council has a supervision over, or check upon any action taken under its provisions, amounting in practical effect, to the final determination of the salaries and compensation of the employes under consideration.

In specific answer to your question, therefore, it is believed that the items indicated, such as maintenance, board, lodging, laundering, etc., being a part of the compensation allowed employes of the municipal hospital, should be included in the general ordinance or resolution of council, fixing the salary and compensation of such employes. Since it is believed by such a procedure sections 4214 and 4035 G. C. may be harmonized and irregular or questionable methods avoided.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2655.

ROADS AND HIGHWAYS—HOW PROPERTY OWNERS' SHARE CALCULATED ON STATE AID HIGHWAY IMPROVEMENT—WHERE BIDS TAKEN ON TWO TYPES OF IMPROVEMENT, STATE PROVIDES GREATER AMOUNT FOR MORE COSTLY TYPE—ADDITIONAL AMOUNT PROVIDED BY STATE NOT CREDITED FOR LESS COSTLY TYPE.

1. *Under the terms of section* 1214 *G. C. and related sections, the property owners' or assessment share of the cost of a state aid highway improvement, is calculated by applying to the whole cost of the improvement (excepting cost of bridges and culverts), the percentage fixed as the property owners' share and not by applying such percentage to the whole cost after deducting the state's share.*

2. *If bids are taken on two types of improvement, and the state has provided a greater amount as the state's share of the more costly type than for the less costly type, and the improvement is in fact made on the less costly type, then and in that event, the improvement project is not to be credited with the additional amount set aside by the state for the more costly type, as compared with the less costly type.*

COLUMBUS, OHIO, December 2, 1921.

HON. KENNETH LITTLE, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—You have submitted for the opinion of this office the following:

> "Intercounty highway No. 1 'National Road' is now being improved in this county with state aid, and the commissioners have carried all their legislation through with the provision that the property owners within one mile on either side are to pay 25 per cent of the total cost, and are now raising the question as to whether the state aid is deducted from the total cost before the computing of the 25 per cent. In other words, do the abutting property owners get credit for state aid, or does it inure solely to the benefit of the county's portion, keeping in mind particularly the fact that all legislation for the improvement of this road provides for the property owners to pay 25 per cent of the total cost.
>
> Also, it appears that the state allowance was greater than that for

which they are now given credit, with the understanding that brick was to be used and the abutting property owners are now insisting that the entire amount of state aid, or the greatest sum be applied, and that the state highway commissioner had no authority to transfer from this road to another."

You have submitted with your inquiry a transcript of the proceedings of your county commissioners relating to the making of the improvement in question (Sec. 0-1 of I. C. H. No. 1); from which transcript it appears that on January 3, 1921, your board of county commissioners adopted a resolution, reciting in substance, that the board was desirous of increasing above ten per cent the proportion of cost of said improvement to be specially assessed, and was also desirous of making a special assessment against the real estate within one mile of either side of said improvement, and that accordingly it was resolved by the board, all the members concurring

"that twenty-five per cent of the cost and expense of so improving said section as above described be, and the same is hereby ordered assessed against the real estate within one mile of either side of said improvement in the manner provided by law."

It further appears that on January 7, 1921, several days after the passage of the resolution last above mentioned, your county commissioners adopted a further resolution for the issue of the bonds of the county for the purpose of providing funds with which to pay the share of the cost of said improvement to be borne by the county, township and property owners, in which resolution it is recited, among other things:

"Of which total estimated cost and expense the state of Ohio is to pay the sum of $73,367; the township of Bethel is to pay 15 per cent; the owners of real estate within one mile of either side thereof are to pay 25 per cent and Miami county is to pay the balance thereof."

The estimated cost is named in said resolution as $229,000.00.

The provisions of law particularly applicable to your inquiry are sections 1214 G. C. and related sections. Section 1214 G. C. reads in part:

"Except as otherwise provided in this chapter, the county shall pay twenty-five per cent *of all cost and expense of the improvement.* Fifteen per cent *of the cost and expense of such improvement,* except the cost and expenses of bridges and culverts, shall be apportioned to the township or townships in which such road is located. If the improvement lies in two or more townships the amount to be paid by each shall be apportioned according to the number of lineal feet of the improvement lying in each township. Ten per cent *of the cost and expense of the improvement,* excepting therefrom the cost and expense of bridges and culverts, shall be a charge upon the property abutting on the improvement, provided the total amount assessed against any owner of abutting property shall not exceed thirty-three per cent of the valuation of such abutting property for the purposes of taxation. Provided, however, that the county commissioners by a resolution adopted by unanimous vote may increase the per cent *of the cost and expense of the improvement* to be specially assessed and may order *that all or any part of the cost and expense of the improvement* contributed by the county and the interested township or townships be assessed against the

property abutting on the improvement; and provided further, that the county commissioners by a resolution passed by unanimous vote may make the assessment of ten per cent or more, as the case may be, of the cost and expense of improvement against the real estate within one-half mile of either side of the improvement or against the real estate within one mile of either side of the improvement. Township trustees shall have the same power to increase the per cent, to be specially assessed and to change the assessment area where the improvement is made on their application." * * *

(Remainder of section prescribes the steps to be taken in preparing, equalizing and confirming the assessment.)

Section 1217 G. C. contains the sentence:

"In no case shall the property owners abutting upon said improvement be relieved by the state, county or township from the payment of ten per cent *of the cost and expense of such improvement,* excepting therefrom the cost and expense of bridges and culverts, provided the total amount assessed against any abutting property owner does not exceed thirty-three per cent of the valuation of such abutting property for the purposes of taxation."

Section 1213 G. C. reads as follows:

"Whenever there are one or more improvements to be made in a county, and the cost and expense thereof does not exceed twice the amount apportioned by the state to a county, then the state shall pay fifty per cent *of such cost and expense.*

Whenever there are one or more improvements to be made in a county, and the cost and expense thereof exceeds twice the amount apportioned by the state to a county, then the state shall pay such proportion *of the cost of said improvement* or improvements as may be agreed upon by the state highway commissioner and the county commissioners or township trustees."

Section 1213-1 G. C. makes special provision that the state may assume more than fifty per cent of the cost of improvements in counties which have a comparatively small amount of taxable property.

Sufficient reference has been made to pertinent statutes to show that the shares of cost to be borne by state, county, township and property owners are calculated upon the basis of percentage of the whole cost; and while the various shares of the state, county, township and property owners are subject to increase over and decrease from the basic proportions of fifty per cent, twenty-five per cent, fifteen per cent and ten per cent, respectively, yet, such increases and decreases are made on a percentage basis having reference to the whole cost of the improvement, and not with reference to a process of calculation which would eliminate one of the shares before the percentage is figured.

The second part of your inquiry goes to the point whether the improvement project may, or must, be given credit, so to speak, for the difference between the share of cost that would have been borne by the state had the improvement been made on a more costly plan than was actually adopted. This part of your inquiry has, in effect, been answered by what has been said in response to the first part of your inquiry; but a further brief discussion may not be amiss,

It appears that bids were taken on two types of improvement, designated by the state highway department as Type A and Type B respectively. Type A contemplated a reinforced concrete construction; and the estimated cost for that type, exclusive of the cost of engineering and supervision, was $196,127.14, the total estimate, including engineering and supervision being $203,333. Type B contemplated brick construction at an estimated cost, exclusive of engineering and supervision, of $243,380.79, the total estimate, including engineering and supervision, being $251,000. The funds provided for the $203,333 estimated cost of Type A improvement were made up of $155,633 county's share and $47,700 state's share, the state's share consisting of $46,700 federal funds and $1,000 intercounty highway funds. The funds provided for the $251,000 estimated cost of Type B improvement consisted of $155,633 county's share and $95,367 state's share, this latter amount being made up of $46,700 federal funds and $48,667 intercounty highway funds. By the term "county's share" as just used is meant the share assumed in the first instance by the county, which includes county, township and property owners' share, or in other words, all of the cost except the share assumed by the state. In the present instance the files of the state highway department show that the county commissioners passed separate final resolutions providing the county's share of funds as to Types A and B.

It will thus be seen that the practical effect of the greater appropriation made by the state for Type B as compared with Type A was merely to afford opportunity for a higher and more costly type of improvement. Under the statutes, all legislation relating to the provision of funds for an improvement must be completed by the time the bids are opened (see particularly section 1218 G. C.) Hence, where bids are called for on several types of improvement, provision must be made in advance for funds sufficient to cover the estimated cost of the highest or most costly type of improvement, so that if after all the bids have been canvassed, it be concluded to make the award on the highest type, everything will be in readiness for the making of the award on the day of the opening of the bids. In the present case, after all bids had been considered, it was concluded to adopt Type A or reinforced concrete construction at the lowest bid of $186,766.69 rather than Type B, brick construction, at the lowest bid of $228,992.10. Therefore, the effect of adopting Type A rather than Type B was to make ineffective the bids as to Type B, and to return to the state treasury the $47,667 of additional funds which the state had temporarily provided in advance against the contingency that the award might be made on Type B rather than Type A.

Upon the whole, then, there is a two-fold reason for concluding that there is no merit in the claim that the cost of the improvement should be credited with the $47,667.00 in question and that the state highway commissioner having once allotted said sum to the project could not afterwards transfer it from the project: First, the statutes provide, as already pointed out, and your county commissioners in accordance with the statutes, have fixed, a definite percentage of the whole cost of the improvement to be borne by property owners; and, second, the improvement for which said $47,667.00 additional funds were provided by the state has not been made and the property owners are not being assessed for such an improvement, but for the actual cost of a less costly type of improvement.

The fact has not been overlooked that the county commissioners' resolution for the issue of bonds recites that the state is to pay $73,367.00 of the estimated cost; whereas the amount ultimately assumed by the state, as already noted, was $47,700 of the estimated cost of Type A improvement. That

fact, however, does not minimize the further fact that the property owners' share was definitely fixed at twenty-five per cent of the cost and expense of the improvement. Subsequent to the time the bonds were issued, new estimates were made at lower figures than those on which the bond issue was based; and following the making of the new estimates, the two final resolutions of the county commissioners were adopted agreeing definitely to the state's share at $47,700 should Type A be used and at $95,367 should Type B be adopted.

Previous opinions of this department having incidental reference to your inquiries are:

Opinions, Attorney-General, 1917, Vol I, p. 492;
Opinions, Attorney-General, 1918, Vol. I, p. 167;
Opinions, Attorney-General, 1918, Vol. II, p. 1606.

Respectfully,
JOHN G. PRICE,
Attorney-General.

2656.

CORPORATIONS—NO LIMITATION ON AMOUNT OF AUTHORIZED CAPITAL STOCK, EITHER COMMON OR PREFERRED IN ARTICLES OF INCORPORATION OR IN CERTIFICATES OF INCREASE OF CAPITAL STOCK—AMOUNT OF PREFERRED STOCK AT PAR VALUE THAT MAY BE ISSUED AND OUTSTANDING AFTER INCORPORATION IS LIMITED TO TWO-THIRDS OF COMPANY'S ACTUAL CAPITAL PAID IN IN CASH OR PROPERTY—SEE SECTIONS 8625 AND 8667 G. C.

1. *There is no limitation on the amount of nominal or authorized capital stock, either common or preferred, that may be stated in the articles of incorporation or in certificates of increases of capital stock of companies subject to the general corporation laws of Ohio; but the amount of preferred stock at par value that may be issued and outstanding after incorporation is limited to two-thirds of the company's actual capital paid in in cash or property. Sections* 8625 *and* 8667 *G. C. construed.*

COLUMBUS, OHIO, December 2, 1921.

HON. HARVEY C. SMITH, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date relative to the interpretation of that portion of section 8667 G. C. which provides that "at no time shall the amount of preferred stock at par value exceed two-thirds of the actual capital paid in in cash or property," was duly received.

1. In Opinion No. 1996, reported in 1916 Opinions of Attorney-General, Vol. II, page 1716, it was held, according to the syllabus that

> "The par value of the authorized preferred stock of a corporation can never exceed two-thirds of the par value of all its authorized capital stock."

In the opinion, at page 1716, it was said with respect to section 8667 G. C., that