

the state land in the rear thereof lying immediately in front of that portion of Lot No. 36 of the Sawyer and Haynes' "Shore Acre" Allotment on the west shore of the East Reservoir of the Portage Lakes, located in Tract No. 13, Coventry Township, Summit County, Ohio, that is now owned by said lessee. Said lease is executed subject to certain conditions therein stated with respect to the manner in which the leased premises are to be used, and the same is likewise subject to certain specified conditions, restrictions and reservations required by law with respect to all leases of this kind.

Upon examining said lease, which is one calling for an annual rental of twenty-four dollars, I find that the same has been properly executed by the parties thereto, and that the provisions of said lease are in conformity with section 471 of the General Code, as amended in the enactment of the Conservancy Act, and the same is likewise in conformity with other statutory provisions relating to the execution of state reservoir land leases.

This lease is accordingly approved by me as to legality and form, and I have accordingly endorsed my approval upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3330.

APPROVAL, BONDS OF TRIMBLE TOWNSHIP, RURAL SCHOOL DISTRICT, ATHENS COUNTY—\$5,000.00.

COLUMBUS, OHIO, June 15, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3331.

TAX LEVY—ONE MILL LEVIED FOR ROAD PURPOSES UNDER SECTION 5625-15, G. C.—APPLICABLE TO PAY COUNTY'S PROPORTIONATE COST OF GRADE ELIMINATION PROJECT UNDERTAKEN BY COMMISSIONERS AND STATE HIGHWAY DIRECTOR UNDER SECTION 1191, G. C.

SYLLABUS:

The proceeds of a tax levied under the provisions of paragraph 7 of Section 5625-15, General Code, for road purposes, generally, may lawfully be used by the county commissioners to pay their proportionate cost of the construction of a grade elimination project as authorized by the provisions of Section 1191, of the General Code.

COLUMBUS, OHIO, June 16, 1931.

HON. CARL J. CHRISTENSEN, *Prosecuting Attorney, Toledo, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

"The Commissioners of Lucas County, Ohio, are desirous of entering into a contract with the State Highway Director for the construction of a grade elimination on the Dixie Highway in this County under the provisions provided for in Section 1191 of the General Code of Ohio.

Lucas County has made a one mill levy for road purposes under Section 5625-15 of the General Code. The resolution providing for the submission of the question of this levy to a vote of the people was drawn under paragraph 7 of said section, and provided for a levy for the general construction, reconstruction, resurfacing, and repair of roads in Lucas County. You will note that the word 'bridges' was left out of this resolution, and consequently was left out of the question submitted to a vote of the people.

Query: Can funds raised by this levy be used by the Board of County Commissioners to bear the county's proportion of the cost of building such grade elimination undertaken by the State Highway Department under authority of Section 1191 of the General Code?"

Section 1191 of the General Code, to which you refer, among other things, provides:

"The commissioners of any county may cooperate with the department of highways in the elimination of railway grade crossings on the state highway system and in the construction or reconstruction of bridges and viaducts, together with the approaches thereto, and shall be authorized to pay such portion of the cost of any such work as may be agreed upon between said commissioners and the director of highways. * * *

This section further authorizes the commissioners of any county to cooperate with the State "in constructing, reconstructing, resurfacing or widening a state highway, where the result" of such improvement "produces a pavement more than twenty feet in width" and the commissioners are authorized to pay all or any portion of the cost of such improvement as lies outside of or extends beyond such width of twenty feet together with the cost of grading, drainage, right of way and other incidental expenses. The section further authorizes counties having a tax duplicate in excess of three hundred million dollars to cooperate without limitation with respect to all improvements hereinbefore mentioned. It may be noted that the constitutionality of the last provision above referred to is under consideration in a case arising from your county which is now pending in the Supreme Court of Ohio.

Section 5625-15, of the General Code, to which you refer, specifically enumerates the purposes for which the taxing authority of any subdivision of the state may levy a tax in excess of the fifteen mill limitation, and paragraph seven thereof, under which you state the funds about which you inquire were provided, reads:

"For the general construction, reconstruction, resurfacing and repair of roads and bridges in counties."

While you do not enclose a copy of the resolution of the commissioners in pursuance of which the levy in question was made, you state that the resolution did not contain the word "bridges." In this connection it may be pointed out that I have before me a letter addressed to the Department of Highways by Mr. Yeager, an attorney of your city, in which it is indicated that the resolution contained the same language as that in paragraph seven of the section above mentioned.

It therefore would appear that there is some misunderstanding as to exactly what the resolution provided. However, for the purposes of this opinion, it will

be assumed that the statement in your communication is correct and that the resolution did not contain the word "bridge." Two questions therefore arise: First, as to whether or not the general term "road" as used in the resolution includes a bridge, and second, if the term "road" includes a bridge, whether or not the construction of a grade elimination project is either a road or a bridge, or both.

Your attention is directed to an opinion rendered by me under date of March 3, 1930, being Opinion No. 1580, in which it was held as disclosed by the second branch of the syllabus:

"The proceeds of the levy provided for under Section 6926, General Code, which are not obligated to pay bonds issued in anticipation of the collection thereof, may be used to pay the county's share of the cost of a grade elimination project instituted under the provisions of Section 6956-22 of the General Code."

In the body of said opinion, with reference to whether the term "road" includes bridges, the following is stated:

"In my Opinion No. 101 issued to the Bureau of Inspection and Supervision of Public Offices under date of February 16, 1929, it was held as follows:

1. The moneys allotted to a municipality under the provisions of sections 5537 and 6309-2 of the General Code, may legally be expended for the purpose of maintaining and repairing bridges and viaducts upon streets within the municipality.

2. County commissioners may legally expend the county's portion of the motor vehicle license and gasoline tax receipts for the purpose of maintaining and repairing bridges on public roads and highways in the county system of highways."

It is believed the foregoing opinion and the citations therein, are dispositive of the question as to whether or not the term "road" will include a bridge. With reference to the second question as to whether the grade elimination construction may be regarded as a bridge or a road, the following is stated in the body of said opinion:

"In view of the conclusion in my opinion last mentioned, the only question now remaining is whether or not the improvement which results in the separation of a grade crossing is to be considered as a road or a bridge. It is not believed that there has been an opinion or decision rendered upon this particular question. However, it is obvious that whatever method is adopted in connection with a grade separation project it results in the road being continued over or under a railroad. Whether said structure technically amounts to a bridge or a road, or both, it necessarily follows that it is a portion of a highway."

In connection with the opinion last above referred to, it may be pointed out that it was held that the funds arising under Section 6926 of the General Code, could be used by the county commissioners for the purpose of paying the county's share of the cost of a grade elimination project instituted under the provisions of Section 6956-22, of the General Code. It will be observed that said section authorizes the levying of a tax "for the purpose of constructing, reconstructing, improving, maintaining and repairing roads under the provisions of this chapter."

It is interesting to note that from a reading of an opinion of the Supreme Court in the case of *The Wymer-Harris Construction Company v. Glass, Adm.*, 122 O. S. 398, it may be reasonably implied that Section 2408 of the General Code,

which expressly mentions "roads" and "bridges" includes "viaducts." Also in the case of *Hanks v. Commissioners*, 35 O. A., 246, it is indicated that a bridge is a part of a road.

Applying the principles set forth in the opinions hereinbefore mentioned, to the questions presented in your inquiry, the conclusion is irresistible that the proceeds of a tax levied under the provisions of paragraph 7 of Section 5625-15, General Code, for road purposes, generally, may lawfully be used by the county commissioners to pay their proportionate cost of the construction of a grade elimination project as authorized by the provisions of Section 1191 of the General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3332.

APPROVAL, LEASE FOR RIGHT TO USE FOR COTTAGE SITES AND
LANDING PURPOSES, LAND AT LAKE LORAMIE, SHELBY COUN-
TY, OHIO—WALTER BENSMAN AND WILLIAM BERNING.

COLUMBUS, OHIO, June 16, 1931.

HON. I. S. GUTHERY, *Director of Agriculture, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of a recent communication from your department with which you submit for my examination and approval a certain reservoir land lease executed by and under the authority of the Conservation Council of the Conservation Division in your department, by which instrument there is leased and demised to Walter Bensman and William Berning of Minster, Ohio, for a term of fifteen years, the right to use and occupy for cottage sites and landing purposes, that portion of the state property at Lake Loramie, Shelby County, Ohio, that is described as follows:

"Commencing at a point within the Northwest Quarter of Section 6, Town 6 South, Range 5 East, Shelby County, Ohio, being 660' south, and 293 feet east of the northwest corner of said section to the true place of beginning; thence South, 21 deg. West, 100 feet to a point; thence South 69 deg. East, 150' more or less, to the water line; thence north-easterly along the water line of Lake Loramie, 100 feet, more or less, to the southeast corner of a lease granted to Albin Martin; thence North 69 deg. East along the southerly line of the said Martin lease, 154' more or less, to the place of beginning and containing .35 acre, more or less."

By the lease here in question, which is one calling for an annual rental of thirty-six dollars, the above described property has been leased and demised to the lessees above named, subject to certain conditions and restrictions with respect to the manner in which the leased premises are to be used, and likewise subject to certain conditions, restrictions and reservations required by the law of the state with respect to all leases of this kind.

Upon examination of said lease, I find that the same has been manually executed by the Conservation Commissioner, acting for said Conservation Council pursuant to a resolution passed by that body on May 5, 1931, and I likewise find that said lease has been properly executed by the lessees above named.