimated cost of the project. * * *'

It may be well to mention that Section 7198, General Code, is in the same form at the present time as it was when the 1921 opinion, supra, was rendered, and I am inclined to agree that there are no restrictions upon the estimated cost of a project where one proceeds by force account pursuant to Section 7198, General Code.

Respectfully,

HERBERT S. DUFFY,
Attorney General.