

I am therefore of the opinion that a judge of the Court of Appeals is ineligible to be an officer on the active list in the National Guard of the State of Ohio. This ineligibility to hold these two offices does not prevent an officer in the National Guard from being a candidate for judge of the Court of Appeals and, if elected to the judgeship, he may qualify for the same upon resigning from his office in the National Guard.

Respectfully,

EDWARD C. TURNER,

Attorney General.

2670.

FORMS—APPROVAL—DRAFTS OF RESOLUTIONS OF COUNTY COMMISSIONERS TO CO-OPERATE IN WIDENING OF STATE ROADS.

SYLLAPUS:

Approval of form of resolution of county commissioners under Sections 1195 and 1200 of the General Code relative to cooperation in the improvement of a state road to a width greater than eighteen feet.

COLUMBUS, OHIO, October 5, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge your letter of September 27, 1928, in which you ask me to submit to you draft of such action as may be necessary on the part of a board of county commissioners which has proposed to the highway department cooperation in the construction or reconstruction of a state road to a width greater than eighteen feet. As I understand it, you desire the form for action taken subsequent to the original proposal to cooperate.

Section 1191 of the General Code authorizes a proposal by county commissioners to cooperate with the superintendent of highways in widening the paved portion of any state road where the paved portion of said road is constructed or reconstructed to a width greater than eighteen feet. The form which you request is for the action taken by the board of county commissioners under the authority of Sections 1195 and 1200 of the General Code.

Section 1195 of the General Code is as follows:

“If upon the receipt of a proposal to cooperate the director approves of the same, he shall enter such approval upon his journal and shall certify his approval thereof to the county commissioners; and he shall cause to be transmitted to the county commissioners copies of such maps, plans, profiles, specifications and estimates as he may prepare for the construction of the work covered by such proposal. Upon receipt of the maps, plans, profiles, specifications and estimates for the proposed improvement, the county commissioners may, by resolution, adopt the same and provide for the cooperation of the county in the construction of the work. A certified copy of such resolution shall be transmitted to the director.”

Section 1200 of the General Code is also pertinent and provides:

“If the county commissioners, after adopting the maps, plans, profiles, specifications and estimates are still of the opinion that the work should be

constructed, and that the county should cooperate upon the basis set forth in their proposal, they shall adopt a resolution requesting the director of highways to proceed with the work, and shall enter into a contract with the State of Ohio providing for the payment by such county of the agreed proportion of the cost and expense. The form of such contract shall be prescribed by the attorney general, and all such contracts shall be submitted to the attorney general and approved by him before the director shall be authorized to advertise for bids. The provisions of Section 5660 of the General Code shall apply to such contract to be made by the county commissioners, and a duplicate of the certificate of the county auditor made in compliance with the provisions of said section shall be filed in the office of the director. All improvements upon which any county may cooperate shall be constructed under the sole supervision of the director of highways. The proportion of the cost and expense, payable by the county, shall be paid by the treasurer of the county upon the warrant of the county auditor issued upon the requisition of the director, and at such times during the progress of the work as may be determined by such director. Upon completion of the improvement, the director shall ascertain the exact cost and expense thereof, and shall notify the county commissioners as to his conclusions, and thereupon any balance in the fund provided by such commissioners for the county's share of the cost shall be disposed of as provided by law."

It is to be observed that under Section 1195 the director must approve the proposal to cooperate and thereafter cause copies of the maps, plans, profiles, specifications and estimates for the work to be transmitted to the county commissioners, who then may, by resolution, adopt the same and provide for the cooperation of the county in the construction of the work. This apparently contemplates a resolution approving the maps, plans, etc., but it must be read in connection with the provisions of Section 1200 of the General Code. That section provides that, after adopting maps, plans, etc., the commissioners shall, if they are still of the opinion that the work should be constructed, and that cooperation of the county should be offered upon the basis set forth in their proposal, adopt a resolution requesting the director of highways to proceed with the work and thereafter enter into a contract with the State of Ohio. In my opinion it would be feasible and advisable to combine in one resolution the steps set forth in these sections, to the extent at least of covering the approval of the maps, plans, etc., the determination that the work should be constructed and that the county should cooperate, and the request to the director of highways to proceed with the work.

I accordingly submit herewith the following form, which meets with my approval:

 Received.....
 Pet. No.
 Name of Road.....
 State Highway No.....

Form - - - - - To be used by County Commissioners in approving maps, plans, etc., for and requesting the Director of Highways to proceed with the work, where the commissioners are cooperating with the State Highway Department in widening paved portion of state road to a width greater than 18 feet.

RESOLUTION OF COUNTY COMMISSIONERS.

Mr. moved the adoption of the following resolution:

WHEREAS this board, on the ----- day of -----, 192..., duly adopted a resolution proposing to cooperate with the Department of Highways in widening the paved portion of State Highway No. ----- by constructing the reconstructing portion of said highway so to be improved, being located in the county of -----, township of -----, and more particularly described as follows:

in all a distance of ----- miles, and

WHEREAS, the Director of Highways has certified his approval of such proposal to the county commissioners and has caused to be transmitted to this board copies of the maps, plans, profiles, specifications and estimates for the construction of the work covered by such proposal;

NOW, THEREFORE, BE IT RESOLVED That the said maps, plans, profiles, specifications and estimates be and the same hereby are approved and adopted; and the county commissioners being still of the opinion that such work should be constructed and that the county should cooperate upon the basis set forth in their proposal;

BE IT FURTHER RESOLVED That the Director of Highways be and he hereby is requested to proceed with such work and that a contract be entered into with the State of Ohio providing for the payment by the said county of -----, Ohio, of the proportion of the cost and expense of such improvement set forth in such proposal, to-wit, -----;

Thereupon, Mr. ----- seconded said motion, and upon the roll being called the result of the vote was as follows:

-----Aye }
-----Aye } Commissioners of
-----Aye } -----County.

In witness whereof, the undersigned County Commissioners of ----- County, sign in duplicate and certify to be correct in duplicate the foregoing resolution and action of said Board of County Commissioners thereon, this ----- day of -----, 192-----.

Attest

Clerk.
Secretary ex-officio of the board of county commissioners. Board of County Commissioners of -----County, Ohio.

STATE OF OHIO }
----- County } Office of Board of County Commissioners.

This is to certify that we have compared the foregoing copy of resolution with the original record thereof, found in the record of the proceedings of the Board of County Commissioners of said ----- County, which resolution was duly passed by said Board of County Commissioners on the ----- day of -----, 192..., and that the same is a true and correct copy of the record of said resolution and the action of said Board of County Commissioners thereon.

We further certify that said resolution and the action of said Board of County Commissioners thereon is recorded in the Journal of said Board of County Commis-

sioners in Vol. _____, at page _____, and under the date of the _____ day of _____, 192_____.

IN WITNESS WHEREOF, we have hereunto set our hands this _____ day of _____, 192_____.

President of the Board of County
Commissioners of -----
County, Ohio.

(SEAL)

Clerk
Secretary ex-officio of the Board of
County Commissioners of -----
-----County, Ohio.

NOTE: If the County Auditor is Secretary ex-officio of the Board of County Commissioners, the Auditor's seal should be affixed.

The following is to be placed on the back of form:

----- County
----- Twp.
----- State
Highway No.-----

Form -----To be used by County
Commissioners in approving maps, plans,
etc., for and requesting the Directors
of Highways to proceed with the work,
where the commissioners are cooperating
with the State Highway Department in
widening paved portion of state road to
a width greater than 18 feet.

Received in the Department of Highways
by mail (at the hands of)

this _____ day of _____, 192_____

(Signature of person actually receiving
same.)

Respectfully,
EDWARD C. TURNER,
Attorney General.

2671.

BONDS—YEARLY LIMIT FOR MUNICIPALITY—MAY NOT ISSUE NOTES
IN ANTICIPATION OF SALE FOLLOWING CALENDAR YEAR.

SYLLABUS:

When a municipality has reached its maximum limitations in the issuance of bonds for the calendar year 1928 and thereafter takes action to authorize bonds to be issued in the following calendar year, such municipality may not legally issue notes during the calendar year of 1928 in anticipation of the sale of said bonds.