

This reasoning is further supported by the fact that the Legislature has made specific provision for cases in which it determined joint ownership of property by political subdivisions to be desirable, as in the case of Section 3399, General Code, authorizing the joint ownership of a town hall by township trustees and a municipality located within the township.

Section 2447, General Code, contains the general authority to county commissioners to sell real estate not needed for public use and the power of the county to lease such property has also been recognized. A discussion of such power to lease appears in Opinions of the Attorney General for 1924 at page 110. However, neither of these powers can be so extended as to include the power of entering into a joint ownership agreement for a use of property proposed to be jointly owned for a purpose not authorized by statute.

It is my opinion, therefore, that a county and a city may not legally enter into a joint ownership agreement with respect to that portion of a county home farm, not needed for public use, for the purpose of equipping and maintaining an airport.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2844.

COUNTY COMMISSIONERS—AUTHORITY TO PURCHASE MATERIAL
FOR GENERAL USE IN CONSTRUCTION AND MAINTENANCE OF
COUNTY ROADS.

SYLLABUS:

County commissioners have legal authority under existing law to purchase material for general use in connection with the construction of highways within their jurisdiction, as well as to make such purchases for the improvement, maintenance and repair of such highways.

COLUMBUS, OHIO, November 8, 1928.

HON. F. E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads:

“Will you please give me your opinion on the following proposition:

Has the Board of County Commissioners the general power to purchase material, such as stone or gravel, for the purpose of using the same for the building and construction of county roads *in general*, as distinguished from the power to purchase such material, in the manner provided by law for a designated or specific improvement, and as distinguished from the power to purchase such material for the repair and maintenance of county roads?

Stating the question in another way:

Has the Board of County Commissioners, for example, the power to purchase ten thousand tons of gravel to be used in building county roads in general, without reference to the construction of any particular or designated highway or improvement?

As I understand it, the general powers of commissioners as to the construction of roads are defined in Title IV, Chapter 6, Sections 6906, et seq., General Code, these sections as they now exist prescribing procedure and legislation necessary to be followed to build or construct a county road. It seems to be obvious that the County Commissioners would not have the general authority under this chapter, to purchase material for road building, or construction in general, without regard or reference to a specific improvement, designated in the manner provided for in this chapter. The method of advertising, letting the contract of such improvement appears to be prescribed by Section 6945, General Code, 112 O. L. 493.

Section 7467, General Code, charges the Board of County Commissioners with the maintenance of all county roads, but I do not understand that this section would give the board power to purchase for general and indiscriminate use materials for building roads.

Section 7200 provides for the purchase and leasing of machinery and equipment for the maintenance and repair of bridges, roads, etc., but I do not find in this connection any authority for the general purchase of road building material.

Section 7203 authorizes the purchase by the County Commissioners, or County Surveyor by direction of the Commissioners, of road building material from public institutions.

By the provisions of Section 3373, the authority is conferred upon Township Trustees to purchase road building materials, but as far as I have been able to discover there is no similar section which could be said to confer such power on the County Commissioners.

I do not find that there is any authority conferred by Title X, Division II, Chapter I, on the Board of County Commissioners to purchase indiscriminately material for road building purposes, without reference to a specific improvement.

As I understand the provisions of Section 6957 et seq., the County Commissioners in certain counties may purchase materials for road repair, but not for construction.

In short, our search of the statutes leads to the conclusion that the County Commissioners are without power to act in the manner outlined in the question propounded at the beginning of this letter."

In reviewing the statutes pertinent to consider in connection with your inquiry, it is noted that Section 7200, General Code, provides in part as follows:

"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. * * *"

The latter part of the section above quoted requires the County Commissioners to provide a suitable place for housing and storing of machinery, tools, equipment and *materials*. Inasmuch as the former part of the section expressly authorizes the purchase of tools and equipment for the *construction* of roads under their jurisdiction, as well as the improvement and repair of such roads, and the latter part of the section expressly mentions the storing of materials, there certainly is an inference in the language used that the Legislature contemplated the said commissioners would have materials stored for the construction of roads.

Section 7203, General Code, to which you refer, and which is a part of Chapter 7, in which Section 7200, *supra*, is included, provides:

"The county commissioners or the county surveyor, when authorized by the county commissioners, or the trustees of any township, may purchase from any public institution within the state any road material, machinery, tools or equipment, quarried, mined, prepared or manufactured by said institution."

The section last quoted grants a general power to purchase *materials*, among other things. The section apparently does not limit the purpose for which such materials may be used, but presumably said materials may be used for the same purposes as those for which tools, machinery, etc., may be purchased under Section 7200, *supra*, which are, for the construction, improvement, maintenance or repair of the highways under the jurisdiction of the county commissioners. While this section refers only to purchases from state institutions, it is significant for the reason it does not limit the purpose for which said material may be purchased.

Your attention is further directed to Section 7214, General Code, which provides:

"The county commissioners or township trustees may contract for and purchase such material as is necessary for the purpose of constructing, improving, maintaining or repairing any highways, bridges or culverts within the county, and also appropriate additional land necessary for cuts and fills, together with a right of way to or from the same for the removal of material. If the county commissioners or township trustees, and the owner of such material or land, cannot agree on the price therefor, the county commissioners or township trustees may apply to the probate court or common pleas court of the county in which the same is located, and on receipt of such application, the court shall proceed to assess the value of the material or right to be appropriated in the manner hereinafter provided."

The section last quoted seems to be general in its nature and expressly authorizes the purchase of material for the construction, as well as maintenance and repair of "any highways" within the county. It may be pertinent to consider what the General Assembly meant by its use of the word "any" in connection with its description of highways. The lexicographers in defining the word indicate that the context of the language in connection with which it is used, has much to do with the proper interpretation to be given it in a certain phrase. It has been defined as follows:

"Some; one out of many; an indefinite number; * * *

It is synonymous with 'either;' * * * and is given the full force of 'every' and 'all;' * * * but its generality may be restricted by the context." Bouvier's Law Dictionary.

It is thought that the legislative reference to "any highways" in the section being considered, means any number of highways or all highways of the county which the county commissioners have power and deem necessary to construct, improve, maintain or repair.

The courts have frequently annunciated the rule that county commissioners have only such powers as are expressly granted by statute. However, by judicial pronouncement, it has been definitely established that such commissioners have such implied power as is necessary and essential to carry into effect the express powers granted.

The observation may be made that the line of demarcation between construction of roads and the improvement or repair of roads, in many instances from a practical standpoint, is difficult to define, especially in connection with the improvement or construction of so-called county roads in view of the methods employed to make such

highways carry the public travel. Therefore, it would seem just as essential for the county commissioners to have the power to purchase a supply of materials to have on hand to be used to construct roads under its jurisdiction as it would be to have power to purchase such materials to repair or improve such roads.

Taking into consideration the objects and purposes to be attained in the enactment of the sections herein referred to relating to the power of county commissioners to purchase materials, together with the express language used, I am compelled to the conclusion that within other limitations provided by law with reference to the existence of public funds from which payments may be made for such purposes, the county commissioners may purchase material, even though it is intended to be used for the purpose of construction as distinguished from improvement, maintenance and repair. Such power exists from necessary implication in order to carry out the express powers granted to said commissioners in connection with the construction and maintenance of highways, if such power is not expressly granted to make such purchase in the language of the statutes hereinbefore mentioned.

In an opinion of the Attorney General, found in Reports of the Attorney General for 1920, Vol. II, page 1020, it was held that Section 7200, General Code, "by necessary implication confers on county commissioners authority to purchase a site, with building, for the purpose of housing and storing machinery, tools and equipment and conveyances owned by the county."

It may be pointed out in this connection that Section 5625-6, General Code, as enacted in 112 O. L. 394, authorizes a special levy without a vote of the people, within the fifteen mill limitation and subject to the control of the county budget commission, "for the construction, reconstruction, resurfacing and repair of roads and bridges other than state roads and bridges thereon." Of course, before any valid purchase could be made of such material the fund from which payment is to be made should be properly provided and the auditor's certificate under Section 5625-33, General Code, would have to be made before any such contract could be legally entered into.

In view of the foregoing and in specific answer to your inquiry, you are advised that it is my opinion that county commissioners have legal authority under existing law to purchase material for general use in connection with the construction of highways within their jurisdiction, as well as to make such purchases for the improvement, maintenance and repair of such highways.

Respectfully,

EDWARD C. TURNER,
Attorney General.

2845.

ELECTRIC LIGHT AND POWER PLANT—MUNICIPAL—SALE OF—EXCESS PROCEEDS PAYABLE TO SINKING FUND OR TO SPECIAL FUND FOR PERMANENT IMPROVEMENTS.

SYLLABUS:

Where a municipal electric light and power plant, having the character of a permanent improvement, as defined by Section 5625-1, General Code, is sold by the municipal corporation owning the same, the proceeds of such sale in excess of the amount required for the redemption of bonds issued for the acquisition or construction of such electric light and power plant should be paid into the sinking fund or the bond re-