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HIGHWAY — NECESSARY REPAIR — REPAIR, UNAVOIDABLE, INDISPENSABLE AND IMMEDIATELY REQUIRED TO MAINTAIN HIGHWAY IN PROPER CONDITION FOR TRAVELING — EMERGENCY REPAIR — PHRASES: COST NOT MORE THAN \$200.00; DOES NOT EXCEED \$200.00 — SECTION 2792-1 G.C.

SYLLABUS:

Within the meaning of Section 2792-1, General Code, an emergency repair is not any repair, the cost of which is not more than \$200.00, but rather any necessary repair, the cost of which does not exceed \$200.00. A necessary repair may be defined as a repair which is unavoidable and indispensable and immediately required to maintain a highway in a proper condition for traveling.

Columbus, Ohio, March 14, 1941.

Hon. G. L. Schilling, Prosecuting Attorney,
Wilmington, Ohio.

Dear Sir:

I have your recent letter inquiring as to the proper meaning of the words "emergency repairs" as they are used in Section 2792-1, General Code. You ask if, within the meaning of that section, "emergency repairs" are any repairs, the cost of which is less than \$200.00.

To determine the answer to your question it is necessary to examine the wording of Section 2792-1, General Code. That Section is as follows:

"For the purposes 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."

As you will have noticed, the above section contains its own definition of what are to be considered emergency repairs and by that definition emergency repairs are not any repairs, the cost of which does not exceed \$200.00, but rather necessary repairs, the total cost of which does not exceed \$200.00.

This inquiry must of necessity begin with the premises that there is no point to or authority for construing a statute unless it is ambiguous or of doubtful meaning. See 37 O. J. 514, wherein the following statement is found:

"Where the meaning of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. To interpret what is already plain is not interpretation, but is legislation,
* * *"

The above statement becomes more particularly true in a situation such as this where the Legislature has itself provided a definition whereby the meaning of an act may be determined. Thus, in the present instance, it is only requisite, in order to determine what are "emergency repairs," to determine the meaning of the word "necessary" as it is used in the above section. In the New Century Dictionary "necessary" is defined as "unavoidable" or "indispensable." Therefore, if we interpose the synonyms of the word "necessary" as given above into the definition provided by the statute we have the following:

"For the purpose of this act, unavoidable or indispensable repairs, the total cost of which is not more than two hundred dollars, shall be deemed emergency repairs."

From such it would appear that an "emergency repair" within the meaning of Section 2792-1, supra, is an immediately necessary repair, unavoidable and indispensable to the maintenance of a highway in a proper condition for travel. This conclusion is supported by that portion of Section 2792-1, supra, which provides as follows:

"* * * 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 * * *"

By the use there of the words "immediate attention," the Legislature has indicated its intention that an emergency repair is a repair for which there is immediate need rather than merely a repair, the cost of which does not exceed \$200.00.

In Opinion No. 3799, Opinions of the Attorney General for 1934, Vol. III, at page 1943, the following statement is found which supports the conclusion here reached:

"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 repair of a road, bridge or culvert when an emergency exists so that the life and property of the traveling public might be safeguarded."

A like conclusion is reached in an opinion by my immediate predecessor in office, found in 1937 Opinions of the Attorney General, Vol. I, page 896, which discusses generally the statute here under consideration and which, at page 899 of that volume, makes the following statement as to an "emergency repair:"

"* * * As suggested by the word 'emergency,' it is a repair made in a pinch or in a crisis and of pressing necessity for the time being."

Based upon the foregoing, my opinion on the question you present is as follows: Within the meaning of Section 2792-1, General Code, an emergency repair is not any repair, the cost of which is not more than \$200.00, but rather any necessary repair, the cost of which does not exceed \$200.00. A necessary repair may be defined as a repair which is unavoidable and indispensable and immediately required to maintain a highway in a proper condition for traveling.

Respectfully,

THOMAS J. HERBERT,
Attorney General.