

the effect that the proposed road improvement must be such an improvement as the commissioners are authorized generally to construct, special power being conferred in certain necessary instances to conduct the improvement into, within or through a municipality. Further support of this construction may be found in the last sentence of Section 6952, General Code, reading as follows:

"The word "road," as used in Sections 6906 to 6953 inclusive of the General Code, shall be construed to include any state or county road or roads, or any part thereof, and any city or village street or streets, or any part thereof, which form a continuous road improvement."

Section 6930 G. C. provides the steps to be taken when an improvement is located in two or more counties or along the county line between two or more counties as in the question here.

Sections 6931 and 6932 create a joint Board of County Commissioners when a proposed improvement lies along the county line between two counties.

Section 6942 G. C. provides:

"All the provisions of the statute relating to improvements wholly within one county shall when applicable, unless otherwise specially provided, apply to improvements authorized by a joint Board of Commissioners."

The foregoing section, considered in connection with the powers given county commissioners under Section 6906 of the General Code, gives to a joint Board of Commissioners acting under the provisions of said Section 6930 et seq., the same rights and powers to improve the county line road lying within a municipality as the statutes give to a single Board of Commissioners, constructing a highway within its own county. Section 6949, General Code, makes the obtaining of the consent of council of a municipality through which the proposed county road passes, a condition precedent to action by such joint board in improving said road into or through such municipality.

Respectfully,
EDWARD C. TURNER,
Attorney General.

25.

TREASURER MUNICIPAL CORPORATION—CUSTODIAN SECURITIES
PURCHASED WITH FUNDS OF FIREMEN'S PENSION FUND AND
POLICE PENSION FUND—TRUSTEES MAY NOT DESIGNATE OTHER
CUSTODIAN.

SYLLABUS:

The treasurer of a municipal corporation is the custodian of securities purchased with the funds of the Firemen's Pension Fund and the Police Pension Fund and the trustees of these funds may not designate any other person to be custodian of these securities.

COLUMBUS, OHIO, January 26, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication of recent

date in which you refer to Sections 4611 and 4627 of the General Code, by virtue of which sections the trustees of police and firemen's pension funds are authorized to invest moneys received by them other than those raised by taxation in certain interest bearing bonds, and you inquire as to the custodian of such investments as follows:

"1. May pension fund trustees by rule designate one of their number or secretary as such custodian?

2. In the absence of a rule would the municipal treasurer be such custodian?"

The provisions of law with reference to the police and firemen's pension funds are practically the same and what applies to one so far as your questions are concerned is applicable to the other.

Provision is made by virtue of Sections 4600 to 4615 inclusive, for the establishment and maintenance of a firemen's pension fund, the creation of a board of trustees therefor, the custody thereof, and the manner of its disbursement. It is provided in such sections that the funds shall be made up of taxes to be levied by council, contributions from members, moneys received by gift, grant, devise or bequest to the trustees for pension purposes, etc.

Section 4610 of the General Code provides who shall be the custodian of the fund in this language:

"The treasurer of a municipality shall be the custodian of the firemen's pension fund and shall pay it out upon the proper order of the trustees thereof."

Section 4611 of the General Code, which provides that the trustees may invest portions of the fund not raised by taxation in certain designated securities, and Section 4612, which provides that the trustees may make rules for the distribution of the fund, contemplate that the trustees shall at all times have full control of the fund and might seem on their face to be somewhat in conflict with Section 4610, which gives custody of the fund to the treasurer.

The word "custodian" as used in General Code 4610, implies that the treasurer shall have custody of the fund and the word "custody" as defined by Webster means: "Keeping, guarding, care, preservation for security, as by one who assumes responsibility for the thing entrusted." However, in connection with the sections here involved it must mean immediate charge and control and not final absolute control or ownership.

In the case of *Territory vs. Matson*, 113 Pac. 816, a very similar apparent conflict was before the court. The laws of New Mexico provided that ordinances might be passed requiring a city treasurer to deposit moneys in his hands in such banks as might qualify under the law, but that no ordinance should be passed taking the custody of such money from the treasurer. It was argued that this statute was inconsistent in its terms, but the court said that custody in such connection meant immediate charge and control and not final absolute control, implying necessarily that even when so deposited as designated by ordinance, the moneys were still in the custody of the treasurer and the court so held. Although the law gives the trustees such control over the funds as to permit them to designate in what securities the funds shall be invested, the treasurer is still the custodian and as the securities represent the funds, the treasurer is the lawful custodian of such securities, there being no other provision of law providing for or permitting someone else to be the custodian.

Answering both your questions it is my opinion that the treasurer of a municipal corporation is the proper person to have custody of the securities purchased with fire-

men's pension funds and the pension fund trustees are not authorized to make any rules to the contrary.

What is said of the firemen's pension fund is true of the police pension fund also.

Respectfully,

EDWARD C. TURNER,

Attorney General.

26.

TOWNSHIP TRUSTEES—MAY ERECT ON ACQUIRED SITE IN ANY ELECTION PRECINCT WITHIN TOWNSHIP, BUILDING OR HOUSE FOR VOTING PLACE—NOT NECESSARY TO SUBMIT QUESTION TO VOTE.

SYLLABUS:

The trustees of a township may erect on a site which they have acquired by permanent lease or otherwise, in any election precinct within the township, a building or house to be used as a voting place, without submitting the question to a vote of the electors of said election precinct.

COLUMBUS, OHIO, January 26, 1927.

HON. ERNEST M. BOTKIN, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—I am in receipt of your letter of January 13, 1927, wherein you request my opinion as to whether or not the trustees of a township may erect on a site which they own, in any election precinct within their township, a building or house to be used as a voting place, without first having submitted the question to a vote of the electors of the precinct.

Township trustees are possessed of such powers as are expressly given them by statute.

Section 3260 of the General Code provides:

“The trustees shall fix the place of holding elections within their township, or of any election precinct thereof. For such purpose they may purchase or lease a house and suitable grounds, or by permanent lease or otherwise acquire a site, and erect thereon a house. * * *”

It is my opinion that under the provisions of the above section of the General Code the trustees of a township may erect on a site which they may have acquired by permanent lease or otherwise in any election precinct within the township, a building or house to be used as a voting place, without first submitting the question to a vote of the electors of said election precinct.

Respectfully,

EDWARD C. TURNER,

Attorney General.