

the General Code. Therefore, all property owners affected by the improvement will have an opportunity to be heard relative to their assessments and their rights can in no way be affected because of the erroneous description of the road to be improved as it appears in certain resolutions of the board of county commissioners as hereinbefore referred to.

There is no question in my mind that the county commissioners have at all times, since the relocation of said highway, had in mind the improvement of that particular portion of I. C. H. No. 196 as shown by the plans and which leads to the village of Lawrenceville, and that entirely through inadvertence an erroneous description of the section of the road to be improved appears in the resolution approving the plans and determining to proceed, as well as the resolution providing for the issuance of bonds.

Answering your question specifically, it is my opinion, that where, subsequent to the filing of an application for state aid, an inter-county highway was relocated by the Director of Highways and Public Works as authorized by law, and all the various steps in the procedure to improve such highway, upon a cooperative basis between the county and the state as provided in Sections 1191, et seq., of the General Code, have been taken, including the letting of the contract, and, through inadvertence and mistake the description of the highway as it was before its relocation, was incorporated in the resolution of the county commissioners approving the plans and determining to proceed, and in the resolution authorizing a bond issue, all other necessary legislation, the plans, the advertisement for bids and the contract containing a description of the road as relocated, it is the duty of such board of county commissioners to correct such erroneous description to conform with its actual intention, by amending said resolutions to show correctly the description of the particular section of the highway to be improved.

Further, it is my opinion that the action by the board of county commissioners in amending said legislation will be legal, and I know of no reason that makes it necessary to start the proceedings from the beginning, with an application for state aid.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1087.

DITCH SUPERVISOR OR COUNTY SURVEYOR—APPOINTMENT BY COUNTY COMMISSIONERS—AUTHORITY TO CLEAN DITCHES WITHOUT APPLICATION OF LAND OWNER—EMPLOYMENT OF NECESSARY LABOR AND PURCHASE OF MATERIALS—COST TO BE CERTIFIED TO COUNTY COMMISSIONERS—AUDITOR TO PLACE AMOUNT ON TAX DUPLICATE OF LAND OWNER.

**SYLLABUS:**

1. *A ditch supervisor, or a county surveyor designated by the county commissioners to act as ditch supervisor, may under Sections 6693 to 6697, General Code, inclusive, apportion the necessary work of cleaning and repairing ditches and water-courses, and cause the same to be cleaned out and repaired without an application first being made to do so by the owner of the lands affected.*

2. *A county surveyor, to whom the county commissioners of the county have delegated the duty to act as ditch supervisor, when directed by the county commis-*

sioners to do so, may employ the necessary labor and purchase the necessary materials to perform the work only when the estimated cost thereof is under fifty dollars, and such work may be done without the owners of the land affected first making an application therefor.

3. When the owner to whom an apportionment of a ditch is allotted neglects or refuses, within the time set by the ditch supervisor, to clean out or repair such ditch, and the work is done by the ditch supervisor by contract or by force account in a proper case, upon the completion of the work the surveyor should certify the cost thereof to the county commissioners for their examination and correction, after which the latter officers should order the auditor to place the correct amount upon the duplicate against the lands of the person to whom the section cleaned or repaired had been apportioned, to be collected as other taxes and assessments, and credited to the ditch improvement fund.

COLUMBUS, OHIO, September 30, 1927.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your communication reading as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

QUESTION 1: May a county surveyor, designated as ditch supervisor, under the provisions of Section 6691, G. C., legally proceed under the provisions of Section 6693, G. C., to repair a ditch by employing the necessary labor without an application on the part of the owner of lands which will be affected by such repair?

QUESTION 2: In the event that he may so proceed, is the cost of such repairs a proper charge against the county, or is there any authority by which such cost may be assessed against the property owners benefited by the repair?”

Section 6691, General Code, authorizes the appointment of a ditch supervisor, whose duty it is to keep clean and in repair ditches, drains and water courses in their township, or the delegation of the powers and duties of the ditch supervisor to the county surveyor. This section reads as follows:

“In any township or townships in which a ditch, drain or watercourse or part thereof has been or may hereafter be located and constructed, the county commissioners for the purpose of keeping such ditches, drains or watercourses clean and in repair, may delegate such duty to the county surveyor who shall execute the necessary work and assess the cost thereof in accordance with the provisions of this chapter as they relate to the duties of a ditch supervisor, or employ a ditch supervisor for such township; the same person may be employed as a ditch supervisor for one or more townships in the county; no person shall be so employed unless he is a resident of the county in which he is employed; he may be removed by the county commissioners at any time for cause, and his duties may be delegated to another supervisor or the county surveyor, or another supervisor may be appointed in his place.

Where the term ditch supervisor is used in this chapter and the duties of ditch supervisor are being performed by the county surveyor, the term 'ditch supervisor' shall be construed to refer to county surveyor."

A county surveyor to whom has been delegated by the county commissioners the duties of ditch supervisor, under the provisions of the above statute, has the same power and authority to clean and repair ditches, drains and water courses, as a township ditch supervisor appointed by the commissioners for such purposes.

Specific provisions are found in Section 6693 and Sections 6695 to 6703, inclusive, of the General Code, prescribing the method and procedure that the ditch supervisors should follow in the performance of the work. The pertinent part of Section 6693 reads:

"The ditch supervisor shall have supervision of the cleaning out or repair of all ditches, drains or watercourses located and constructed in his township or townships, which have theretofore been located and constructed by township trustees, or by county commissioners as single county ditches, or by county commissioners as joint county ditches, and shall at all times be under the direction and control of the commissioners. The ditch supervisor is authorized to repair tile that are broken, uncovered or stopped up; to open the outlet of tile; to repair any abutment, catch basin or retaining wall that has been constructed on any ditch, drain or watercourse; and to clean out and keep ditches, drains or watercourses in repair as provided by law; he shall annually report to the county commissioners the work done by him on ditches, drains or watercourses, and any money collected by him, which report shall be made between the fifteenth and thirty-first days of December of each year; no part of the compensation of the supervisor or his assistant shall be assessed against the owners of affected land. \* \* \* "

In connection with the provisions of the above statute, it should be noted, ditch supervisors, for the purpose of cleaning out and repairing ditches and watercourses are, by the provisions of Section 6697, General Code, required to divide such ditches and watercourses into working sections and apportion the sections to the owners of lands according to the benefits received by them from the cleaning or repairing and to notify in writing all owners affected, as provided in Section 6697, General Code, reading as follows:

"The ditch supervisor or supervisors for the township or townships through which a ditch, drain or watercourse runs, for the purpose of cleaning it or keeping it in repair, shall divide it into working sections and apportion such sections to the owners of lands according to the benefits that will be received by such cleaning or repair, provided, however, on petition of the owners of two-thirds in amount of the apportionment of the work to clean out or repair any ditch, the ditch supervisor may cause the work to be done as a unit in accordance with Sections 6700 and 6701 of this chapter, and shall apportion the costs of such work among the owners of land affected thereby according to benefits. All working sections allotted to each owner shall be on, or as near as practicable to his land. The surveyor shall, if the ditch supervisor so requests and if so ordered by the commissioners, cooperate with the ditch supervisor in making the apportionment. When the ditch supervisor has completed the apportionment according to benefits, he shall file such apportionment with the auditor who shall file the same with the original papers of the improvement.

The auditor shall call such apportionment to the attention of the commissioners, and the auditor shall fix the time when protests may be heard thereon, which shall be not more than twenty days after the date of filing such apportionment. Upon the fixing of such time by the auditor, the ditch supervisor shall give notice in writing as provided in chapter one of this title, to each owner of land to whom an apportionment is allotted, which notice shall state the portion allotted to him, the time within which protests against his apportionment may be filed with the commissioners, the time fixed by the auditor for hearing such protests, and also the date for the completion of the work allotted to such owner, which date shall be after the time for hearing protests. Such notice shall be served at least ten days prior to the time for such hearing. Each owner so notified shall clean out or repair the portion of the ditch, drain or watercourse so apportioned to him, by the ditch supervisor and approved and confirmed by the commissioners, to its full depth and capacity, as originally constructed; *and when necessary re-clean such portion without further notice*; and shall mark the section so allotted to him by a substantial post or marker." (Italics the writer's.)

From the provisions of the above section, it is the duty of each owner after having had due notice of the apportionment and the date fixed by the supervisor for the completion of the work, to "clean out or repair the portion of the ditch \* \* \* so allotted to him \* \* \* and when necessary re-clean such portion without further notice."

It is further provided by statute, that if an owner to whom an apportionment is allotted, neglects or refuses within the time set by the supervisor to clean out or repair a section of such ditch so allotted to him, the supervisor is authorized to sell the work of cleaning or repairing that apportionment of the ditch to the lowest responsible bidder, who shall enter into a contract for such working section. Section 6700, General Code, provides as follows:

"If the owner to whom an apportionment is allotted neglects or refuses within the time set by the ditch supervisor to clean out or repair such ditch, drain or watercourse, the ditch supervisor shall sell the work of cleaning or repairing that apportionment of the ditch, drain or watercourse at public outcry to the lowest responsible bidder and take a bond with surety to the approval of the supervisor for the satisfactory completion of the work. The ditch supervisor shall take separate contracts for each working section. Payment to the contractor shall be made out of the general ditch improvement fund upon the certificate of the ditch supervisor and the approval of the commissioners. If any part of the apportionment for the cleaning or repairing of a ditch, drain or watercourse is apportioned to a county, township, municipality or school district, the ditch supervisor shall let the contract for the completion of such work and give a certificate of the completion of such work to the contractor; if apportioned to the county, the contractor shall be paid upon allowance by the commissioners out of the general ditch improvement fund, and if apportioned to a township, municipality, or school district, he shall be paid out of the general or contingent funds. All contracts entered into by the ditch supervisor and all bonds taken by him, shall be subject to the approval thereof by the commissioners."

However, if the cost of the cleaning or repairing as estimated by the supervisor exceeds \$200.00, before letting the contract therefor public notice thereof shall be given, as provided by Section 6701, General Code, which reads as follows:

"If the cost of such cleaning or repairing as estimated by the ditch supervisor exceeds two hundred dollars, before letting a contract, the ditch supervisor shall give notice of receiving bids by publication once in a newspaper of general circulation in the county wherein the work or part thereof is to be done, which notice shall be published at least one week before the time fixed for the receipt of bids, and shall also give notice of the letting of the contract by posting in three public places in the vicinity where the work or part thereof, is to be done, such posting to be made at least one week before the date fixed for the receipt of bids. If the estimated cost is less than two hundred dollars, notice shall be given by posting in three public places in the vicinity where the work or part thereof is to be done. If the estimated cost is under fifty dollars, the ditch supervisor may at his option award a contract without advertisement or may if so ordered by the commissioners proceed to complete the work by employing necessary labor and by purchasing the necessary material to complete the work. If he proceeds himself, he shall file an itemized claim thereof with the commissioners, and upon the allowance of such claim by the commissioners, the same shall be paid out of the general ditch improvement fund."

By virtue of the provisions of the above statutes, I am of the opinion that a ditch supervisor may clean out and repair a ditch if he is of the opinion that such work needs to be done, without an application by the owners of the lands affected. Such inference I think is warranted from the fact that counties, townships, municipalities and school districts are frequently directly affected and interested in the cleaning and repairing of ditches and watercourses.

However, provision is made by Section 6695, General Code, for an owner of land to file with the ditch supervisor, an application to clean out or repair a ditch affecting his lands. This section reads as follows:

"Any owner of land that will be affected by the cleaning, recleaning or repairing of a ditch, drain or watercourse, may file an application with the ditch supervisor of the township in which his land is located, asking that proper proceedings be had to clean out or repair the ditch, drain or watercourse, as provided by law. Upon the filing of such application the ditch supervisor and the commissioners shall take the necessary steps to clean or repair such ditch, drain or watercourse."

While the owner of lands affected is given the privilege to start proceedings to clean out and repair a ditch or watercourse, I think it is lawful for the ditch supervisor, under the broad provisions of Section 6693, to divide and apportion the ditch as provided by Section 6697, General Code, *supra*, and after having given notice to the owners of lands allotted, clean out or repair such a ditch, without an application to do so being filed with him by an owner of the lands affected.

I find there is very limited authority for the ditch supervisor to clean out and repair ditches by employing the necessary labor and purchasing the necessary materials to do so, and it is only when the estimated cost therefor is under fifty dollars, and the county commissioners order and direct the ditch supervisor to do so, that such work can be done. By the terms of Section 6701, *supra*, if the estimated cost of the cleaning out or repairing is fifty dollars or more, there is no authority to do the work by employing the necessary labor and purchasing the necessary material. If the estimated cost is under fifty dollars, the surveyor may award a contract therefor without advertisement, or may, if so ordered by the commissioners, proceed to com-

plete the work by employing the necessary labor and purchasing the necessary materials.

After the work of cleaning and repairing a ditch is completed, it is the duty of the surveyor to certify the cost thereof to the commissioners for examination and correction and the commissioners thereafter should order the auditor to place the correct amount upon the duplicate for collection as other taxes and assessments. This is authorized and directed by Section 6702, General Code, which section reads as follows:

"Upon the completion of the work as provided in this chapter, whether by contract or otherwise, the supervisor shall certify the cost thereof to the commissioners, who shall examine and correct the same, and shall order the auditor to place the correct amount upon the duplicates to be collected as other taxes and assessments; and this shall be credited to the general ditch improvement fund; such cost shall be a lien on the land to which said work was apportioned from the date of the filing of such certificate with the auditor.

In all cases where the work has been under the supervision of the ditch supervisor and where the ditch repair or clean out has been done as a unit, the ditch supervisor shall make an estimate of the cost of such improvement, and shall apportion the estimated cost thereof according to benefits to the several tracts of land benefited, and shall file such estimates with the auditor; the auditor shall report such apportionments to the commissioners, and the commissioners shall fix a time when such apportionment shall be heard which shall be not more than twenty days after the date of filing such estimates.

Upon the fixing of such time, ten days' notice of such hearing, as provided in chapter one of this title shall be given by the ditch supervisor and the hearing shall proceed the same as the hearing on the report of the surveyor in chapter one of this title, and all parties shall have the rights and remedies as provided in chapter one of this title. The commissioners shall correct and approve such assessments, and shall order the ditch supervisor to let the contract according to Sections 6700 and 6701.

Upon the letting of the contract the auditor shall place the assessments as finally confirmed by the board of county commissioners against the lands of each owner for collection by the county treasurer as other assessments are collected and said assessments shall be a lien against the lands upon which the assessment is placed until the assessment is paid."

Specifically answering your questions, it is my opinion that:

1. A ditch supervisor, or a county surveyor designated by the county commissioners to act as ditch supervisor, may under Sections 6693 to 6697, General Code, inclusive, apportion the necessary work of cleaning and repairing ditches and water-courses, and cause the same to be cleaned out and repaired without an application first being made to do so by the owner of the lands affected.
2. A county surveyor, to whom the county commissioners of the county have delegated the duty to act as ditch supervisor, when directed by the county commissioners to do so, may employ the necessary labor and purchase the necessary materials to perform the work only when the estimated cost thereof is under fifty dollars, and such work may be done without the owners of the land affected first making an application therefor.

3. When the owner to whom an apportionment of a ditch is allotted neglects or refuses, within the time set by the ditch supervisor, to clean out or repair such ditch, and the work is done by the ditch supervisor by contract or by force account in a proper case, upon the completion of the work the surveyor should certify the cost thereof to the county commissioners for their examination and correction, after which the latter officers should order the auditor to place the correct amount upon the duplicate against the lands of the person to whom the section cleaned or repaired had been apportioned, to be collected as other taxes and assessments, and credited to the ditch improvement fund.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1088.

COMMISSIONER OF INSOLVENTS—APPOINTMENT BY PROBATE COURT, MANDATORY—DEPUTY CLERK MAY QUALIFY—FEES.

*SYLLABUS:*

1. *By the terms of Section 11146, General Code, it is mandatory that each probate court of the several counties of the state appoint a commissioner of insolvents.*
2. *A probate court may designate a deputy clerk or an employe of his office to act as commissioner of insolvents, providing such deputy or employe possesses the necessary qualifications to hold such office and provided the probate court determines that it is possible for such appointee physically to perform the duties of both positions.*
3. *By the terms of Section 11179, General Code, a commissioner of insolvents shall be entitled to the fees therein enumerated, such fees to be collected from the applicant seeking the benefits of the insolvent debtors statutes and not from the appropriation fixed by the county commissioner for the probate court.*

COLUMBUS, OHIO, September 30, 1927.

HON. O. A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge receipt of your letter of recent date which reads as follows:

“Section 11146, et seq., of the General Code, headed generally ‘Assignments to Avoid Arrest,’ pertain to the appointment of a Commissioner of Insolvents and seem to place a mandatory duty upon the Probate Court to appoint a Commissioner of Insolvents, this never having been done in Summit County. Section 11179 of the General Code governs the payment of fees and the compensation which the commissioner shall receive.

One of the attorneys in Summit County has lately filed an application for the appointment of Commissioner of Insolvents with the Probate Judge of Summit County, Honorable L. D. Slusser, whom I understand called your office concerning your ruling on these sections. Judge Slusser requests that I ask your opinion concerning his duty in appointing such commissioner, as to