

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?”

By the terms of Section 9170 of the General Code, a magnetic telegraph company is given the right to construct its lines along any public road in the state, in the following words:

“A magnetic telegraph company may construct telegraph lines, from point to point, along and upon any public road by the erection of the necessary fixtures, including posts, piers and abutments necessary for the wires; but shall not incommode the public in the use thereof.”

Exactly the same right is extended to telephone companies by Section 9191 and electric light companies by Section 9192, with the exception of certain restrictions in the latter case not pertinent to the present discussion.

In construing the authority granted under Section 9170, the Supreme Court, in the case of Zanesville vs. Telephone and Telegraph Company, 64 O. S., 67, reached the conclusion that a telephone company was thereby granted a state-wide franchise over all public roads. It is to be noted, however, that this franchise is granted on the condition that the fixtures shall not incommode the public in the use of the road. It would seem to reserve the right to relocate such fixtures, whenever, in the exercise of reasonable judgment, the interests of the traveling public render it necessary. By the terms of Section 7204, General Code, the power to relocate is conferred upon the Director of Highways and Public Works as to inter-county highways and main market roads and upon the county surveyor as to other highways. The franchise right conferred by Section 9170 is not, in my opinion, so broad as to prevent relocation of the lines once established whenever the interests of public travel require. This is clearly indicated by the proviso in the section itself, above referred to. The director and the surveyor would seem to be the proper public authority, having as they do between them the control and supervision of all highways, to determine, at least in the first instance, the necessity for relocation.

Your question, however, relates to the construction of new lines. Since the enactment of section 9170 of the General Code, the legislature has enacted Section 7204-1a, the third paragraph of which section is as follows:

“It shall be unlawful for any person, partnership or corporation to hereafter erect within the bounds of any highway or on the bridges or culverts thereon, any obstruction whatever, without first obtaining the consent and approval of the Director of Highways and Public Works in case of inter-county highways and main market roads and the bridges and culverts thereon, and the consent and approval of the county commissioners, in case of highways other than inter-county highways and main market roads and the bridges and culverts thereon.”

By the terms of this section an added requirement is made which, in my opinion, is a condition precedent to the exercise of the franchise right granted under Section 9170. The consent of the Director of Highways or the county commissioners must first be obtained before any new structures are placed within the highway bounds. It is my opinion that the power to consent implies the power to refuse consent and likewise to impose any terms and conditions incident to the granting of the consent. This is the conclusion of the Supreme Court in the case of Telephone Company vs. Columbus, 88 O. S., 466.

Answering your first question categorically, it is my opinion that you have jurisdiction to consent to the construction of the electric power lines along the highways of the state system and that you may refuse your consent when in your judgment it is necessary so to do.

2. "Is it my mandatory duty to grant such applications and issue permits accordingly?"

The prior discussion is an answer to your second inquiry.

3. "Has the board of county commissioners of the county within which the highway involved is located any authority to grant a franchise to such a company to erect a pole line on a highway on the state system?"

An examination of Sections 7204 and 7204-1a of the General Code leads to the conclusion that the authority of the board of county commissioners and the Director of Highways is the same but not concurrent as to one highway. Each has exclusive jurisdiction under said sections over the highways mentioned and not as to those which are within the jurisdiction of the other. In other words, the Director of Highways and Public Works has sole authority to consent to the erection of a pole line on inter-county highways and main market roads, while the board of county commissioners has sole authority to so consent as to highways other than inter-county highways and main market roads.

4. "Is it necessary for the board of county commissioners to grant a franchise to such company to operate before such company is authorized to build such a pole line?"

As I have stated, in answer to your first question, the electric power company obtains its general franchise from the state by virtue of Sections 9170 and 9192, and the only added requirement is found in Section 7204-1a. It follows from the answer to your third question that it is unnecessary to secure any franchise from the board of county commissioners as to inter-county highways and main market roads.

5. "Is it necessary that the public utilities commission issue a certificate of necessity to such company before the company is authorized to build such a pole line?"

The only provision as to a certificate of necessity is found in Section 614-52. This applies exclusively to the right of one telephone company to invade the territory of another and therefore is inapplicable to electric power companies.

6. "If it is necessary for such company to obtain a franchise from the county commissioners, can a blanket franchise be given to cover all the roads in the county or must a separate franchise be given for each highway on which this company wishes to operate?"

I assume from the form of your question that you only ask it in the event that the board of county commissioners is required to grant a franchise as to a line constructed over inter-county highways and main market roads. Since this has been answered in the negative, no answer is necessary to this question. I might add that it would be perfectly proper for the county commissioners to give a blanket franchise as to all roads within their jurisdiction viz., such highways as are not inter-county highways or main market roads.

In answering your inquiry, no reference has been made to the necessity of obtaining the consent of abutting property owners. You will understand, of course, that the property owner's rights exist, irrespective of any franchise rights which may be given,

and that they must be taken into consideration by the power company prior to the construction of pole lines upon the public highways.

Respectfully,
EDWARD C. TURNER,
Attorney General.

95.

COUNTY COMMISSIONERS—BY A VOTE OF THE PEOPLE MAY ISSUE BONDS TO LIQUIDATE INDEBTEDNESS OF COUNTY AGRICULTURAL SOCIETY—INDEBTEDNESS MUST AMOUNT TO \$15,000.00 OR MORE.

SYLLABUS:

The county commissioners may, by a vote of the people, issue bonds under authority of Sections 9888 to 9893 of the General Code, in the manner prescribed by Sections 5649-9a et seq., General Code, to liquidate an indebtedness of a county agricultural society, when the same amounts to fifteen thousand dollars (\$15,000.00) or more.

COLUMBUS, OHIO, February 23, 1927.

HON. A. E. WALTON, *Prosecuting Attorney, Upper Sandusky, Ohio.*

DEAR SIR:—I am in receipt of your letter of February 7, 1927, which reads as follows:

“The Wyandot County Agricultural Society is in debt and unable to pay its indebtedness and asks the county commissioners to assume and pay said indebtedness. How can it be done legally?”

The following statement gives approximately the indebtedness and how it was made.

In April, 1921, the Society purchased on the north side of Fair Grounds ten acres of ground for new race track, \$3800.00. Moving, rebuilding amphitheatre, \$6,000.00. Moving two horse barns, \$500.00. Filling, leveling and seeding old track, \$2,000.00.

April 1st, 1926, the Society was indebted to The Citizens Savings Bank of this city, \$20,455.00, on its promissory note of seven per cent interest, due in one year.

Society of Agriculture is indebted for last year's premiums, amounting to several hundred dollars that must also be assumed and paid.”

The method of organizing and the powers and duties of county and district agricultural societies are set out in Sections 9880 to 9910, both inclusive, of the General Code.

From your statement it is assumed that the Wyandot County Agricultural Society is properly organized and recognized as such by the Department of Agriculture and owns the land whereon to hold fairs, or that the title to such grounds is vested in fee in the county.

The answer to the question presented is found in Sections 9888 to 9893 of the General Code, as modified by Sections 5649-9a, et seq.

Section 9888, General Code, provides: