92.

APPROVAL, BONDS OF VILLAGE OF PARKVIEW, CUYAHOGA COUNTY, $18,899.84.

COLUMBUS, OHIO, February 19, 1927.

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

93.

GENERAL ASSEMBLY—WITHOUT AUTHORITY TO LIMIT JURISDICTION OF COURT OF APPEALS—VIOLATION OF ARTICLE IV, SECTION 6, OHIO CONSTITUTION—CANNOT LIMIT OR ABRIDGE RIGHT OF LITIGANTS TO PROSECUTE ERROR TO COURT OF APPEALS FROM ANY COURT OF RECORD IN OHIO.

SYLLABUS:

The General Assembly of Ohio is without authority to limit the appellate jurisdiction of the Court of Appeals under the provisions of Section 6 of Article IV of the Ohio Constitution; neither may it limit nor abridge the right of litigants to prosecute error to the Court of Appeals from any court of record in Ohio.

COLUMBUS, OHIO, February 21, 1927

HON. HARRY E. DAVIS, *Member of the House of Representatives, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of the 17th instant requesting my opinion as follows:

> "As chairman of the Codes Committee of the House, I am submitting the following proposition for an informal opinion from you:
>
> The several municipal court acts passed in recent years generally contain a provision denying an appeal to the Court of Appeals.
>
> There is such a provision in the Municipal Court Act of Cleveland. However in Section 1579-9 of the General Code, the Cleveland Municipal Court is given some chancery jurisdiction.
>
> We are anxious to get your opinion as to whether or not it is within the legislative power to limit an appeal in chancery cases from the Municipal Court to the Court of Appeals or whether this conflicts with Article 4, Section 6, of the Constitution."

You refer to Section 1579-9, General Code, which is as follows:

> "Whenever an action or proceeding is properly brought in the municipal court, the court shall have jurisdiction to determine, preserve and enforce all rights involved therein, and to hear and determine all legal and equitable remedies necessary or proper for a complete determination of the rights of the parties."

In the Cleveland Municipal Court Act the legislature undertook to limit the jurisdiction of the Court of Appeals in the enactment of Section 1579-36, General Code. Without quoting that entire section, it will be observed that it uses the following language pertinent to our inquiry:

> "That in actions in forcible entry and detention the party objecting to the finding of the court on questions of law and evidence shall reduce his objections to writing and present same to the trial court not more than ten days after the overruling of a motion for a new trial of said action, and no petition in error to reverse, modify or vacate the judgment or final order in such cases shall be filed in the Court of Appeals except upon leave of said Court of Appeals or a judge thereof, and upon notice of such application being first given to the opposite party."

The power of the legislature is limited on this subject by the provisions of Article IV, Section 6 of the Ohio Constitution as amended in 1912. The portion of this section material to our inquiry is as follows:

> "The Court of Appeals shall have original jurisdiction in quo warranto, mandamus, habeas corpus, prohibition and procedendo, and *appellate jurisdiction in the trial of chancery cases,* and to review, affirm, modify, or reverse the judgments of the court of common pleas, superior court and other courts of record within the district as may be provided by law. * * * "

In the case of Cincinnati Polyclinic vs. Balch, 92 Ohio State, page 415, the Supreme Court had occasion to construe the jurisdiction of the Court of Appeals as given it by the Constitution. In that case it held that the legislature may neither add to nor subtract from the jurisdiction therein defined. It held that a litigant may prosecute error to the Court of Appeals from any court of record, and that even the court itself could not limit or abridge that right, and also that the legislature may not impose any limitations thereon. This case has been cited and followed in many subsequent cases.

Your attention is directed to the case of State ex rel. The Medical Centre Company vs. Wallace, Clerk of Court of Appeals, 107 Ohio State, page 557, the syllabus of which is as follows:

> "1. The jurisdiction of the Court of Appeals is fixed by the Constitution, and the Legislature may not add to or subtract from the jurisdiction thereof defined in Section 6, Article IV, of the Ohio Constitution as amended in 1912.
>
> 2. Section 1579-36, General Code, in so far as it operates as a restriction or limitation upon the jurisdiction of the Court of Appeals to review error proceedings from the Municipal Court of the city of Cleveland, is unconstitutional and void.
>
> 3. Error may be prosecuted from actions in forcible entry and detention from any court of record in any county to the Court of Appeals of that county without leave of such Court of Appeals or any judge thereof, and it is the duty of the clerk of the Court of Appeals to file a petition in error tendered by the unsuccessful party upon compliance with the statutory procedure in such cases made and provided."

The reasoning of the court in the above case, as well as in the case of Cincinnati Polyclinic vs. Balch, supra, applies with the same force to the appellate jurisdiction of

the Court of Appeals in chancery cases as to proceedings in error in such court, and I am therefore of the opinion that the General Assembly is without authority to impose limitations upon the appellate jurisdiction of the Court of Appeals; neither may it limit nor abridge the right of litigants to prosecute error to the Court of Appeals from any court of record.

Respectfully,
EDWARD C. TURNER,
Attorney General.

94.

DIRECTOR OF HIGHWAYS—HAS AUTHORITY TO CONSENT OR REFUSE CONSENT TO THE CONSTRUCTION OF POWER LINES ALONG INTER-COUNTY HIGHWAYS AND MAIN MARKET ROADS—LIMITATION OF AUTHORITY TO REFUSE CONSENT—POWER OF COUNTY COMMISSIONERS UNDER SECTION 7204-1a, G. C.—POWER COMPANIES NOT REQUIRED TO OBTAIN CERTIFICATE OF NECESSITY.

SYLLABUS:

1. *The Director of Highways and Public Works is authorized by Section 7204-1a of the General Code to consent to the construction of electric power lines along inter-county highways or main market roads.*

2. *The power to consent implies the authority to refuse consent, where the interests of the public for travel so require.*

3. *Such power of consent is also given to boards of county commissioners by Section 7204-1a as to highways other than inter-county highways and main market roads, but such power does not extend to inter-county highways and main market roads.*

4. *Electric power companies are not required to obtain certificates of necessity and convenience from the public utilities commission of Ohio as a condition precedent to placing pole lines upon the public highways.*

COLUMBUS, OHIO, February 21, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which you state:

> "This department some times has applications from two different companies for permits to erect electric power lines along the same highway on the state system."

With this statement of the premise, you ask several questions, which will be quoted and discussed in their order.

> 1. "Is it within my jurisdiction to grant or refuse to grant such application and issue permits for the purposes mentioned?"