

This question is answered in opinion No. 458, issued on November 9, 1911, and appearing at page 562, Vol. 1, 1911-1912, wherein it is held that:

"The county certificates will be sufficient to carry teachers through the present year but for later periods a certificate must be obtained from the regularly appointed city board of school examiners."

This same opinion of the Attorney-General also says that:

"The power to appoint the city board of examiners resides only in the board elected under the city plan."

There have been no changes in the statutes that would cause this rule to be changed as previously announced, and the opinion of the Attorney-General in 1911 is herewith concurred in.

You are therefore advised, in answer to your specific questions, that it is the opinion of this department:

1. That the prosecuting attorney of the county in which the municipality is located is the legal adviser of the board of education of a municipality which has become a city by virtue of the proclamation of the secretary of state, while that municipality is still functioning under the village form of government and has not yet elected city officials.

2. Teachers' certificates issued by county boards of school examiners or the state board of school examiners, will be sufficient to carry teachers through the present year and until a city board of school examiners starts to function. Such city board of school examiners (7838 G. C.) can be appointed only by the board of education elected for the city school district in November, 1921.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2055.

ROADS AND HIGHWAYS—COUNTY COMMISSIONERS AUTHORIZED TO RENT BUILDINGS FOR STORAGE OF MACHINERY AND CONVEYANCES FOR USE IN ROAD WORK—BUILDING MAY ALSO BE USED FOR STORAGE OF AUTOMOBILES OWNED BY COUNTY AND USED BY COUNTY OFFICERS—WHEN COUNTY SURVEYOR MAY EMPLOY MECHANIC TO KEEP IN REPAIR ROAD MACHINERY, ETC.—HOW COMPENSATION AND DUTIES OF MECHANIC PROVIDED.

1. *County commissioners are authorized by section 7200 G. C. to rent a building for the housing and storage of machinery, tools, equipment and conveyances owned by the county for use in road maintenance work. Rental should be paid from the county general fund.*

2. *By virtue of sections 7198 and 7200 G. C., the county surveyor may, if first authorized by the county commissioners, employ a mechanic whose duty it will be to keep in repair the road machinery and road repair trucks of the county. The compensation of the mechanic for his services in such respect should be paid from the road maintenance fund of the county.*

3. *If a building be rented for the purpose of housing and storing the road machinery and road repair trucks of the county, such building may also be used for*

the housing and storage of automobiles owned by the county for the use of the sheriff, commissioners and surveyor.

4. *If a mechanic be employed as mentioned in paragraph 2 above, the commissioners may provide that such mechanic do the necessary repair work on the county's automobiles used by the sheriff, commissioners and surveyor. The compensation of the mechanic for services in the latter respect should be paid from the county general fund.*

COLUMBUS, OHIO, May 9, 1921.

HON. HARRY BRITTON, *Prosecuting Attorney, Batavia, Ohio.*

DEAR SIR:—You have recently written to this department as follows :

“The commissioners of this county have five (5) automobile trucks and three (3) touring cars used by county officials and for the purpose of maintaining roads. The commissioners heretofore have been spending a great sum of money to various garages in this county for repair and upkeep on these automobiles. At the last meeting of the commissioners they decided to rent a building and hire one man on a straight salary to take care of all motor vehicles owned, operated and used by county officials. This will save the county money, and after due consideration the commissioners have decided this would be the best plan. I advised the commissioners as prosecuting attorney that the proposition as made by them would be very good because of the fact that it will save the county several hundred dollars each month. But before completing their arrangements the commissioners would like to have a ruling from the attorney-general on the following question :

Can county commissioners rent a building, and employ one mechanic to take care of and keep in running order all county vehicles in their possession?”

Since you make reference both to automobile trucks and touring cars, and to use in maintaining roads and by county officials, it is to be inferred that your county has acquired the trucks for highway maintenance purposes and has acquired the touring cars by virtue of sections 2412-1 and 2412-2 G. C. (for county commissioners and county sheriff) and section 7200 G. C. (for county surveyor).

Taking up your inquiry, first, as applied to the trucks upon the assumption that they were acquired for use in maintaining highways:

Sections 7198 and 7200, G. C., read respectively :

“Sec. 7198. 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.”

“Sec. 7200. The county commissioners may purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highway, bridges and culverts under their jurisdiction as they may deem necessary, which shall be paid for out of the road funds of the county. The county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business. All such machinery, tools, equipment and conveyances belonging to the county shall be under the care and custody of the county surveyor.

All such machinery, tools, equipment and conveyances owned by the county shall be plainly and conspicuously marked as the property of the county. The county surveyor shall annually on the fifteenth day of November make, or cause to be made, a written inventory of all such machinery, tools, equipment and conveyances indicating each article and stating the value thereof and the estimated cost of all necessary repairs thereto and deliver the same to the county commissioners, who shall cause the same to be placed on file. At the same time he shall file with the county commissioners his written recommendations as to what machinery, tools, equipment and conveyances should be purchased for the use of the county during the ensuing year and the probable cost thereof. The county commissioners shall provide suitable places for housing and storing machinery, tools, equipment and conveyances owned by the county."

In an opinion of this department dated September 30, 1920 (Opinions Attorney-General, 1920, p. 1020), it was held that said section 7200, by necessary implication, confers on county commissioners authority to purchase a site, with building, for the purpose of housing and storing the road machinery, tools, equipment and conveyances owned by the county. Similarly, if your commissioners deem the renting of a building to be the manner best suited in the interest of the public for carrying out the mandate of section 7200, G. C., as to providing suitable places for housing and storing road machinery, it is believed that in the light of the broad terms of the last sentence of section 7200, they have ample power to proceed accordingly. Of course, sections 5660 and 5661, G. C., should be kept in mind in the matter of first appropriating and certifying necessary funds.

So far as concerns the employment of a mechanic to care for and keep in running order the machinery, tools, equipment and conveyances owned by the county for use in road maintenance work, it is believed that your county commissioners are empowered in their discretion to authorize the county surveyor to arrange for such an employe. It will have been noted that by the terms of section 7200, the road machinery of the county "shall be under *the care and custody*" of the county surveyor; which provision, read in connection with section 7198, clearly indicates that the county surveyor is the proper officer to have charge of the actual employment and superintendence of the mechanic, since the work of such mechanic would be within the purview of section 7198,—that is to say, that the keeping of the road machinery in repair is a necessary incident of maintaining roads. If the county commissioners grant the necessary authority to the county surveyor, the latter, if he makes use of such authority, will bear in mind the provisions of section 486-1, G. C. (civil service law).

If your county commissioners proceed on the plan of renting a building and authorizing the surveyor to employ a mechanic for the purpose of keeping in repair the county's road machinery, the question then arises whether automobiles purchased under authority of sections 2412-1, et seq., and 7200, G. C., may be housed and stored in such building and kept in repair by such mechanic. Sections 2412-1 and 2412-2 do not employ the term "repair" but they contain the sentence:

"When vehicles are so purchased by the county commissioners, they may purchase such supplies as may be necessary."

The sentence in section 7200, G. C.,

"All such machinery, tools, equipment and conveyances belonging to the county shall be under the care and custody of the county surveyor,"

includes automobiles purchased for the use of the county surveyor and his assistants "when on official business," as well as road machinery.

Since none of the sections in question specifically mention repairs or point out the fund from which repairs are to be paid for, and since they do not make mention of the fund to be resorted to in purchasing or renting a building for the housing and storing of automobiles, the solution of the question now under consideration would seem to turn on the matter of whether a conflict as between funds will result from attempting to follow the plan proposed by your commissioners. It is to be borne in mind that at all events the county must keep up repairs both to its road machinery and to the automobiles it has acquired for use by the sheriff, commissioners and surveyor; so that if no conflict in funds results, there would seem to be no reason for saying that the automobiles last mentioned should not be housed and repaired in connection with the road machinery.

In the previous opinion of September 30, 1920, above mentioned, it was held that for the purchase of a site and building for housing and storing road machinery and conveyances, the commissioners might appropriate from the county general fund, though it was suggested that resort be had in the first instance to unappropriated moneys, if any, in the public building fund. Since the plan you speak of, however, is that of renting, rather than purchasing, a building,—in other words, a current expense rather than a permanent investment,—the proper fund to be resorted to in the first instance is the county general fund and not the public building fund. Hence, it would be entirely proper to house and store both the county's road trucks and its automobiles purchased for sheriff, commissioners, and surveyor, in the same rented building; since the housing and storage of the automobiles is payable from the same fund as that of the trucks.

So far as concerns payment of the compensation of the mechanic, it is to be said that his services in repairing trucks should be paid from the road maintenance fund. It is equally plain, on the other hand, that compensation for his services in repairing the county's automobiles used by the sheriff and commissioners should be paid from the county general fund; and this is true also of the county's automobiles used by the surveyor and his assistants, since such use is not confined to road work, but applies to the general "official business" of the surveyor's office. From a practical standpoint no difficulty is to be perceived in making an adjustment as between the two funds,—that is to say, so much of the mechanic's compensation as is attributable to services on the trucks will be paid out of the road maintenance fund, and the remainder out of the county general fund. The same principle would apply to repair parts purchased.

Respectfully,
JOHN G. PRICE,
Attorney-General.