

tage No. 1, Institution for Feeble-Minded, Apple Creek, Ohio, and calls for an expenditure of four thousand, eight hundred dollars (\$4,800.00).

You have further submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the consent of the Controlling Board to the release of funds has been obtained in accordance with Section 4 of House Bill 203 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the American Surety Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,

GILBERT BETTMAN,

Attorney General.

956.

ROAD IMPROVEMENT—WHEN COUNTY COMMISSIONERS MAY COMBINE TWO DIFFERENT ROADS IN ONE PROCEEDING—METHOD FOR ASCERTAINING ASSESSABLE AREA ON OUTSIDE OF OBTUSE ANGLE CAUSED BY INTERSECTING ROADS.

SYLLABUS:

1. *In the event a petition is filed for the improvement of one road and a part of another road, which roads are connecting and in fact constitute one continuous road, the board of county commissioners may consider such improvement as one improvement, and it is not necessary that two separate proceedings be instituted therefor.*

2. *In the event of a turn in a road improvement at any point making an obtuse angle, and assessments are made under the provisions of Section 6919, General Code, upon real estate lying within one mile on either side thereof, the proper method for ascertaining the extent of the area assessable on the outside of such obtuse angle is to project the limit lines parallel with their respective sides to the exact length of such respective sides, and then connect the two points with a line, instead of drawing an arc with the point of turn as the center and the width of the assessment area as the radius.*

COLUMBUS, OHIO, October 1, 1929.

HON. WINSTON W. HILL, *Prosecuting Attorney, Delaware, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“May I respectfully request an opinion from you on the following: A petition was filed with the county commissioners of Delaware County, Ohio, for the construction of Trimmer and part of the East Liberty roads. As you will notice from the accompanying diagram, the Trimmer road intersects the East Liberty road at Point B, the East Liberty road being an old established highway and the Trimmer road being built years afterwards and intersecting the former at the aforesaid point ‘B’.

The petition called for the Trimmer road and the part of the East Liberty road (from point 'C' to 'B') to be built as one improvement, and accordingly after the road was granted by the commissioners, the surveyor in making the assessments, taxed the land in the area designated as 'E' on the diagram, swinging around it in a circle. The surveyor claims that although the Trimmer road and the East Liberty road are separate roads in fact, the East Liberty road being intersected by the Trimmer road at point 'B', the fact that the construction on both roads was petitioned for and granted in one improvement, authorizes him to assess at right angles from point 'C', and swing around the corner and take in the area designated as 'E'.

My opinion to the commissioners was, that because there were two different roads, the Trimmer road had its terminus at point 'B', and right angles should be drawn from its terminus. Further, as the East Liberty road was a different road, although being constructed under the same petition and improvement, assessments should be determined by drawing a right angle at point 'C', and point 'B', leaving out the area designated as 'E'. Also, that which could not be done directly, if the Trimmer road was fixed alone, could not be done indirectly, by repairing a small portion of the East Liberty road and assessing around the corners."

Attached to your letter is a diagram of the two roads which you mention, showing the road to be improved and upon which it is noted that the assessments are levied under the provisions of paragraph 3 of Section 6919 of the General Code.

The determining factor in the question submitted, as will be hereinafter shown, is whether or not the improvement of Trimmer road and a part of East Liberty road is, in fact, one improvement or two distinct improvements.

If the improvement of Trimmer road and a part of East Liberty road is to be considered as two separate and distinct improvements, there is no doubt but that the area lying outside of the obtuse angle formed at the point where the Trimmer road intersects the East Liberty road may not be assessed. It appears to be well established in this state that where property may be assessed which is abutting upon an improvement or situated within a certain distance on either side thereof, as in the case here, the assessable area may not extend beyond a line drawn at right angles with the termini thereof. *Lear vs. Halstead*, 41 O. S. 566; *Kasson vs. County Commissioners*, 15 O. C. C. (N. S.) 460.

If, on the other hand, the improvement of Trimmer road and a part of East Liberty road is, in fact, one road improvement, then under authority of the case of *Moneypeny, et al., vs. Board of County Commissioners, et al.*, 2 O. N. P. (N. S.) 330, the area lying outside of the obtuse angle formed at the point where the Trimmer road intersects the East Liberty road may be assessed. This case not only passed upon the matter of such area being assessable, but decided the extent thereof. The first branch of the syllabus is as follows:

"Where a free turnpike road, improved under the one mile assessment law, makes an obtuse angle, the proper method for ascertaining the amount of property assessable at the angle, is to project the limit lines parallel with their respective sides at an exact length and then connect the two points by a line, instead of projecting them still further until they meet."

The reasoning of the court, as appearing on page 331, is, in my opinion, sound:

"To construe Section 4786 in the most natural and reasonable manner consistent with its manifest purpose must necessarily lead to the conclusion

that its provisions do not contemplate application only to improvement of or laying out of perfectly straight roads, nor to exempt territory at each of the bends or angles thereof. I readily conclude that the line of the one mile limit on each side of the road should follow the bends and angles thereof, and not be broken by each angle or bend leaving exempt territory until a point one mile distant at exactly right angles with the new line of direction be reached.

But in the case at bar, in making the turn at this angle, the defendants can not project the two limit lines until they meet at a point, because this point and considerable of the territory embraced in the angle thereof will be more than a mile distant. The more reasonable plan is to project each limit line parallel with the respective sides at an exact length and then connect the two points by a line instead of projecting them still further until they meet. I do not find anything in the case of *Lear vs. Halstead*, 41 Ohio St., 566, cited by counsel, to be inconsistent with the above holding."

As previously indicated, therefore, the question becomes one of whether or not, upon the facts submitted, the improvement of Trimmer road and a part of East Liberty road is one improvement.

This office has frequently held that where more than one road is to be improved, separate proceedings should be had for each improvement. Manifestly, in the case of the improvement of more than one road, one of such roads may be improved pursuant to a petition being filed and the cost thereof assessed and apportioned in an entirely different way than in the case of another improvement which might be either by petition or pursuant to the unanimous action on the part of the board of county commissioners. In the case presented, however, there appears to have been a petition filed for the improvement of the roadway between a point on the Trimmer road and a point on the East Liberty road, which improvement is apparently one continuous improvement. I do not believe it can be said that because of the fact that a portion of the road sought to be improved between two points bears one name and another portion of such road bears another name that such improvement, therefore, must necessarily be considered as two separate improvements. The county commissioners have broad powers in locating, establishing, altering, widening, straightening, vacating or changing the direction of roads under the provisions of Section 6860 of the General Code. I am of the view that the word "road", as used in Section 6906, General Code, providing that a board of county commissioners may improve any public road or part thereof, should be given a broad rather than a narrow construction, and, accordingly, although a continuous improvement between two points may consist of parts of two or more roads, it may, nevertheless be considered as one road improvement.

There is no doubt but that the authority to improve a part of any public road would necessarily result in an opposite conclusion, providing separate petitions were filed for the improvement of Trimmer road and a part of East Liberty road, setting forth entirely different methods of assessment, or, of course, a petition could be filed for the improvement of East Liberty road, providing for one method of assessment, and the board of county commissioners could, by unanimous action, without petition, resolve to improve Trimmer road and perhaps proceed under a different paragraph of Section 6919 in apportioning the cost. Under such circumstances, probably the improvement of the roadway between these same two points might constitute two separate improvements. However, it is unnecessary to pass upon such a situation, in view of the facts submitted in your letter.

The county commissioners should, in the exercise of their discretion in such matters, take into consideration the needs of the public using the roads, and if it ap-

pears that a road improvement should be made between two points, the fact that such improvement may be known by two names should not preclude the commissioners from treating it as one improvement.

Specifically answering your question, I am of the opinion that:

1. In the event a petition is filed for the improvement of one road and a part of another road, which roads are connecting and in fact constitute one continuous road, the board of county commissioners may consider such improvement as one improvement, and it is not necessary that two separate proceedings be instituted therefor.

2. In the event of a turn in a road improvement at any point making an obtuse angle, and assessments are made under the provisions of Section 6919, General Code, upon real estate lying within one mile on either side thereof, the proper method for ascertaining the extent of the area assessable on the outside of such obtuse angle is to project the limit lines parallel with their respective sides to the exact length of such respective sides, and then connect the two points with a line, instead of drawing an arc with the point of turn as the center and the width of the assessment area as the radius.

Respectfully,

GILBERT BETTMAN,

Attorney General.

957.

APPROVAL, CONTRACT BETWEEN STATE OF OHIO AND THE ELECTRIC POWER EQUIPMENT COMPANY, COLUMBUS, OHIO, FOR CONSTRUCTION OF OUTSIDE CABLES AND HIGH TENSION WORK, INSTITUTION FOR FEEBLE-MINDED, APPLE CREEK, OHIO, AT AN EXPENDITURE OF \$3,700.00—SURETY BOND EXECUTED BY THE AMERICAN SURETY COMPANY OF NEW YORK.

COLUMBUS, OHIO, October 1, 1929.

HON. RICHARD T. WISDA, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a contract between the State of Ohio, acting by the Department of Public Works, for the Department of Public Welfare, and the Electric Power Equipment Company, of Columbus, Ohio. This contract covers the construction and completion of contract for outside cables and high tension work, Institution for Feeble-Minded, Apple Creek, Ohio, and calls for an expenditure of three thousand seven hundred dollars (\$3,700.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also submitted evidence that the consent of the Controlling Board to the release of funds has been obtained in accordance with Section 4 of House Bill 203 of the 88th General Assembly. In addition, you have submitted a contract bond upon which the American Surety Company of New York appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form, I have this day noted my