

and the application for a renewal, the qualifications of the individual might have changed substantially and he might have been guilty of acts which would warrant the board in refusing to make the renewal. You will observe that Sections 6373-42 to 6373-46, inclusive, provide for the investigation by the board upon its own motion of the conduct of any licensee or any applicant for the renewal of a license. The board is authorized to conduct an inquiry and, if it is satisfied that the applicant has been guilty of conduct justifying refusal to renew, it may take such action. The action of the board is reviewable by the courts.

Section 6373-33 of the Code is as follows:

“The state board of real estate examiners may make such reasonable rules and regulations as it may deem necessary, relating to the form and manner of filing applications for license, the issuance, suspension and revocation of licenses and the conduct of hearings as provided for in this act (G. C. Sections 6373-25 to 6373-51). The board may hear testimony in matters relating to the duties imposed upon it by law, and the president and secretary of the board may administer oaths. The board may require such other proof as it may deem advisable of the honesty, truthfulness and good reputation of any person named in an application for a real estate broker's license, before admitting the applicant to the examination or issuing a license as the case may be.”

Under this section I feel it would be within the power of the board to adopt a rule requiring that, unless applications for renewals of license are made within a reasonable time to be prescribed by the board, renewals will only be granted after an inquiry which will satisfy the board that the applicant has not, in the intervening time, violated the law by acting as a broker. In such case, however, although an inquiry may be conducted, the application is still one to renew a license and not for the issuance of a new license. This being so, the fee payable would still be \$5.00.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1260.

COUNTY COMMISSIONERS—AUTHORITY TO PURCHASE ROAD MACHINERY AND MATERIALS UNDER SECTIONS 7200 AND 7214, GENERAL CODE—AUTHORITY OF SAME COMMISSIONERS TO RESCIND LEGISLATION—CERTIFICATE OF FISCAL OFFICER, DISCUSSED.

SYLLABUS:

(1) *Under the provisions of Sections 7200 and 7214 of the General Code, county commissioners are authorized to purchase such machinery, tools, equipment, automobiles and materials as may be necessary to construct, reconstruct, improve, maintain or repair county roads, and the bridges and culverts thereon, by force account, and such board of county commissioners may rescind legislation authorizing the county surveyor to lease equipment and tools and to purchase such material as may be necessary to carry on work by force account, as provided in Section 7198 of the*

General Code, provided, however, that such action in rescinding such legislation shall not effect leases already entered into or obligations already created by the county surveyor under the provisions of said section.

(2) *By virtue of Section 39 of House Bill Number 80, (112 O. L. 391), Section 5660, General Code, is still in force and effect as to acts taken or proceedings begun previous to May 12, 1927.*

(3) *Pursuant to the provisions of Sections 5660, General Code, and 5625-33, General Code (112 O. L. 391), it is necessary, previous to the incurring of obligations or the entering into of contracts under the provisions of Sections 7198, 7200 and 7214 of the General Code, that a certificate from the proper fiscal officer be obtained to the effect that the amount required to meet such obligations or to carry out the terms of such contracts, (except in case of continuing contracts, to be performed in whole or in part in an ensuing fiscal year, it is necessary only to certify the amount required to meet the same in the fiscal year in which such contracts are made), is in the treasury or is in process of collection to the credit of an appropriate fund, free from any previous encumbrances.*

COLUMBUS, OHIO, November 14, 1927.

HON. LISLE M. WEAVER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“I would like your opinion with respect to the following:

Under authority of Section 7198, General Code, the Commissioners of Williams County passed a resolution on April 11th, 1927, granting the county surveyor authority to proceed with the construction and repair of county roads, bridges and culverts, and stipulated that the surveyor having filed his estimates covering the cost of said work, that he not exceed the total estimated cost as shown by his estimates. A copy of this resolution is enclosed.

The county surveyor in pursuance to this resolution has started his work and is expending money for the same. Also under authority of this section he is expending money in purchasing material, supplies, automobile repairs and gasoline, etc. These bills are made out and presented to the commissioners to sign. The commissioners do not designate the purchase of materials or where they are to be purchased, this being carried out by the surveyor himself.

The county commissioners wish to curb this expenditure of money through the surveyor and the question is, can the commissioners after having passed the resolution, rescind the same and pass a new resolution to the effect that all materials, appliances, and supplies be ordered direct through them and not the county surveyor?

Also, under authority of law, the county auditor must certify before expenditures of money that the money is in the treasury or in process of collection. When the auditor has not so certified, can the county surveyor contract a bill for the payment of gasoline and automobile repairs without a contract, or without this certification?

Also, in view of Section 7189, and the resolution passed by the county commissioners, what authority is conveyed therein to the county surveyor to purchase materials, supplies and contract for labor in order to carry out the provisions of said section?

I am enclosing a copy of a resolution of the county commissioners authorizing the county surveyor to proceed under Section 7198 to construct a road by force account, and the road is in the process of construction. Have the commissioners the right to rescind this resolution under force account construction?"

The following is a copy of a resolution which was passed by the board of county commissioners of Williams County under date of April 11, 1927, authorizing the county surveyor to proceed under the provisions of Section 7198, General Code, to construct, reconstruct, maintain and repair county roads, bridges and culverts :

"Whereas, the county surveyor, pursuant to the provisions of Sec. 7187, General Code of Ohio, has submitted his estimate covering the probable cost of reconstructing, maintaining and repairing the county roads, bridges and culverts of the county for the year beginning April 1st, 1927.

Therefore be it resolved that the county surveyor is hereby authorized under Sec. 7198 of the General Code of Ohio to construct, reconstruct, maintain and repair the county bridges and culverts; and to reconstruct, resurface, surface treat, maintain and repair the county roads of the county, the total amount to be expended in either case not to exceed the total estimated cost as shown by the above mentioned report to the county commissioners."

It will be observed from a reading of the foregoing resolution that the county surveyor was authorized to proceed by force account to construct, reconstruct, maintain and repair bridges, culverts and all county roads, specific mention being made to the effect that the county surveyor should proceed, under the provisions of Section 7198, General Code, in accomplishing the matters set forth in said resolution.

Section 7198, General Code, provides :

"The county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account." (Italics the writer's.)

It is quite clear that under the provisions of the statute above quoted, the county surveyor may, if he be first authorized by the county commissioners, as was done in the present case, employ laborers and teams, lease implements and tools and purchase such material as may be necessary to construct, reconstruct, improve, maintain and repair roads, bridges and culverts, by force account.

You state in your letter that the county surveyor, acting under authority of the resolution of the commissioners, has started work on various projects and is purchasing materials, supplies and gasoline and is incurring obligations for automobile repairs.

You inquire whether the county commissioners may rescind the resolution authorizing the county surveyor to proceed under the provisions of Section 7198, supra, and pass a new resolution providing that all materials, appliances and supplies necessary in carrying out the work by force account, be purchased by the county commissioners.

Authority to purchase machinery, tools and other equipment for the construction, improvement, maintenance or repair of highways, bridges and culverts, by the county

commissioners, is found in the provisions of Section 7200 of the General Code, the pertinent part of which section reads 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 county commissioners may also at their discretion purchase, hire or lease automobiles, motorcycles or other conveyances and maintain the same for the use of the county surveyor and his assistants when on official business. All such machinery, tools, equipment and conveyances belonging to the county shall be under the care and custody of the county surveyor. * * *”

Under the provisions of Section 7214 of the General Code, authority may be found vesting in the county commissioners the right to purchase materials necessary in the constructing, improving, maintaining or repairing of highways, bridges and culverts within the county.

Said section provides as follows :

“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.”

Thus we find from the provisions of the sections of the code immediately above quoted that the county commissioners may purchase such machinery, tools, equipment, automobiles and material as may be necessary to construct, improve, maintain or repair the county roads, bridges and culverts, but nowhere in the statutes do we find authority vested in the county commissioners to employ laborers and teams.

It follows, then, that in the first instance the commissioners may exercise their discretion as to whether in proceeding under the provisions of Section 7198, supra, they will permit the county surveyor to purchase materials and lease equipment and tools or whether they themselves will purchase such materials and the machinery, equipment and tools that may be necessary in carrying on work by force account.

The question then arises whether after the commissioners have once authorized the county surveyor to purchase materials and to lease equipment and tools necessary to carry on certain work by force account, the commissioners may revoke such authority by rescinding the legislation conveying such authority to the county surveyor and provide by legislation that the commissioners, acting as a board, will make the necessary purchases.

Of course, at the outset, it must be conceded that the commissioners may not by action of theirs affect the legality of obligations created by the county surveyor for purchase of materials already made or leases already entered into for equipment and tools.

However, the commissioners having the right to amend or repeal legislation which will not affect or impair the obligations of contracts or leases made pursuant to their legislation, and further, having authority to purchase machinery, tools and equipment under the provisions of Section 7200, *supra*, and materials under the provisions of Section 7214, *supra*, and it being discretionary in the first instance as to their authorizing the county surveyor to purchase materials and lease equipment and tools as provided by Section 7198, *supra*, it is my opinion that the county commissioners may rescind the legislation authorizing the county surveyor to purchase materials and lease equipment and tools so long as such action does not impair the obligations of any contract or lease already entered into and still in effect.

In support of this position your attention is directed to the first branch of the syllabus of opinion number 2411, Opinions of the Attorney General, 1921, Volume II, page 822, as follows:

“In the construction or reconstruction as well as the repair of a bridge by a county, the method commonly known as force account may be followed, whatever may be the cost of the project,—that is to say, that under Sections 7200 and 7214, G. C., the county commissioners may purchase the necessary machinery, tools, equipment and materials, and under Section 7198, G. C., authorize the county surveyor to employ the necessary teams and labor; or the commissioners may, by virtue of the last named section, authorize the county surveyor to purchase the materials, lease the implements and tools and employ the labor necessary for the project. (Opinions, Attorney General, 1917, Volume III, p. 2332; and 1918, Vol. I, p. 459, not followed in so far as they hold that there is a distinction between construction and repair.)”

Mention may be made in passing that Section 6948-1 of the General Code which authorizes the county commissioners to construct a road improvement by force account, is a statute of limited application and must be considered in the light of Section 7198, General Code.

In an opinion of this department reported in Opinions of Attorney General for 1921, Volume II, page 895, it was held that:

“Where county commissioners have elected to do road work by force account they are not authorized by Section 6948-1, G. C., or otherwise, to employ a road foreman to take charge of the work, but they must proceed as defined in Sections 7198, G. C., *et seq.*”

It is well to emphasize the fact that even though the county commissioners may decide to rescind the legislation relative to the purchase of materials and the leasing of equipment and tools, they may not employ laborers and teams to carry on the work by force account, since there is no provision in the statutes by which they may employ such laborers and teams.

Coming now to consider the question as to whether it is necessary, previous to the expenditure of money under the provisions of Section 7198, *supra*, to obtain the certificate of the county auditor, as provided in Sections 5660 and 5661, of the General Code, your attention is directed to the second branch of the syllabus of an opinion of this department, reported in Opinions, Attorney General, 1921, Volume II, page 830, as follows:

“The requirements of Sections 5660 and 5661, G. C., are applicable to the purchases of materials, tools, equipment and supplies, and to the employ-

ment of teams and labor under authority of Sections 7198, 7200 and 7214, G. C."

Although Section 5660, General Code, was repealed by House Bill Number 80 (112 O. L. 391), Section 39 of said act, which is the saving clause, makes said act ineffective as to acts taken or proceedings pending prior to the date said act was filed with the Secretary of State, to-wit, on the 12th day of May, 1927, and the provisions of Section 5660, General Code, are in effect for the purpose of completing acts started or proceedings pending at the time such act was filed in the office of the Secretary of State.

In this instance the resolution of the county commissioners, authorizing the county surveyor to proceed under the provisions of Section 7198, supra, General Code, was passed on the 11th day of April, 1927, while House Bill Number 80, supra, was filed in the office of the Secretary of State, as hereinbefore stated, on the 12th day of May, 1927.

It therefore follows that for the purpose of considering your question the provisions of Sections 5660 and 5661 are still in force and effect, and that it is necessary, previous to the incurring of obligations or the entering into contracts under the provisions of Section 7198, supra, that a certificate from the county auditor be obtained to the effect that "the money required to meet the contract, agreement or other obligation, or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification."

It might be well to mention here that Section 5625-33, General Code, was enacted as a part of House Bill No. 80, and that under the provisions of said section a similar certificate to that required by Section 5660, supra, will be necessary as to all expenditures to be made relative to acts or proceedings taken after May 12, 1927.

Summarizing my conclusions, it is my opinion that:

(1) Under the provisions of Sections 7200 and 7214 of the General Code, county commissioners are authorized to purchase such machinery, tools, equipment, automobiles and materials as may be necessary to construct, reconstruct, improve, maintain or repair county roads, and the bridges and culverts thereon, by force account, and such board of county commissioners may rescind legislation authorizing the county surveyor to lease equipment and tools and to purchase such material as may be necessary to carry on work by force account, as provided in Section 7198 of the General Code, provided, however, that such action in rescinding such legislation shall not affect leases already entered into or obligations already created by the county surveyor under the provisions of said section.

(2) By virtue of Section 39 of House Bill No. 80 (112 O. L. 391), Section 5660, General Code, is still in force and effect as to acts taken or proceedings begun previous to May 12, 1927.

(3) Pursuant to the provisions of Sections 5660, General Code, and 5625-33, General Code (112 O. L. 391), it is necessary, previous to the incurring of obligations or the entering into of contracts under the provisions of Sections 7198, 7200 and 7214 of the General Code, that a certificate from the proper fiscal officer be obtained to the effect that the amount required to meet such obligations or to carry out the terms of such contracts (except in case of continuing contracts, to be performed in whole

or in part in an ensuing fiscal year, it is necessary only to certify the amount required to meet the same in the fiscal year in which such contracts are made), is in the treasury or is in process of collection to the credit of an appropriate fund, free from any previous encumbrances.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1261.

BOARD OF EDUCATION—NOT REQUIRED TO TRANSPORT PUPIL TO ELEMENTARY SCHOOL AFTER SAID PUPIL HAS GRADUATED THEREFROM—DUTIES OF BOARDS OF EDUCATION AS TO TRANSPORTATION—CERTIFICATE OF FISCAL OFFICER DOES NOT APPLY TO EMPLOYMENT OF TEACHER BY BOARD OF EDUCATION.

SYLLABUS:

1. *A board of education is not required to transport a pupil to the elementary schools, after such pupil has graduated therefrom and is eligible to attend a high school.*

2. *A county board of education has no authority to order a district board of education within the county to expend any money, and any order so issued is not binding upon the district board.*

3. *When a district board of education fails to furnish school facilities as provided by law, it is the duty of the county board of education so to do and any expenses incurred in connection therewith shall be paid from the county treasury and deducted from the local school district's funds at the next tax settlement date.*

4. *When a board of education fails to furnish school privileges to any pupil, as required by law, and it becomes necessary for the parent of the pupil to transport his child to a high school located more than four miles from the home of such pupil because such board failed to perform its duty with respect thereto, as provided by law, the parent has a valid claim against the board of education for the expenses so incurred.*

5. *The statutory requirement that no contract shall be entered into by any subdivision until the fiscal officer has certified that the money for the payment thereof is in the treasury or in the process of collection, has no application to the contract of employment between boards of education and the teachers of the district.*

COLUMBUS, OHIO, November 15, 1927.

HON. G. O. MCGONAGLE, *Prosecuting Attorney, McConnellsville, Ohio.*

DEAR SIR:—Permit me to acknowledge receipt of your request for my opinion on several matters relative to schools.

Your first inquiry is as follows:

"In Meigsville Township, this County of Morgan, -----, age 16 years in January, 1927, residing two miles from elementary school, was transported until she graduated from the eighth grade and received a diploma at the close of the school year 1926. Last year, instead of attending high school, this pupil again attended the same elementary school and is now claiming payment for transportation. During last year and after having graduated from the eighth grade, she produced a certificate from the district health officer to the