

3606.

APPROVAL, REFUNDING BONDS, EAST PALESTINE CITY SCHOOL DISTRICT, \$29,500.

COLUMBUS, OHIO, September 19, 1922.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

3607.

APPROVAL, BONDS OF CHAMPAIGN COUNTY, \$41,000, FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, September 19, 1922.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

3608.

DISAPPROVAL, BONDS OF AVON VILLAGE SCHOOL DISTRICT, LORAIN COUNTY, \$5,000.00.

COLUMBUS, OHIO, September 19, 1922.

*Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.*

3609.

ROADS AND HIGHWAYS—COUNTY ROAD IMPROVEMENT INITIATED BY COUNTY COMMISSIONERS PASSING PRELIMINARY RESOLUTION OF NECESSITY BY UNANIMOUS VOTE—FURTHER RESOLUTIONS DO NOT REQUIRE UNANIMOUS VOTE.

COLUMBUS, OHIO, September 19, 1922.

*Where a county road improvement project is initiated by county Commissioners by the passage of the preliminary resolution of necessity by the unanimous vote required by sections 6910 and 6911 G. C., in case no petition is filed, the further resolutions contemplated by sections 6917, 6922, 6926 and 6929 G. C. are not required to be adopted by unanimous vote.*

HON. LAWRENCE H. WEBBER, *Prosecuting Attorney, Elyria, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

“A peculiar situation has arisen in this county and I would greatly appreciate having your opinion concerning the same. The situation is this: One of our county commissioners is ill and in bed, suffering from nervous breakdown. In all human probability he will not be out before two months. During that time important legislation, particularly with reference to the construction of roads will be passed by the county commissioners. In several cases the commissioners have proceeded under authority of section 6910 of the General Code, which provides for a unanimous vote, and in this connection permit me to call your attention to Section 6921, which provides for a unanimous vote.

The question is: Is it necessary in all of the steps of the legislation to have a unanimous vote on all resolutions, if the commissioners are proceeding under Section 6910 and 6921 of the General Code. The problem that confronts the commissioners just at this particular time, and the resolution which they are now ready to pass is the one referred to in Section 6917 of the General Code.”

Your question arises in connection with statutes relating to road improvement by county commissioners as authorized generally by the group of sections 6906 to 6954 G. C.

Proceedings for an improvement under those sections may be initiated in either of two ways: Upon petition by fifty-one per cent. of land owners (sections 6907 to 6909) or by unanimous vote of the county commissioners, as provided by section 6910. The latter section reads as follows:

“The county commissioners may, without the presentation of a petition, take the necessary steps to construct, reconstruct, improve or repair a public road or part thereof, as hereinbefore provided, upon the passage of a resolution by unanimous vote declaring the necessity therefor. The cost and expense thereof may be paid in any one of the methods provided in section 6919 of the General Code, as may be determined by the county commissioners in said resolution.”

Similarly, section 6911 specifically provides that where the board is acting without a petition, their resolution describing the route and termini of the road, the kind and extent of the improvement, and the order for survey, etc., shall be by unanimous vote. You indicate that action has already been taken under section 6910, but it is presumed that such action also embraces the matters mentioned in section 6911, so far as the resolution of the county commissioners is concerned.

You also make mention of section 6921. That section reads as follows:

“The county commissioners, or joint board thereof, upon a unanimous vote, may without a petition therefor, order that all the compensation and damages, costs and expenses of constructing any improvement be paid out of the proceeds of any levy or levies for road purposes on the grand duplicate of the county, or out of any road improvement fund available therefor, or the county commissioners or joint board thereof may enter into an agreement with the trustees of the township or townships in which said

improvement is in whole or part situated, whereby said county and township, or one or more of them may pay such proportion or amount of the damages, costs and expenses as may be agreed upon between them."

In connection with section 6921 it is to be noted that section 6919 G. C., which lays down a number of methods for apportioning the cost of the improvement, concludes with this sentence:

"When the board of county commissioners acts by unanimous vote and without the filing of a petition, the commissioners shall set forth in their resolution declaring the necessity for the improvement, the method of apportioning and paying for compensation, damages, costs and expenses of the improvement, which may be any one of the methods above provided."

It is to be presumed, then, that such resolutions of the county commissioners as have been passed by unanimous vote under sections 6910 and 6911, set out, as prescribed by section 6910, the proportion of cost that is to be assumed by the various parties in interest—county, township and property owners; in other words, that the options allowed by sections 6919 and 6921 have already been selected through unanimous vote in the preliminary resolution prescribed by sections 6910 and 6911."

Starting with this assumption, we are brought to your specific question of whether, when the commissioners are proceeding without a petition, they may pass the resolution prescribed by section 6917 only by unanimous vote. Said section reads as follows:

"If, after hearing and determining all claims for compensation and damages on account of land or property taken for said improvement, or after the determination of such claims in the probate court on appeal, said board of commissioners is still satisfied that the public convenience and welfare require that such improvement be made, and that the cost and expense thereof will not be excessive in view of the public utility thereof, said commissioners shall order by resolution that they proceed with such improvement, and shall adopt the surveys, plans, profiles, cross-sections, estimates and specifications therefor, as reported by the surveyor, or with such modifications thereof as the commissioners and surveyor may agree upon."

This section requires the passage of a second resolution, after the completion of the steps contemplated by the preliminary resolution prescribed by sections 6910 and 6911, that is, the completion of the survey, making of estimates, etc., and the further steps contemplated by sections 6912 to 6916, i. e., the giving of notice to file claims for damages, carrying out of appropriation proceedings and hearing of damage claims. But section 6917 does not in terms require unanimous action, nor is it believed that such requirement appears by implication. The purpose of unanimous action, as compared with majority action, would seem to be fully subserved by unanimous action on the preliminary resolution called for by sections 6910 and 6911; for the preliminary resolution, as to which unanimous action is required, embraces the principal element which is to be set forth in a petition when a petition is filed; that is to say, the method of paying compensation, damages, costs and expenses of the improvement. (See section 6907.) Furthermore, the preliminary resolution has already determined the necessity of the improvement, leaving the only question to be resolved in the second resolution men-

tioned in section 6917 as one of whether the cost of the proposed improvement will be excessive in view of the public utility.

For these reasons, then, it is the conclusion of this department that the resolution prescribed by section 6917 need receive only a majority vote where action on the preliminary resolution has been by unanimous vote.

What has been said disposes of the major part of your inquiry, though you ask generally whether all steps must be had by unanimous vote. A remaining important step, after action has been taken under section 6917, is the making of assessments as provided by sections 6922, et seq. Without discussing those sections at length, it need only be said that they provide for a hearing on the assessment by the commissioners after notice, and for confirmation by the commissioners before the assessment is entered on the duplicate. There is no specific requirement of unanimous action. The assessment proceedings are the same in character, whether the improvement project has been initiated by petition or by unanimous vote of the commissioners. For this reason, it is the view of this department that only majority action is required in the matter of hearing and confirming the assessment.

Similarly, it is the view of this department that without reference to the manner in which the project is initiated, majority action only is required in the matter of levying taxes (Sections 6926, et seq.) and issuing bonds (Sec. 6929).

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

3610.

INDUSTRIAL COMMISSION—WHERE FULL AMOUNT OF AWARD MADE TO INJURED EMPLOYEE WHO PREVIOUSLY FILED WITH COMMISSION WRITTEN ASSIGNMENT OF PORTION OF AWARD—COMMISSION NOT WARRANTED IN ALLOWING EMPLOYER CREDIT ON PREMIUM EQUAL TO AMOUNT SO ADVANCED.

COLUMBUS, OHIO, September 19, 1922.

*The full amount of an award made to an injured employe was paid to him by the Industrial Commission, notwithstanding the employe had previously filed with the Commission a written assignment of a portion of the award equal in amount to the amount which the employer had advanced to the employe on account of the injury. Held that the Commission is not warranted in thereafter allowing the employer a credit on his premium equal to the amount so advanced by him to the employe and covered by the assignment above mentioned.*

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your letter of recent date relative to the administration of the Workmen's Compensation Fund, was duly received.

The facts of the specific case referred to in the correspondence, as I understand them, are as follows:

An award of \$65.98 was made to an injured employe. The full amount of the award was paid by the Industrial Commission to the employe, notwithstanding the employe had previously filed with the Commission a written assignment or order