

2318.

COUNTY COMMISSIONERS—AUTHORITY TO CO-OPERATE WITH DIRECTOR OF HIGHWAYS IN WIDENING STATE HIGHWAY—EFFECT OF COUNTY TAX DUPLICATE—EFFECT OF NUMBER OF FEET ROAD IS WIDENED.

SYLLABUS:

1. *County commissioners in counties having a tax duplicate of less than three hundred million dollars, are limited in their cooperation with the department of highways in the widening of the paved portion of a state road, to the portion of the cost of the construction or reconstruction of such paved portion which represents the excess width over eighteen feet. The commissioners may assume any part of the cost of such excess width provided that the state assumes some portion thereof.*

2. *In any instance where a state road is being constructed or reconstructed to a width greater than eighteen feet, the county commissioners, in counties having a tax duplicate of less than three hundred million dollars, are authorized to cooperate with respect to the cost of the widening in excess of eighteen feet, irrespective of whether or not any pavement theretofore existed.*

3. *Where a village street constitutes a continuation of a state highway into or through the village and the highway department undertakes the resurfacing or rebuilding of such street to the same width as the existing pavement, the village has no authority, under Section 1224-1a of the General Code, to bear any portion of the cost of such improvement. If, however, the plans for the improvement as prepared by the department of highways do not contemplate resurfacing or rebuilding of such street to a width such as is desired by such village, the village may proceed under authority of Section 1224-1a of the Code to secure the improvement to such additional width, in which case the additional cost must be borne by the village.*

4. *Where, in the improvement of a state highway by the director of highways to a width in excess of eighteen feet, it is necessary to secure land for right of way purposes, the director of highways is authorized, and it is his duty, to secure such additional right of way by purchase or condemnation proceedings. In such event, however, the cost of such additional right of way may be included within that portion of the cost of the widening in excess of eighteen feet with respect to which county commissioners are authorized to cooperate by virtue of Section 1191 of the General Code.*

5. *In any county having a tax duplicate in excess of three hundred million dollars, the county commissioners are authorized to bear, as part of the cost of reconstructing any state highway, such proportion of the cost of the acquisition of additional right of way as may be agreed upon by the county commissioners and Director of Highways.*

6. *County commissioners, by virtue of Section 6860 of the General Code, may, with the consent of the Director of Highways, widen a state highway and acquire the necessary right of way therefor by purchase or condemnation proceedings.*

COLUMBUS, OHIO, July 5, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date which reads as follows:

“An opinion is requested on that portion of Section 1191 of the General Code of Ohio, which provides for the financial cooperation of county commissioners in counties having a tax duplicate of less than \$300,000,000, with the State of Ohio, when widening State roads.

This section, in part, reads as follows:

'Said commissioners shall also be authorized to cooperate with said department in widening the paved portion of any state road where the paved portion of such road is constructed or reconstructed to a width greater than eighteen feet; and such commissioners shall be authorized to pay such portion of the cost occasioned by or resulting from such widening as may be agreed upon between them and said director. Any board of county commissioners desiring to cooperate as above, may, by resolution, propose such cooperation to the director, and a copy of such resolution, which resolution shall set forth the proportion of the cost and expense to be contributed by the county, shall be filed with the director. Where any portion of the work covered by such proposal is within the limits of a village, such proposal shall be accompanied by the consent of the village to the doing of such work, evidenced by proper legislation by its council, unless such consent has already been given by said village to the director.'

We would like to be advised particularly upon the following:

1. On what width of pavement can a board of county commissioners cooperate in the cost when widening an existing pavement to a width greater than 18 feet? For instance, suppose an existing 10 foot pavement was widened to 20 feet, could the county pay a part or all of the cost of the additional 10 feet, or only on 2 feet?

2. Taking the above example, assuming that this old 10 foot pavement was used simply as a base for resurfacing with brick, at the same time widening with entirely new construction to a width of 20 feet; could the county participate, and if so, on what portion of the improvement, and for what widths?

3. In the case of an entirely new pavement on a newly constructed sub-grade where the paved portion is built to a width greater than 18 feet, can the county participate in the cost, and, if so, to what extent?

4. In the case of a village street which has already been constructed to a width greater than 18 feet, and which is to be resurfaced or rebuilt to the same width as originally constructed, may the village or county or both, cooperate in the cost, and if so, on what portion of the pavement?"

In a letter supplementing the above communication, you ask that I also and at the same time answer the following:

"(1) It is desired to know whether counties having tax duplicates of less than three hundred million dollars (\$300,000,000) are authorized to secure the right-of-way in connection with a project upon which it is proposed to 'widen the paved portion of any State road, where the paved portion of such road is constructed or reconstructed to a width greater than 18 feet.'

Section 1191 of the General Code of Ohio further states: 'Provided, however, the county commissioners of any county having a tax duplicate of real and personal property in excess of three hundred million dollars (\$300,000,000) shall also be authorized to cooperate with the department of highways in the reconstruction of State roads by paying such portion of the cost thereof as is agreed upon by the county commissioners and director of highways.'

(2) We wish to be advised if counties of three hundred million dollars (\$300,000,000) tax duplicate or over, when cooperating with the department of highways in the reconstruction of State roads, are authorized to secure right-of-way as a part of such reconstruction projects."

Section 1191, General Code, to which you refer in your communications, was amended by the 87th General Assembly, in House Bill No. 67, commonly called Norton-Edwards Act, effective January 2, 1928 (112 v. 430; 469). As amended this section reads:

"The commissioners of any county may cooperate with the department of highways in the abolishment of railway grade crossings on the state highway system or any extension thereof, and in the construction or reconstruction of bridges and viaducts within municipal corporations, and shall be authorized to pay such portion of the cost of any such work as may be agreed upon between said commissioners and the director of highways. *Said commissicners shall also be authorized to cooperate with said department in widening the paved portion of any state road where the paved portion of such road is constructed or reconstructed to a width greater than eighteen feet; and such commissioners shall be authorized to pay such portion of the cost occasioned by or resulting from such widening as may be agreed upon between them and said director. Any board of county commissioners desiring to cooperate as above, may, by resolution, propose such cooperation to the director, and a copy of such resolution, which resolution shall set forth the proportion of the cost and expense to be contributed by the county, shall be filed with the director.* Where any portion of the work covered by such proposal is within the limits of a village, such proposal shall be accompanied by the consent of the village to the doing of such work, evidenced by proper legislation by its council, unless such consent has already been given by said village to the director. Provided, however, the county commissioners of any county having a tax duplicate of real and personal property in excess of three hundred million dollars shall also be authorized to cooperate with the department of highways in the reconstruction of state roads by paying such portion of the cost thereof as is agreed upon by the county commissioners and director of highways."

This section should be read in connection with section 1193, General Code, also amended in House Bill No. 67 (112 v. 430, 471) which reads:

*"Where county commissioners cooperate with the department and assume a part of the cost of constructing any pavement on a state road to a width greater than eighteen feet, such commissioners shall be authorized to specially assess such portion of that part of the cost assumed by them on behalf of the county as they may deem proper, and such special assessments may be made according to any one of the several methods provided by Section 6919 of the General Code of Ohio, and the procedure in making said assessments shall be the same as is provided by law with respect to the assessments authorized by said Section 6919 of the General Code.*

Answers to the questions submitted by you depend upon the meaning of the words italicized in Section 1191, above quoted, providing that county commissioners "shall also be authorized to cooperate with said department (the State Department of Highways) in widening the paved portion of any state road where the paved portion of such road is constructed or reconstructed to a width greater than eighteen feet; and such commissioners shall be authorized to pay such portion of the cost oc-

casioned by or resulting from such widening as may be agreed upon between them and said director."

As has been many times said by the courts and repeatedly stated in the opinions of this office, the basic rule in construing statutes is to ascertain and give effect to the intention of the Legislature as expressed in the statute. When the language used is plain and unambiguous it must be given effect by the courts. On the other hand, where the language of the statute is of doubtful meaning, or where an adherence to the strict letter would lead to absurdity, or to injustice, it is the duty of the courts to declare the statute's true meaning. And in determining the true meaning, it is proper to look to the policy and purpose of the act, as well as to consider the effect and consequences of a given interpretation.

As stated in 36 Cyc. 1110:

"Every statute must be construed with reference to the object intended to be accomplished by it. *In order to ascertain this object it is proper to consider the occasion and necessity of its enactment, the defects or evils in the former law, and the remedy provided by the new one; and the statute should be given that construction which is best calculated to advance its object, by suppressing the mischief and securing the benefits intended. For the purpose of determining the meaning, although not the validity, of a statute, recourse may be had to considerations of public policy, and to the established policy of the legislature as disclosed by a general course of legislation.* \* \* \* If the purpose and well ascertained object of a statute are inconsistent with the precise words, the latter must yield to the controlling influence of the legislative will resulting from the whole act." (Italics the writer's.)

And on page 1111, with reference to the consideration to be given to the effect and consequences of any given interpretation of a statute, the same authority reads:

"It is the rule for which there is an abundance of authority that the mere fact that a certain construction of a statute will cause inconvenience or failure of justice will not affect the judicial determination of a case involving such a construction. But where the proper construction of a statute is otherwise doubtful, arguments from the inconvenience, absurdity, injustice, or prejudice to the public interests, resulting from a proposed construction, may be considered. \* \* \*"

One of the objects sought by the Legislature in the enactment of House Bill No. 67 was largely to relieve counties, townships and to some extent property owners of the burden of paying a portion of the cost and expense of constructing, reconstructing, maintaining and repairing roads in the state highway system. As stated in Opinion No. 776 rendered to you by this office under date of July 25, 1927, Opinions, Attorney General, 1927, Vol. II, page 1357:

"By the enactment of House Bill No. 67 (Edwards-Norton Act) the Eighty-seventh General Assembly completely revised and codified the existing highway laws. When such act becomes effective, viz., on the first Monday in January, 1928, it will result in the placing of the responsibility of a state highway system in the State of Ohio, acting by and through its Department of Highways, and will relieve the smaller counties from the burden of taxation, resulting from their cooperating with the State Highway Department in the construction of intercounty highways and main market roads under the present law (Sections 1191 et seq., General Code).

\* \* \*

While it is true that the new act will not have the effect of entirely doing away with the construction, improvement, maintenance and repair of inter-county highways and main market roads upon a cooperative basis, yet in the great majority of counties the construction, improvement, maintenance and repair of inter-county highways and main market roads by the Department of Highways and Public Works, acting in conjunction and cooperation with counties and townships will be greatly reduced, if not entirely done away with."

Section 1191, *supra*, makes provision for cooperation in state highway construction and maintenance between the several counties and the state in certain cases, which are exceptions to the general policy of the Legislature that roads in the state highway system shall be constructed and maintained by the state without the cooperation of such counties; and the question here to be determined is, as above pointed out, the meaning of the language, prescribing the circumstances under which the counties may cooperate, of the second exception contained in the section. And it is here proper to point out that exceptions to the general language and policy of an act are to be strictly construed, and the application of a section creating such exception is to be limited to cases clearly falling within the terms of the section containing the exceptions.

Applying the rules of statutory construction above commented upon to the question here presented, it is my opinion that county commissioners may cooperate when, and only when, the paved portion of the road is to be "constructed or reconstructed to a width greater than eighteen feet," regardless of the present width or regardless of the existence of any paved portion, at the time the work is initiated, and that the commissioners may only cooperate by agreeing to pay and paying such part of the cost and expense, as may be agreed upon between them and the Director of Highways, "occasioned by or resulting from such widening" *beyond eighteen feet*. That is to say, the commissioners may only cooperate when a road is being constructed or reconstructed to a width greater than eighteen feet, and they may only pay a portion of the cost and expense of that part of the road that is in excess of eighteen feet.

I have reached this conclusion because in my opinion the language of the statute is not so plain and unambiguous as to make unnecessary the application of the rules of statutory construction to which reference has heretofore been made. While it is true that the word "widening" is used in Section 1191 in such a way as to indicate to a certain extent that the language of the section should be restricted to those occasions when an existing pavement is being widened, yet the clause "where the paved portion of such road is *constructed* or reconstructed to a width greater than eighteen feet" introduces an ambiguity which renders an interpretation of the language necessary.

Further, while it might be urged that this language also is susceptible of the interpretation that counties are authorized to cooperate in any construction or reconstruction and to any extent where that construction or reconstruction is to exceed eighteen feet, in my view such a construction would lead to absurd results. So construed the section would prohibit cooperation by the county if the road were to be only eighteen feet in width. If, however, the road were to be eighteen feet one inch in width, the county could assume practically the entire cost. Examples might be multiplied to illustrate the results which might ensue upon the adoption of an interpretation of the language other than that which I have heretofore set forth. I deem it sufficient to say that any other interpretation would scarcely be in harmony with the purpose of the act and the results ought to be accomplished by the Legislature in its adoption.

In reaching this conclusion, I have in mind that it has been the policy of the department of highways to establish eighteen feet as the minimum width of state roads, which width apparently is, in the judgment of the department, adequate to handle through travel on such roads. At the same time it is perfectly apparent that local

traffic in congested districts may be such as to necessitate an extension of the eighteen feet width for its accommodation. It is in these congested districts that necessity for a deviation from the standard width exists and such deviation from the standard width exists and such deviation is, as I understand it, in highway engineering spoken of as a "widening", even though no previous pavement may exist. That is to say, there is a broadening of the highway over the standard fixed for the purpose of through traffic. I am confirmed in this view by reason of the fact that I find the word "constructed" in Section 1191, supra, which clearly indicates that the section is applicable to original construction as well as reconstruction or what might popularly be described as "widening".

Taking the section by its four corners, in the light of the general object sought, in the codification of the highway laws in the Norton-Edwards act, I am of the opinion that the intention was to permit cooperation by a county only as to that portion of a state highway in excess of eighteen feet. In so far as the eighteen feet width is concerned, the highway exists for the purpose of through, or what may be termed state, traffic. The remainder, being necessitated by the demands of local traffic, is properly made the subject of cooperation by the county. That is to say, the cooperation of a county is limited to the cost of the construction or reconstruction in excess of eighteen feet.

The foregoing conclusions make the answers to your specific inquiries fairly obvious, but for the purpose of clarity, I will discuss them separately and give categorical answers thereto.

In the first question it is assumed that there is an existing pavement of a width of ten feet which is to be widened to twenty feet. The inquiry is, what is the extent of the authority of the county commissioners to cooperate?

From the foregoing discussion it is clear that the commissioners can cooperate only as to the two feet, which constitute the excess over eighteen feet. As to this portion the commissioners cannot assume the entire cost, since Section 1191, supra, speaks of cooperation. Cooperation implies that both parties to the agreement shall have some duties with respect to the improvement. It is further to be noted that the language of the section requires that the resolution of the county commissioners "shall set forth the portion of the cost and expense to be contributed by the county." This to my mind is indicative of the fact that not all may be assumed but some part of the cost must remain against the state. No limitation is placed, however, upon the proportion and consequently so long as the state contributes in any degree at all, the remainder may be assumed by the county commissioners.

In the second inquiry it is assumed that a ten foot pavement is to be used as a basis for resurfacing the brick and at the same time the road widened to an entirely new construction to a width of twenty feet. In such a case the commissioners could participate in exactly the same way as in the previous instance. They may assume any proportion of the cost in excess of eighteen feet so long as some portion of such additional cost is borne by the state.

Likewise, in answer to your third inquiry, it may be stated that, where the entire new pavement is to be constructed to a width greater than eighteen feet, the county commissioners may participate in the construction of that portion of the improvement in excess of eighteen feet in width.

Your fourth question is premised upon the present existence of a pavement more than eighteen feet in width on a village street, which is part of the state highway system. You inquire whether, in case this pavement is to be resurfaced or rebuilt to the same width, the village or county, or both, may cooperate, and if so, on what portion of the pavement.

The portion of the Norton-Edwards act applicable to cooperation by a village in the improvement of the continuation of a state highway through the limits of the village is contained in Section 1224-1a which, so far as pertinent, is as follows:

"\* \* \* The director may at his discretion construct, reconstruct, improve, maintain or repair any continuation of a highway on the state highway system through the limits of a municipal corporation, and the bridges and culverts thereon, but he shall first obtain the consent of the legislative authority of such municipal corporation before proceeding with such work. He may also, if he deems it to the best interest of the public, upon obtaining the consent of the legislative authority of any city, maintain or repair any continuation of such road or highway within such city, and he may construct or reconstruct the bridges and culverts thereon, and pay the portion agreed to of such work from state funds. When any portion of an extension of the state highway system within a municipal corporation is to be improved and the legislative authority of said municipal corporation desires to improve all or any portion thereof to a greater width than is contemplated by the proceedings for said improvement by the director, such legislative authority shall at any time before the surveys, plans, profiles, cross-sections, estimates and specifications for such improvement are approved by the director, determine by resolution the additional width to which it desires such extension, or part thereof, to be improved, and shall cause copies of such resolution to be filed with the director.

The director shall thereupon cause to be prepared the necessary surveys, plans, profiles, cross-sections, estimates and specifications for improving such extension, or part thereof, to said additional width. The estimate shall set forth the probable cost and expense of so much of said improvement as is made necessary by the proposed increase of width thereof. Copies of such surveys, plans, profiles, cross-sections, estimates and specifications shall be filed with the legislative authority of the municipal corporation and upon the approval of the same by such legislative authority the improvement shall be constructed to such additional width. The municipal corporation shall first enter into a contract with the State of Ohio, providing for the payment by such municipal corporation of the agreed proportion of the cost and expense. The form of such contract shall be prescribed by the attorney general, and all such contracts shall be submitted to the attorney general and approved by him before the director shall be authorized to advertise for bids. The provisions of Section 5660 of the General Code shall apply to such contract to be made by the municipal corporation, and a duplicate of the certificate of the chief fiscal officer of the municipal corporation, made in compliance with the provisions of said section, shall be filed in the office of the director. The improvement shall be constructed under the sole supervision of the director. The proportion of the cost and expense payable by the municipal corporation shall be paid by the proper officers thereof upon the requisition of the director and at such times during the progress of the work as may be determined by him.

The legislative authority of said municipal corporation may assess against abutting property owners all or any part of the cost and expense of improving such extension, or part thereof, to such additional width, which assessments shall be made in any one of the methods provided for in the case of street-improvements wholly within a municipality and under the exclusive control of such municipality. For the purpose of providing by taxation a fund for the payment of all or any part of the cost and expenses of improving such extension, or part thereof, to such additional width, said municipal corporation is authorized to levy taxes upon all the taxable property of such municipal corporation under the same restrictions and conditions imposed by law in the case of taxes levied for the purpose of providing funds for the payment of the

municipal corporation's share of the cost and expense of street improvements under the exclusive jurisdiction and control of such municipal corporation.

In anticipation of the collection of assessments to be made against abutting property as hereinbefore provided and in anticipation of the collection of taxes levied for the purpose of providing for the payment of all, or any part of the cost and expense of improving such extension, or part thereof, to such additional width, said municipal corporation is authorized to sell its bonds under the same conditions and restrictions imposed by law in the sale of bonds for street improvements under the exclusive control and jurisdiction of such municipal corporation."

In my opinion this language must be construed as providing that it is only when the plans of the highway department contemplate an improvement at a width narrower than that desired by the proper authorities of the municipality that the village may participate. In the instance you cite, you state that the street is to be resurfaced or rebuilt to the same width as originally constructed. If by this you mean that the plans of the highway department call for a resurfacing or rebuilding at the same width, then apparently there is no authority for any division of the cost and the State must bear it all, unless it be desired by the municipality that the street be improved at a greater width. Consequently, I am of the opinion that the village in the instance you cite may not participate in the cost of the improvement.

In so holding, I do not wish to be understood as saying that the village has no right whatsoever to improve a street that may constitute an extension of a state highway. By an independent proceeding the village may make such improvement of the street as it sees fit, being governed by the general sections of law applicable thereto. Such proceeding would, however, be one wholly within the authority of the village and the contract would have to be let by it, but it is conceivable that a proceeding by the village and one by the director might so be coordinated as to result in a joint improvement of the street in question.

In case of the county, however, it is quite apparent from the provisions of Section 1191, supra, that cooperation may be had in an improvement to a greater width than eighteen feet either within or without the limits of a municipality. You will note by the express language of the section that, where any portion of the work covered by such proposal of the county commissioners is within the limits of a village the consent of the village must be furnished. In this instance the work of reconstruction will be to a width in excess of eighteen feet. Under such circumstances I believe it within the authority of the county to cooperate by bearing a proportion of so much of the cost of the improvement as is in excess of eighteen feet.

In the supplementary letter heretofore quoted, you first inquire whether counties, having a tax duplicate of less than \$300,000,000, are authorized to secure the right of way in connection with the project on which it is proposed to widen the paved portion of any state road and where the paved portion of any state road is constructed or reconstructed to a width greater than eighteen feet. I assume that you have in mind that proceedings started after the effective date of the Norton-Edwards act and consequently governed by the terms thereof. With respect to the authority and duty relative to the acquisition of the right of way for state highways, Section 1202 of the General Code, which was enacted as a part of the Norton-Edwards act, found in 112 v. 440, is as follows:

"The director shall have power and is hereby authorized to alter, widen, straighten, realign or relocate any road or highway on the state highway system, and when in altering, straightening, re-aligning or relocating any such road or highway there is any portion of the existing road or highway which he deems not needed for highway purposes he may vacate and abandon such



portion. The director is hereby authorized to purchase or appropriate property for the necessary right of way for such purposes, and also such property as may be necessary in the location or construction of any bridge, culvert, grade separation project, or other highway improvement, which he, by law, is or may be authorized to locate or construct. Title to such property purchased by the director shall be taken to the state by easement deed in accordance with forms prescribed by the attorney general which easement deed shall contain a definite description of the property, and shall be recorded in the county where the property is situated and when recorded kept on file in the department of highways."

Section 1201 of the General Code, which is found on the same page in 112 Ohio Laws, authorizes the director to condemn land or property for state highway purposes by action taken in the manner therein prescribed. Section 1201-1 is also descriptive of the procedure incident to such appropriation proceeding. Section 1188, found on page 443 of 112 Ohio Laws, is as follows:

"The costs and expenses in connection with the purchase and appropriation of property for highway purposes, unless otherwise provided by law, shall be payable by the director out of any funds of the department of highways available for the construction, improvement, maintenance and repair of highways."

From these sections of the Code it is clear that the duty of providing the necessary right of way for state highways, irrespective of the width thereof, devolves primarily upon the director of highways. He has the authority and it is his duty to secure all lands necessary for state highway purposes. There is at present no provision of law requiring the county commissioners to acquire right of way for the improvement of a road in the state highway system. This is a departure from the practice existing prior to the enactment of the Norton-Edwards act. Former Section 1201 made it the duty of the county commissioners to acquire such right of way when cooperating in the improvement of an inter-county highway or main market road. The amendment of that section in the Norton-Edwards act has omitted any reference to any such duty.

It does not follow, however, from the foregoing, that the county commissioners are without power to act with respect to the acquisition of a right of way for a state highway. It is true that the obligation to provide such right of way is no longer present. As a part of the Norton-Edwards act, Section 6860 of the General Code was amended to read as follows:

"The county commissioners shall have power to locate, establish, alter, widen, straighten, vacate or change the direction of roads within the county, except that as to roads on the state highway system the approval of the director of highways shall be had."

The succeeding section of the General Code, as amended in the Norton-Edwards act, provides the procedure to be followed in locating, establishing, widening or otherwise changing a public road upon petition. You will observe that Section 6860, supra, extends the authority to widen to state highways where the approval of the director of highways is first had. Accordingly the county commissioners may, in an independent proceeding had under the authority of the provisions of Section 6860, et seq., General Code, widen the road in question with the consent of the director of highways and as an incident to such improvement acquire the necessary right of way. In that event, of course, the county would bear the entire cost of the widening.

If, however, the director proceeds to acquire the right of way as authorized by the above quoted sections and such acquisition is rendered necessary by the widening of the pavement beyond eighteen feet, I am of the opinion that a county having a tax duplicate of less than \$300,000,000 dollars may participate in the cost of such additional right of way, since it is properly a part of the cost occasioned by the widening. This conclusion is substantiated by the language found in a prior opinion of this department, viz. Opinion No. 2046, dated May 2, 1928, and addressed to Hon. Seth Paulin, Prosecuting Attorney, Painesville, Ohio.

Your final question involves the right to acquire land necessary for right of way purposes where a county, with a tax duplicate in excess of \$300,000,000, is cooperating in the reconstruction of the state road. The reasoning given for my conclusion on the previous inquiry is here applicable. The county commissioners may, in an independent proceeding, acquire this right of way as an incident to the widening of the road where the consent of the director of highways is first obtained. If, however, the director acquires the additional right of way as an incident of the widening and reconstruction of the road, the county may cooperate in such cost in such percentage thereof as may be agreed upon between the county commissioners and the director of highways.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

2319.

APPROVAL, CONTRACT BETWEEN THE STATE OF OHIO AND CHICAGO BRIDGE AND IRON WORKS, CLEVELAND, OHIO, FOR THE CONSTRUCTION OF STEEL WATER TOWER, LONDON PRISON FARM, LONDON, OHIO, AT AN EXPENDITURE OF \$8,180.00—SURETY BOND EXECUTED BY THE FIDELITY AND CASUALTY COMPANY OF NEW YORK.

COLUMBUS, OHIO, July 5, 1928.

HON. JOHN E. HARPER, *Director of Public Welfare, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Welfare (London Prison Farm, London, Ohio), and Chicago Bridge and Iron Works, of Cleveland, Ohio. This contract covers the construction and completion of one 100,000 gallon Steel Water Tower, London Prison Farm, London, Ohio, and calls for an expenditure of eight thousand one hundred and eighty dollars (\$8,180.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure has been obtained as required by Section 12 of House Bill No. 502 of the 87th General Assembly. In addition you have submitted a contract bond upon which the Fidelity and Casualty Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by