

3820.

COUNTY SURVEYOR—REQUIRED TO SUBMIT PLANS, ETC., FOR IMPROVEMENTS SUBJECT TO ALTERATION BY COUNTY COMMISSIONERS—MAY PURCHASE MATERIALS FOR EMERGENCY REPAIRS TO EXTENT OF AMOUNT AVAILABLE IN EMERGENCY FUND.

SYLLABUS:

1. *Under Section 2792, General Code, a county surveyor is required to submit plans, specifications, details and estimates of cost of an improvement, repair, construction or reconstruction to the board of county commissioners for approval, when the board of county commissioners requests the same, and, when submitted, such plans, specifications, details and estimates are subject to alteration by said board.*

2. *A board of county commissioners may determine the amount, kind and size of material to be used in an improvement, repair, construction or reconstruction.*

3. *A county surveyor has the authority to purchase materials needed in making of emergency repairs under the provision of Section 2792-1, General Code.*

4. *A county surveyor may purchase materials from the appropriation made under Section 2792-1, General Code, without the approval of the board of county commissioners, even though such purchase is in excess of \$1,000.00.*

COLUMBUS, OHIO, December 5, 1931.

HON. HARRY I. KAYLOR, *Prosecuting Attorney, Kenton, Ohio.*

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

“The county commissioners of Hardin County have requested me to write to you for an opinion regarding the respective duties of the surveyor and the board.

The questions to be answered are:—

Is the county surveyor compelled to submit plans, specifications, details and estimates of cost of an improvement, repair, construction or reconstruction to the board for approval; if so, can they alter these plans, etc., if they deem it necessary? Section G. C. 2792.

Shall the surveyor or the board determine the amount, kind and size of materials to be used in an improvement, repair, construction or reconstruction?

Under Section 2792-1 of the General Code, the county surveyor must make all emergency repairs of bridges, culverts and highways, the cost of which is under \$200.00.

Who shall purchase the materials so used?

Can the county surveyor purchase said materials from the appropriation under said section without the approval of the board? If so, shall the surveyor make said purchase in excess of \$1000.00 without the approval of the board?”

Section 2792, General Code, to which you refer, reads as follows:

"The county surveyor shall perform all duties for the county now or hereafter authorized or declared by law to be done by a civil engineer or surveyor. He shall prepare all plans, specifications, details, estimates of cost, and submit forms of contracts for the construction or repair of all bridges, culverts, roads, drains, ditches and other public improvements, except buildings, constructed under the authority of any board within and for the county. When required by the county commissioners, he shall inspect all bridges and culverts, and on or before the first day of June of each year report their condition to the commissioners. Such report shall be made oftener if the commissioners so require; Provided, the county surveyor shall not be required to prepare plans, specifications, details, estimates of costs or forms of contracts for emergency repairs authorized under Section 2792-1 of the General Code, unless he deems them to be necessary."

In answer to your first inquiry, your attention is called to the case of *Hibbard v. Biddle*, 81 O. S. 181, the syllabus of which reads:

"Section 1166, Revised Statutes, (Section 2792, General Code), does not require the county commissioners to cause plans, specifications and details to be made in all cases of road improvement."

In this case the court, at page 183, stated:

"Manifestly the section contains no express provision that plans, specifications, details, estimates of costs shall be prepared by any one for all highway repairs. The proposition for counsel for the plaintiff is, that that requirement is implied in the general provisions of the section when considered in connection with numerous other provisions of the statute requiring them to be made for buildings and other improvements. The better view seems to be, that the omission of the requirement in this case indicates that the subject is to be left to the large discretion which the statutes generally confer upon the board of county commissioners, and that is especially true in view of the obvious fact that in many repairs of roads, such plans, specifications, et cetera, would not be necessary or even practicable. Whether in a given case they are practicable and necessary, is left to the discretion of the county commissioners, the effect of the amended section in that regard being, that if they deem them necessary they shall be prepared by the county surveyor."

It follows that, under the provisions of Section 2792, General Code, the county surveyor is compelled to submit plans, specifications, details and estimates of costs of an improvement, repair, construction or reconstruction of all bridges, culverts, roads, drains, ditches and other public improvements, except buildings, to the board of county commissioners for approval, if the board so requires.

As to the authority of a board of county commissioners to alter such plans if they deem it necessary, it should be noted that there is nothing in said Section 2792, General Code, which makes the finding of the county surveyor binding upon the county commissioners, nor does such section prohibit the plans, specifications, details and estimates of costs made by such county surveyor from being subject to change or rejection by the county commissioners.

An examination of the various sections of the general code relative to the duties of the county surveyor and the county commissioners impels the conclusion that the plans, specifications, details and estimates of costs prepared by the county surveyor under the authority of the above section are subject to review and change by the county commissioners.

Section 2343, General Code, relative to the building of bridges by county commissioners, reads in part as follows:

“* * * Nothing in this section shall prevent the commissioners from receiving from bidders on iron or reinforced concrete substructures for bridges the necessary plans and specifications therefor.”

Your attention is called to the case of *State, ex rel. Gillespie v. Bd. of County Commissioners*, 111 O. S. 1, in which it was held, as disclosed by the second branch of the syllabus, that

“Where a bidder submits a proposal to erect the substructure under a plan furnished by the county surveyor, but the commissioners award a contract for construction of an entire bridge as a monolithic unit to another bidder under his plan, the first-named bidder has not established a clear legal right to have a contract awarded to him. (*State, ex rel. Ross v. Board of Education*, 42 Ohio St., 374, followed).” See also 1930 *Opinions of the Attorney General*, 368.

Section 6452, General Code, relative to single county ditches, reads in part as follows:

“If the board of county commissioners find that the proposed improvement is necessary, and that it will be conducive to the public welfare, and are reasonably certain that the cost thereof will be less than the benefits, they may grant the prayer of the petition, and they shall determine the route and termini of the proposed improvement and of the branches, spurs, and laterals thereof; and the manner of constructing the same. * * *”

Section 6966, General Code, relative to the county system of highways, places the duty upon the county commissioners of determining and designating a connecting system of county highways, and provides that:

“The county commissioners may call to their assistance the county surveyor in performing the duties devolving upon them under this section * * *.”

Section 6967, General Code, reads in part as follows:

“The board of township trustees of any township within a county may make application in writing to the board of county commissioners thereof for the construction, reconstruction or improvement of any section of highway in the county system. If the county commissioners approve such application they shall direct the county surveyor to make the necessary plans for the construction, reconstruction or improvement of such section of highway together with an estimate

of the cost thereof. It shall be the duty of the county surveyor to promptly prepare such plans and estimates and file the same with the county commissioners. * * *"

See also Section 6968, General Code.

From a consideration of the foregoing, it is apparent that there is devolved upon the county commissioners the duty of providing for various county improvements, the plans and specifications of which are to be drawn by the county surveyor under the authority of Section 2792, above quoted. And it is also apparent that if they deem changes in the plans and specifications necessary, they are empowered to make the same. See 1927 Opinions of the Attorney General, 2250.

Coming now to your second question relative to the amount, kind and size of materials to be used in an improvement, repair, construction or reconstruction. Section 7214, General Code, reads in part as follows:

"The county commissioners or township trustees may contract for and purchase such material as is necessary for the purpose of constructing, improving, maintaining or repairing any highways, bridges or culverts within the county, and also appropriate additional land necessary for cuts and fills together with a right of way to or from the same for the removal of material. * * *"

Section 7200, General Code, reads in part as follows:

"The county commissioners may purchase such machinery, tools or other equipment for the construction, improvement, maintenance or repair of the highway, bridges and culverts under their jurisdiction as they may deem necessary. * * *"

Section 7203, General Code, reads:

"The county commissioners or the county surveyor, when authorized by the county commissioners, or the trustees of any township, may purchase from any public institution within the state, any road material, machinery, tools or equipment, quarried, mined, prepared or manufactured by said institution."

It is evident from a consideration of the foregoing that the power to purchase materials in the instant case is vested in the county commissioners, and that such authorization implies that the discretion as to whether or not certain materials are necessary in the fulfillment of the duties imposed upon them by statute in relation to county improvements should be exercised by the county commissioners.

Coming now to your third question, Section 2792-1, General Code, to which you refer, reads:

"For the purposes of this act, necessary repairs, the total cost of which is not more than two hundred dollars, shall be deemed emergency repairs. The county surveyor shall make all emergency repairs on all roads, bridges and culverts in the county, including state highways,

and shall keep on hand at all times a supply of material for the purposes of making such repairs. Upon report to the county surveyor of any road or bridge in the county needing immediate attention, the county surveyor shall, if he deems it an emergency repair, proceed at once to make such repair by force account, without preparing plans, specifications, estimates of cost or forms of contract.

The county commissioners are hereby authorized to appropriate a sum of money each year sufficient to enable the county surveyor to carry out the purposes of this section. Such sum shall constitute the 'county surveyor's emergency repair fund.' All expenses incurred in employing extra help or in purchasing materials used in such repairs shall be paid from such fund on vouchers signed by the county surveyor."

It is evident from an examination of the last sentence above quoted, namely, that the expenses incurred in purchasing materials to be used in emergency repairs shall be paid from the emergency repair fund on vouchers signed by the county surveyor, that said section authorizes such surveyor to purchase the materials so used.

As to your fourth question, it is apparent that the only limitation upon the sum which may be expended by a county surveyor in the purchase of materials to be used in emergency repairs is the amount available in the emergency repair fund appropriated by the county commissioners to the county surveyor to carry out the purposes of this section.

In view of the foregoing and in specific answer to your inquiries, I am of the opinion that:

1. Under Section 2792, General Code, a county surveyor is required to submit plans, specifications, details and estimates of cost of an improvement, repair, construction or reconstruction to the board of county commissioners for approval, when the board of county commissioners requests the same, and, when submitted, such plans, specifications, details and estimates are subject to alteration by said board.

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Respectfully,

GILBERT BETTMAN,

Attorney General.