

"Each year the governor shall appoint one member of the state board of accountancy who shall serve for a term of three years and until his successor is appointed and qualified. A vacancy in the board shall be filled by the governor by appointment for the unexpired term."

By the terms of the foregoing statute the power to make appointments of members of the State Board of Accountancy is extended to the Governor without qualification. No mention is made of such appointments having to be confirmed by the Senate or by any other authority.

In a number of other statutes wherein appointments are authorized by the Governor, it is provided that the appointments shall be made "with the advice and consent of the senate," as, for instance, the directors of the several administrative departments authorized by the so-called administrative code. It is provided by Section 154-4, that these directors shall be appointed by the Governor "by and with the advice and consent of the Senate;" and in Section 487, General Code, it is provided that the members of the Public Utilities Commission shall be appointed by the Governor "with the advice and consent of the Senate;" also the members of the State Board of Pharmacy, by the terms of Section 1296, General Code, are to be appointed by the Governor "with the advice and consent of the Senate."

There is no general statute or any constitutional provision which requires that all appointments made by the Governor must be confirmed by the Senate or that they are to be made with the advice and consent of the Senate. And apparently where the Legislature did not provide that the appointments should be made with the consent and advice of the Senate or should be confirmed by the Senate, it was the intention that the Governor should make the appointments and that the same need not be confirmed by the Senate.

I am therefore of the opinion, in specific answer to your inquiry, that the names of appointees to the State Board of Accountancy should not be submitted to the Senate for confirmation.

Respectfully,
GILBERT BETTMAN,
Attorney General.

321.

ROAD IMPROVEMENT—APPLICATION FOR STATE AID BY COUNTY COMMISSIONERS AND APPROVAL BY HIGHWAY DIRECTOR BEFORE NORTON-EDWARDS ACT—PROCEEDING PENDING—MAY PROCEED UNDER ORIGINAL APPLICATION.

SYLLABUS:

When the county commissioners of a county filed application for state aid in 1922 under the provisions of Section 1191, General Code, as then in force and effect, and the Director of Highways approved such application in 1922 under the provisions of Section 1195, General Code, as then in force, proceedings are pending within the meaning of Section 26 of the General Code and obligations are incurred within the meaning of Section 1230, General Code, and therefore, the Director of Highways and the county commissioners are authorized to proceed with the improvement in question upon the original application.

COLUMBUS, OHIO, April 18, 1929.

HON. HARRY K. FORSYTH, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion which is as follows:

“I should appreciate your opinion as to the legal status of the following proceedings:

On February 27, 1929, the commissioners of Shelby County, Ohio, by resolution decided to improve a part of Inter-county Highway No. 217 situated in said county, and thereupon made application to the State Highway Commissioners for aid in the improvement of said part of said highway in accordance with the provisions of Sections 1178-1231-11, inclusive, of the General Code. That thereafter on March 31, 1922, said application was duly confirmed by the Director of Highways and Public Works in a communication addressed to said Board of Commissioners on that date. Subsequently the surveyor was authorized to proceed with his survey in accordance with the application and the confirmation thereof by said department. Since the above outlined steps were taken, no further action has been had on the application.

The commissioners are desirous of proceeding with this improvement and I understand that the Highway Department is willing to co-operate under the assumption that the original application is valid.

While I have read carefully Opinion 776 of your predecessor, Mr. Turner, which covers many phases of the present inquiry, in view of the considerable period of time which has elapsed since the filing of the application, I am desirous of your opinion relative to the advisability of proceeding.”

Application having been made by the commissioners of Shelby County for state aid in 1922, in connection with the proposed improvement of part of an inter-county highway, such procedure was had under authority of Section 1191, General Code, which became effective the first Monday in September, 1915. The application, as set forth in your letter, was approved by the Highway Commissioner in March, 1922, which approval was under authority of Section 1195, General Code, which also became effective the first Monday in September, 1915. These sections were in full force and effect until January 2, 1928, the effective date of the Norton-Edwards Act, in which act they were both amended.

The sole question presented is whether or not proceedings for the improvement of an inter-county highway are pending within the meaning of Section 26 of the General Code, when a board of county commissioners has made application for state aid under the provisions of Section 1191, General Code, prior to amendment in the Norton-Edwards Act, and when a Director of Highways, pursuant to such application, approved the same in accordance with the then provisions of Section 1195, General Code.

In the opinion of my predecessor to which you refer, found in Opinions of the Attorney General, 1927, Vol. II, p. 1357, this question was thoroughly discussed. It was therein held that when an application for state aid had been made pursuant to the provisions of Section 1191, General Code, prior to amendment and the Director of Highways had not approved the same, even then, the saving clause as contained in the Norton-Edwards Act, being Section 1230, was applicable, and a county, upon making such application, had contracted an obligation within the meaning of Section 1230.

Clearly, therefore, in the case presented, where the application for state aid has been approved, the proceedings are, unquestionably, pending within the meaning of

Section 26 of the General Code, and also have reached the point where obligations have been incurred within the meaning of Section 1230 of the Norton-Edwards Act.

The next matter for consideration in connection with the foregoing as set forth in your letter, has to do with the interval of time that has expired since proceedings for the improvement of Inter-county Highway No. 217 have been pending. On account of the fact that there have been no statutes enacted in this interval amending Section 26 of the General Code, and for the further reason that Section 1230, General Code, enacted in 1927, in no way nullifies the provisions of Section 26, but is, in a way, merely supplemental thereto, the interval of time can have no bearing upon the situation.

In view of the foregoing and specifically answering your question, I am of the opinion that when the county commissioners of a county filed application for state aid in 1922 under the provisions of Section 1191, General Code, as then in force and effect, and the Director of Highways approved such application in 1922 under the provisions of Section 1195, General Code, as then in force, proceedings are pending within the meaning of Section 26 of the General Code, and obligations are incurred within the meaning of Section 1230, General Code, and therefore the Director of Highways and the county commissioners are authorized to proceed with the improvement in question upon the original application.

Respectfully,
GILBERT BETTMAN,
Attorney General.

322.

CITY PARK DEPARTMENT—EMPLOYES CONSTRUCTING BOULEVARD
PARKWAY FINANCED BY BONDS—PAID FROM GENERAL PARK
APPROPRIATIONS—HOW REIMBURSEMENT MADE.

SYLLABUS:

When regular employes of a city park department are engaged in constructing a boulevard parkway which is financed from the sale of bonds, and those employes are inadvertently paid from appropriations made for general park purposes, instead of from the special boulevard parkway fund, the service so rendered should be paid for at its full value from the boulevard parkway improvement fund, and the payment credited to the appropriation for general park purposes, in accordance with Section 280, General Code.

COLUMBUS, OHIO, April 18, 1929.

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

GENTLEMEN:—This will acknowledge your letter requesting my opinion which reads as follows:

“The pertinent part of Section 5625-13, G. C., 112 O. L., page 397, reads:
‘Section 13. No transfers shall be made from one fund of a subdivision to any other fund, by order of court or otherwise, except that transfers may be made from the general to special funds established for purposes within the general purposes of the general fund, and from such special funds to the general fund; but no transfers shall be made from any such special fund to the general fund, except of moneys theretofore transferred from the general fund.’

Section 280, G. C., reads: