

be used, or which is not needed for the purpose for which the tax was levied, or the loan made, or the bonds issued, all of such surplus shall be transferred immediately by the officer, board or council having charge of such surplus, to the sinking fund of such city, village, county, township or school district, and thereafter shall be subject to the uses of such sinking fund."

Since the improvement project is not to be carried out, there remains no option in the commissioners, except transfer to sinking fund. While this step, in effect, prevents the direct use of the proceeds in question on an improvement other than the one for which the bonds were issued, yet in a sense such use may be indirectly brought about through the medium of the county sinking fund act (108 O. L., Part I, p. 700), in that moneys will be available in the sinking fund for the purchase of a new and independent issue of bonds, authorized for a specific improvement.

It is suggested that prior to making transfer to the sinking fund, the commissioners adopt a resolution definitely abandoning the original improvement project. Such resolution might properly embrace a statement of the reasons for the action being taken.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

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1531.

ROADS AND HIGHWAYS—WHEN PROCEEDS OF LEVY AUTHORIZED BY SECTION 6926 G. C. MAY BE DIRECTLY EXPENDED BY COUNTY COMMISSIONERS IN IMPROVEMENT OF VILLAGE STREET—SECOND CONCLUSION IN OPINION NO. 1182, DATED APRIL 27, 1920, REVISED.

*Subject to the prior consent of the village as provided by section 6949 G. C., the proceeds of the levy authorized by section 6926 G. C. may be directly expended by county commissioners in the improvement of a village street or part thereof, not theretofore improved by the State Highway Commissioner, and lying on the line of an inter-county highway. Question whether county commissioners may make like expenditure on village street if already improved by State Highway Commissioner, not passed upon.*

*(Second conclusion in Opinion No. 1182, dated April 27, 1920, revised.)*

COLUMBUS, OHIO, August 30, 1920.

HON. BARCLAY W. MOORE, *Prosecuting Attorney, Cadiz, Ohio.*

DEAR SIR:—Under date April 27, 1920, there was rendered to you in connection with the road laws an opinion wherein the following conclusions were expressed:

"1. The proceeds of the tax levy authorized by section 6926 G. C. may be expended by county commissioners in the improvement of such sections of an inter-county highway within the county as have not become subject to maintenance by the state as provided by sections 1224, 7464 and 7465 G. C.

2. The proceeds of the levy authorized by said section 6926 G. C. may not be expended by county commissioners in the improvement of a village street lying on the line of an inter-county highway."

You will recall that the reasoning underlying the second conclusion was in substance that because of the fact that supervision and control over streets within a municipality and the duty to keep them in repair was vested in and cast upon the municipality (sections 3629 and 3714 G. C.), such streets were not to be considered essentially as sections of inter-county highway for the purpose of improvement by county commissioners; but that statutes granting authority for road improvement within municipalities such as that conferred upon the state highway commissioner as to inter-county highways by sections 1193-1 et seq. and 1231-3, and upon county commissioners as to county highways by sections 6949 et seq., were to be strictly construed and not extended by implication to highways whose statutory designations were other than those immediately named in the respective statutes.

It was intimated in said opinion that your question to which answer was made in the second conclusion above quoted, was a close one, even in the light of considerations set out in said opinion. However, this department has recently had occasion in connection with another inquiry bearing on the road laws, to make quite an extensive review of the road statutes, with the result that it has become the settled opinion of this department that the second conclusion above stated placed too narrow a construction upon the authority of county commissioners with respect to improving a village street lying along the line of an inter-county highway.

This last statement is made principally upon the basis that toward the close of the series of sections beginning with section 6906 G. C. dealing with improvement of roads by county commissioners, there appears in section 6952 the following sentence:

"The word 'road,' as used in sections 6906 to 6953 inclusive of the General Code, shall be construed to include any state or county road or roads, or any part thereof, or any state or county road or roads and any city or village street or streets, or any part thereof, which form a continuous road improvement."

The effect of this provision was not taken into consideration when rendering you the opinion first above referred to.

To get the full effect of said provision we must recur to the opening section of said series dealing with improvement by county commissioners, namely, 6906, as well as to other sections of statutes referred to in said previous opinion.

Said section 6906 reads as follows:

"The board of commissioners of any county shall have power, as hereinafter provided, to construct a public road by laying out and building a new public road, or by improving, reconstructing or repairing any existing public road or part thereof by grading, paving, draining, dragging, graveling, macadamizing, resurfacing or applying dust preventives, or by otherwise improving the same. The county commissioners shall have power to alter, widen, straighten, vacate or change the direction of any part of such road in connection with the proceedings for such improvement."

In the previous opinion, section 1203 G. C. appearing in that part of the road

laws relating particularly to the duties of the state highway commissioner, was quoted, reading as follows.

"Nothing in this chapter shall be construed as prohibiting the county commissioners or township trustees from constructing, improving, maintaining or repairing any part of the inter-county highways within such county or township; provided, however, that the plans and specifications for the proposed improvement shall first be submitted to the state highway commissioner and shall receive his approval."

Section 7465 G. C. was also referred to, reading:

"In all cases where a county or township has constructed or improved any main market or inter-county road, the state highway commissioner, upon request, shall, within sixty days indicate what changes, or improvements, will be required in said road in order to bring the same up to the approved standard of construction of such roads, or in any case where such road is about to be constructed, reconstructed, or improved, the state highway commissioner shall, upon application, indicate within sixty days what changes will be required in the plans and specifications therefor, to bring said road up to the standard required by the state for the construction of inter-county highways and main market roads. Whenever the changes so specified by the state highway commissioner have been made, or when such roads have been constructed according to the plans and specifications so approved by the state highway commissioner, such roads shall at once become state roads."

Reference was also made to section 6949 G. C. which reads as follows:

"The board of county commissioners may construct a proposed road improvement into, within or through a municipality, when the consent of the council of said municipality has been first obtained, and such consent shall be evidenced by the proper legislation of the council of said municipality entered upon its records, and said council may assume and pay such proportion of the cost and expenses of that part of the proposed improvement within said municipality as may be agreed upon between said board of county commissioners and said council. If no part of the cost and expense of the proposed improvement is assumed by the municipality, no action on the part of the municipality, other than the giving of the consent above referred to, shall be necessary; and in such event all other proceedings in connection with said improvement shall be conducted in the same manner as though the improvement were situated wholly without a municipality."

It is plain, of course, that said section 6949 and related sections are merely a part of the general scheme of road improvement by county commissioners, and that the steps to be taken by the municipality are merely incidental to the proceedings and ultimate construction work carried on by the county commissioners.

Section 6926 with which your inquiry was principally concerned, reads as follows:

"The proportion of the compensation, damages, costs and expenses of such improvement to be paid by the county shall be paid out of any road

improvement fund available therefor. For the purpose of providing by taxation a fund for the payment of the county's proportion of the compensation, damages, costs and expenses of constructing, reconstructing, improving, maintaining, and repairing roads under the provisions of this chapter, the county commissioners are hereby authorized to levy annually a tax not exceeding two mills upon each dollar of the taxable property of said county. Said levy shall be in addition to all other levies authorized by law for county purposes, and subject only to the limitation on the combined maximum rate for all taxes now in force."

Said section is to be read as part of the series beginning with section 6906 G. C. and that series, as has been already noted, includes section 6949 et seq. relating to improvement by commissioners into, within or through municipalities, and also includes said section 6952.

Since, as was pointed out in the first conclusion expressed in the opinion previously rendered you, county commissioners are authorized to expend funds arising from levy under section 6926 in the improvement of such sections of an inter-county highway as have not become subject to maintenance by the state as provided by sections 1224, 7464 and 7465 G. C., it follows that the last sentence quoted above from said section 6952 has the effect of bringing within the general scope of said first conclusion that part of a city or village street which lies along the line of an inter-county highway.

The expression "within the general scope of said first conclusion," as used in the next preceding sentence, has been employed for the reason that it may be an open question whether said first conclusion may be applied fully and exactly to the case of a municipal street along the line of an inter-county highway as distinguished from the part of the inter-county highway lying outside the municipality. Said first conclusion embraces the proposition that county commissioners may themselves make direct expenditure from funds arising under section 6926 upon *only those sections of inter-county highway which have not become subject to maintenance by the state*. This brings on the query whether a village street improved by the state highway commissioner (sections 1193-1, 1193-2 and 1231-3 G. C.) becomes by reason of the fact of such improvement subject to maintenance by the state. This query, however, will not be considered in this opinion, for the reason that it is believed from the nature of your inquiry that what you have in mind is a village street which, while not improved by the state highway commissioner, yet lies on the line of an inter-county highway.

In conformity with the foregoing and in lieu of the second conclusion stated in said previous opinion No. 1182, you are advised that county commissioners, subject to their first obtaining the consent of the village as specified in section 6949 G. C. have authority to make direct expenditure themselves from funds arising from levy under section 6926 G. C. upon the improvement of such village streets or parts thereof as have not been improved by the state highway commissioner, no opinion being herein expressed as to whether county commissioners may make like expenditure on village streets or parts thereof which have been improved by the state highway commissioner.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*