2091.

ROAD IMPROVEMENT—LEGISLATION STARTED BY COUNTY COMMISSIONERS IN 1926—SECTION 1214, GENERAL CODE, AS IT THEN READ, GOVERNS LEVYING OF ASSESSMENTS.

SYLLABUS:

The provisions of Section 1214, *General Code, as in force and effect in the year* 1926, *should govern proceedings now to be taken in connection with levying assessments to pay a part of the cost of the improvement of an intercounty highway, the proceedings for which became pending in the year* 1926.

COLUMBUS, OHIO, July 15, 1930.

HON. BENJAMIN F. PRIMMER, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—In your communication of recent date you request my opinion upon the applicability of the provisions of Section 1214, General Code, as in force and effect in the year 1926, to proceedings for the levy of assessments to pay a portion of the cost of a road improvement. You state that the improvement in question has been completed and that the first legislation for the improvement was passed by the board of county commissioners in the year 1926. Since the section involved is one of the group of sections relating to the improvement of what were then referred to as intercounty highways as cooperative projects between the county and the state, I assume that application for state aid was made in the year 1926 under the then provisions of Section 1191, General Code. As you mention in your letter, Section 1214, General Code, was amended by both the 87th and 88th General Assemblies, and the question becomes one of whether or not the provisions of Section 1214, as in force and effect in 1926, would now apply to the steps to be taken in levying assessments for the road improvement in question.

This office has consistently held that upon filing application for state aid for the improvement of an intercounty highway, the proceedings for such improvement are pending within the meaning of Section 26, General Code, and the sections of the law relative thereto should govern such proceedings notwithstanding the fact that they may have, during the pendency of such proceedings, been amended or repealed. Opinions of the Attorney General, 1928, Vol. I, p. 638, Vol. II, p. 1196 and Vol. III, p. 1921.

In view of the foregoing and in specific answer to your question, it is my opinion that the provisions of Section 1214, General Code, as in force and effect in the year 1926, should govern proceedings now to be taken in connection with levying assessments to pay a part of the cost of the improvement of an intercounty highway, the proceedings for which became pending in the year 1926.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2092.

COUNTY COMMISSIONERS—NO LIABILITY FOR NEGLIGENCE IN MAINTENANCE OF STATE HIGHWAYS.

SYLLABUS:

County commissioners are not liable in damages by reason of negligence in the maintenance of state highways.

COLUMBUS, OHIO, July 15, 1930.

HON. FREDERICK C. MYERS, *Prosecuting Attorney, Marietta, Ohio.*

DEAR SIR:—This will acknowledge the receipt of your recent communication, as follows:

> "Directing your attention first to Section 7464 of the General Code, which makes classifications of public highways in the state, and to Section 2408 which fixes liability upon the county commissioners for damages arising from negligence in not keeping the roads, including state roads, within their county, in proper repair, I am asking your opinion as to whether, as the law now stands, there is any liability resting upon the state or any of its subdivisions, or officers thereof, for damages resulting from the failure or neglect in keeping a state road, as defined by Section 7464, in proper repair? Putting the question bluntly and in another form, if a person sustains damages due to failure of the proper authority to keep a state road in proper repair, has he any redress whatsoever?
>
> In this connection, permit me to cite you to the cases of *Bellard* vs. *Commissioners*, 31 O. App. 224, and *Weiher* vs. *Phillips, et al.*, 103 O. S. 249."

I deem it unnecessary to give extended consideration to your inquiry, in view of the apparently settled law on the subject. The cases which you cite are conclusive upon the question as to the responsibility of the county commissioners for any negligence in connection with the maintenance of state roads. The duty to maintain this type of roads is now by law clearly placed upon the state and no such duty is imposed upon the county commissioners. Section 2408, General Code, is as follows:

> "The board of county commissioners may sue and be sued, plead and be impleaded in any court of judicature, bring, maintain and defend all suits in law or in equity, involving an injury to any public, state or county road, bridge, ditch, drain or watercourse established by such board in its county, and for the prevention of injury thereto. The board shall be liable in its official capacity for damages received by reason of its negligence or carelessness in not keeping any such road or bridge in proper repair, and shall demand and receive, by suit or otherwise, any real estate or interest therein, legal or equitable, belonging to the county or any money or other property due the county. The money so recovered shall be paid into the treasury of the county, and the board shall take the treasurer's receipt therefor and file it with the county auditor."

This section was under consideration in the cases which you have cited, and it is unnecessary to comment extensively thereon.

While it is true that the section states that the county commissioners shall be liable for any negligence in connection with their failure to maintain state roads, it is nevertheless true that negligence must be predicated upon some duty. Since there is no duty to maintain, there can be, of course, no negligence.

Section 7563 of the General Code formerly imposed the duty upon county commissioners to erect guard rails on all public highways under certain circumstances. My predecessor in two opinions held that this duty applied to state highways. It is significant, however, that the last Legislature amended this section so as to place the duty of maintining such guard rails specifically upon the Department of Highways. In view of this amendment, and in the light of the authorities cited, I am of the opinion that there is no liability upon the part of county commissioners in connection with the maintenance of state highways.

You further inquire whether a person sustaining damages from failure to keep the state road in proper repair has any redress. Of course, no suit against the state may be predicated upon failure to maintain its highways, since the Legislature has not made provision for bringing suits of this character. I may say that recent Legislatures have incorporated several items in their sundry claims bills covering reimbursement for damages of this character. At the present time this is the only method by which relief may be had. I may add that there is some agitation for provision being made for suits of this character, but so far as I know, no definite proposal has been offered.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2093.

REAL ESTATE EXAMINERS—ISSUANCE OF LICENSE TO APPLICANT TO OPERATE UNDER MORE THAN ONE TRADE NAME AUTHORIZED.

SYLLABUS:

The state board of real estate examiners may issue a license to an individual doing business under two trade names.

COLUMBUS, OHIO, July 15, 1930.

HON. ED. D. SCHORR, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter of recent date, which is as follows:

> "Where a broker is licensed in his individual name, doing business as (DBA) 'Brokers' Exchange' and desires also to operate under the name of 'Jones Rentals', that is, doing business as (DBA) 'Jones Rentals', under the provisions of the license law, is the State Board of Real Estate Examiners authorized to issue a license to an applicant to operate under his personal license under more than one trade name?"

Section 6373-26 of the General Code provides as follows:

> "No person, firm or corporation shall act as a real estate broker or as a real estate salesman, or advertise or assume to act as such, without first being licensed so to do as provided in this act."

Section 6373-29 of the General Code provides that the application for a license as a real estate broker shall be made in writing and provides that the application shall state the name of the person, firm or corporation applying for such license and the location of the place or places of business for which such license is desired and shall give such other information as the board of real estate examiners may require in the form of application prescribed by the board. This section further provides that if the applicant is a firm, the names of all the members thereof must be stated, and if it is a corporation, the names of the president and each of its officers to whom the license is to apply shall be stated.

Section 6373-34 of the General Code provides in part as follows:

> "The form and size of the licenses issued under this act shall be prescribed by the state board of real estate examiners. Each license shall show