

but, all of the partners having passed the original examination, the provisions of Section 6373-36 make the issuance of a firm license to a new partnership mandatory and further direct that the new license shall issue without charge. Likewise, in the case of C, who has retired from the original partnership and is engaging in business as an individual broker, the same rules are applicable. His name having been included in the original license issued to the A, B and C Realty Company, as a firm, for the current year, he is entitled to have a new license issued to him as an individual broker. Each of these licenses would, of course, be only for the unexpired period.

Since both the new firm and the individual broker C would thereupon have exactly the same status as if they had applied for and obtained licenses in their present status, their respective rights of renewal are the same as any other licensees. Accordingly, they should be renewed upon application therefor without recommendation, examination or inquiry, excepting as provided in Sections 6373-39 to 6373-44, inclusive, of the General Code.

Specifically answering your question, I am of the opinion that where a partnership of three members has heretofore made application for and been granted a real estate broker's license in the firm name and separate licenses were issued to each of the partners as brokers, upon the dissolution of such partnership, the formation of a new partnership of two of the members of the old firm and the engaging in business of the individual remaining member, licenses for the new firm and an individual license to the remaining partner shall be immediately issued by the State Board of Real Estate Examiners without charge, for the unexpired period. Such licenses are subject to renewal in the manner prescribed by Section 6373-38 of the General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1423.

COUNTY COMMISSIONERS—PAYMENT FOR PRELIMINARY ROAD SURVEYS AFTER JANUARY 2, 1928.

SYLLABUS:

1. *A board of county commissioners acting under the provisions of Sections 1191 and 1195, General Code (effective January 2, 1928), may enter into an agreement with the Director of Highways and Public Works to pay some part or all of the cost and expense of surveys and other preliminary expenses incident to the improvement of a state highway.*

2. *After the second day of January, 1928, the county may pay a portion or all of the cost and expense of surveys and other preliminary expenses incident to the improvement of a state highway only in those instances where the improvement is being constructed under the provisions of Section 1191, General Code, 112 O. L. 469.*

COLUMBUS, OHIO, December 22, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion, as follows:

"The Edwards-Norton Highway Bill, House Bill No. 67, repeals Section 1193 of the General Code whereby the county was obligated to pay one-half of the preliminary engineering expense. In proceeding under Sections 67 and 68 of the above mentioned bill, is the state obligated to pay the entire cost of surveys, preparation of plans and other preliminary expenses?"

May the county pay any of the cost of preliminary engineering where the state bears the entire cost of construction excepting property owners' assessment which may be assumed by the counties which will be the case in all except the larger counties?"

This will have a marked effect on the organization of our field forces after January 1, 1928."

As pointed out in several former opinions of this department, Section 1193, General Code, is one of a series or group of statutes relating to the construction, improvement, maintenance and repair of inter-county highways and main market roads upon a co-operative basis between the State of Ohio and a county or township therein. These statutes are commonly referred to as "State Aid Statutes."

Section 1193, General Code, as it now reads, will not be in effect after the first day of January, 1928, since by the provisions of House Bill No. 67, (Edwards-Norton Act) said statute was expressly repealed.

It is well to bear in mind that pending proceedings for road improvements, which have been instituted under the provisions of Sections 1191, et seq. of the General Code, will not be affected by the going into effect of House Bill No. 67. You will recall that in Opinion No. 776, addressed to you on the 25th day of July, 1927, it was held:

"1. A proceeding is 'pending' within the meaning of Section 26 of the General Code when a board of county commissioners makes application for state aid under the provisions of Section 1191 of the General Code, and such a proceeding may be completed under the present law after the effective date of House Bill No. 67, passed by the Eighty-seventh General Assembly (Norton-Edwards Act).

2. A board of county commissioners or a board of township trustees contracts an obligation within the meaning of Section 91 of House Bill No. 67 at such time as it files an application under Section 1191 of the General Code for state aid, in that by filing such application a board of county commissioners or a board of township trustees agrees to pay one-half of the cost of surveys and other preliminary expenses incident to the construction, improvement, maintenance or repair of an inter-county highway or main market road."

Therefore, in all instances where an application for state aid has been made under the provisions of Sections 1191, et seq., General Code, prior to the second day of January, 1928, it will be the duty of the county commissioners or township trustees "to pay one-half the cost and expense of surveys and other expenses preliminary to the construction, improvement, maintenance or repair of a state highway," as provided in Section 1193, General Code.

In your letter you refer to Sections 67 and 68 of House Bill No. 67, 112 O. L. 430. Your attention is invited to the fact that these sections are now respectively designated as Sections 1191 and 1195 of the General Code. An examination of House Bill No. 67 will reveal that the only sections of that act relating to the subject of co-operation between the state and county, in the matter of road improvements, are Sections 1191 to 1193, both inclusive, General Code. Section 1191, General Code, as enacted in 112 O. L. 469, provides:

"The commissioners of any county may co-operate 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 commissioners shall also be authorized to co-operate 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 co-operation 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 co-operate 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."

It will be observed that, under the provisions of the above quoted statute, the only cases in which the county will be able to co-operate with the state after the first day of January, 1928, are:

- (1) In the abolishment of railway grade crossings on the state highway system or any extension thereof;
- (2) In the construction or reconstruction of bridges and viaducts within municipal corporations;
- (3) 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;
- (4) In those counties having a tax duplicate of real and personal property in excess of three hundred million dollars, the county commissioners shall be authorized to co-operate with the Department of Highways in the reconstruction of state roads.

It is important to note that after the first day of January, 1928, the only basis upon which the smaller counties will be able to co-operate with the state in the matter of the construction and reconstruction of highways is where the highway is being widened to a width greater than eighteen feet. Even then such co-operation is limited to participating in such portion of the cost as is occasioned by such widening.

Your attention is also directed to the fact that in the several larger counties having a tax duplicate of real and personal property in excess of three hundred million dollars, under the express terms of Section 1191, *supra*, co-operation is limited to the *reconstruction* of state roads within said counties.

You will also note, under Section 1191, *supra*, that in all instances where co-operation is provided provision is made that the board of county commissioners shall be authorized to co-operate with the Department of Highways in reference to the cost of the improvement as may be agreed upon. Your attention is further directed to

the fact that whereas, under the provisions of Section 1193, General Code, provision is made that in the application for state aid the county commissioners or township trustees must agree to "pay one-half of the cost and expense of surveys and other expenses preliminary to the construction, improvement, maintenance or repair" of state highways, we find no such requirement under the provisions of House Bill No. 67.

Section 68 of House Bill No. 67 (Sec. 1195 G. C.) reads in part as follows:

" * * * he (Director of Highways and Public Works) shall cause to be transmitted to the county commissioners copies of such maps, plans, profiles, specifications and estimates for the proposed improvement as he may prepare for the construction of the work covered by such proposal."

No mention is made in the above section of participation by the county in the cost of preliminary engineering expense. This would seem to evidence an intention on the part of the legislature not to make it mandatory upon the county commissioners to pay for any portion of the cost of preliminary engineering work. This fact coupled with the fact that there are no provisions in any other section of House Bill No. 67 which require participation by the county in the cost of preliminary engineering work further evidences the legislative intent not to make such participation necessary, unless, as will be hereinafter pointed out, agreement is made between the county and the state in which agreement the county commissioners agree to participate in the cost of said work.

As heretofore pointed out, if, under the provisions of Section 67, House Bill No. 67 (Sec. 1191, G. C.), co-operation between the state and the county is undertaken, then the county may participate in the cost of an improvement.

There is no question but that it is necessary to have preliminary surveys made prior to the undertaking of a highway improvement. Such preliminary engineering as may be necessary to the drafting of plans is a necessary incident to all road improvement projects.

In view of the foregoing, I am of the opinion that the cost and expense of preliminary surveys and other expenses preliminary to a highway improvement, when such improvement is being made by the state and the county, as is provided for in Section 67 of House Bill No. 67, may be apportioned between the state and the county as may be agreed upon by the Director of Highways and Public Works and the county commissioners of said county.

In reference to your second question, let it suffice to say that while it is true that under the provisions of Section 34-1 of House Bill No. 67 (Sec. 1214-1, G. C.) the county commissioners may assume on behalf of the county and agree with the Director of Highways and Public Works to make certain assessments against property situated within certain limits of the improvement, yet, there is nothing in the provisions of Section 34-1 or any other Section of House Bill No. 67 which permits the county commissioners to pay any of the cost of preliminary engineering where the state, with the exception of the assessments against property owners, bears the entire cost of the improvement.

In view of the foregoing and answering your questions specifically, it is my opinion that:

1. A board of county commissioners acting under the provisions of Sections 1191 and 1195, General Code (effective January 2, 1928), may enter into an agreement with the Director of Highways and Public Works to pay some part or all of the cost and expense of surveys and other preliminary expenses incident to the improvement of a state highway.

2. After the second day of January, 1928, the county may pay a portion or all of the cost and expense of surveys and other preliminary expenses incident to the improvement of a state highway only in those instances where the improvement is being constructed under the provisions of Section 1191, General Code, 112 O. L. 469.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1424.

RABBITS—OPEN SEASON DISCUSSED.

SYLLABUS:

The last day on which hares and rabbits may lawfully be hunted during 1927 will be December 31st.

COLUMBUS, OHIO, December 22, 1927.

HON. CHARLES V. TRUAX, *Director, Department of Agriculture, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter dated December 22, 1927, which reads as follows:

“Referring to Section 1396, General Code of Ohio, ‘Hares and rabbits may be taken and possessed only from the fifteenth day of November to the first day of January, both inclusive, and such taking shall be done only with gun and dog, or with gun.’

Since January 1, 1928, falls on Sunday, many inquiries have been received as to the permissibility of hunting rabbits on Monday, January 2, 1928. Your opinion on same is hereby requested.”

Section 1396, General Code, in so far as pertinent to your inquiry, provides:

“Open season: Hares and rabbits may be taken and possessed only from the fifteenth day of November to the first day of January, both inclusive,
* * * ”

Many laymen are under the mistaken impression that Sections 8301 and 10216, General Code, have the effect of extending the open season to and including January 2, 1928.

Section 8301, General Code, provides in part as follows:

“ * * * But if the first day of January * * * be the first day of the week, known as Sunday, the next succeeding secular or business day shall be a holiday.”

Section 10216, General Code, provides:

“Unless otherwise specifically provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; except that the last shall be excluded if it be Sunday.”