

therefore be regarded as doubtful, and if of sufficient importance in a particular case might best be settled in the due course of litigation. This department having no other function than to advise what, in the opinion of the attorney general, the law is, does not feel called upon nor authorized to make what might be termed a "ruling" in the matter, involving a choice between the two views which have been suggested. In so far as administrative authority exists, such authority is vested in the commission and this department can do no more than to advise the commission with respect to the state of the law as aforesaid, and recommend that the commission promulgate such administrative ruling or recommendation in the premises as may fairly raise the question; or be guided by the weight of authority as indicated by the above cited decisions, as the commission deems best.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1544.

ROADS AND HIGHWAYS—WHEN FUNDS ACCRUING FROM LEVY UNDER SECTION 6926 G. C. ARE SUBJECT TO USE BY COUNTY COMMISSIONERS FOR PAYMENTS AUTHORIZED BY SECTION 1208-5 G. C. TO MAKE REIMBURSEMENTS OF ROAD CONTRACTORS.

Funds accruing from levy under section 6926 G. C. to the extent that no contractual obligations exist against them, are subject to use by county commissioners for payments which the commissioners are authorized by sections 1208-5 G. C. (108 O. L. Pt. I, page 550) to make in reimbursement of road contractors.

COLUMBUS, OHIO, September 1, 1920.

HON. VICTOR L. MANSFIELD, *Prosecuting Attorney, Defiance, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

"The county commissioners of Defiance county under the provisions of section 6926-1, Vol. 108, Part I, Laws of Ohio, submitted the question of exempting from all tax limitations the levy of one and four-tenths mills for the purpose of paying the county's proportion of the compensation, damages, costs and expenses of constructing, reconstructing, maintaining and repairing county roads. There is still a large sum of money raised by this method, which is unappropriated for any purpose. The question now arises whether or not the board of county commissioners would be authorized to use the above funds for the purpose of making payments to reimburse contractors on contracts entered into prior to May 25, 1918, as provided in section 1208-5 of the General Code, Vol. 108, Part I, 1919, Laws of Ohio, page 550. It is provided in this section that payments shall be made from any funds available for the construction, improvement, maintenance and repair of roads, highways, streets or bridges created by general taxation and against which no contractual obligations exist.

Will you please render an opinion as to whether or not the board of county commissioners may use funds raised under sections 6926-1 for the purpose of reimbursing contractors as provided in section 1208-5 of the General Code?"

The statute known as section 1208-5 G. C. is found in an act appearing 108 O. L. Part I, p. 548, and in part reads:

"The board of county commissioners of any county, the board of township trustees of any township, or the council of any municipal corporation, or other corresponding board or officer in the case of a charter city or village not having a council, is hereby authorized and empowered to allow and pay to any contractor who has performed or who is engaged in performing any contract entered into with such county, township or municipal corporation or the proper authorities thereof, for the construction, reconstruction, improvement, maintenance or repair of any public road, highway, street, bridge or section or portion thereof, the increased freight charges paid by such contractor on materials transported over a railroad or railroads by him and used in the performance of such contract, where such materials were transported on and after the twenty-fifth day of June, nineteen hundred and eighteen, and such increased freight charges were paid under and by virtue of the terms of a certain order issued by the United States railroad administration on the twenty-fifth day of May, nineteen hundred and eighteen, and known as general order number twenty-eight, or under and by virtue of any other order promulgated by said United States railroad administration or any other lawful authority on or after the twenty-fifth day of May, nineteen hundred and eighteen. This authorization shall be effective and such payment shall be made to such contractor only in the event that his said contract was entered into with said county, township or municipal corporation or the proper authorities thereof prior to said twenty-fifth day of May, nineteen hundred and eighteen. * * * Payments shall be made from any fund available for the construction, improvement, maintenance or repair of roads, highways, streets or bridges created by general taxation and against which no contractual obligations exist. * * *."

It has been pointed out in an opinion of this department (No. 959) dated January 23, 1920, directed to Hon. Walter W. Beck, prosecuting attorney, Lisbon, Ohio, copy of which is enclosed, that a favorable vote at an election held under favor of sections 6926-1 et seq. (108 O. L. 500) does not change the essential character of the levy authorized by section 6926 G. C. and that the sole effect of such favorable vote is to permit the making of such levy free of the restraint otherwise imposed by general tax limitations. This being true, and it being also true that the county road levy authorized by section 6926 is upon all the taxable property of the county, it follows that the fund accruing from such levy comes within the terms of the last sentence above quoted from section 1208-5,—in other words, said fund is one "created by general taxation." Hence the county commissioners may use such fund to the extent not otherwise anticipated or appropriated, for making the payments which they are authorized to make by said section 1208-5 G. C.

Respectfully,
JOHN G. PRICE,
Attorney-General.