

regularly called meeting is all that is necessary to transact business, in the absence of a statutory provision to the contrary.

You are advised, therefore, first, that the confirmation of appointments made by the mayor under section 4384 G. C. may be made by resolution of council, and votes of the councilmen on the resolution must, by virtue of section 4224 G. C., be taken by "yeas" and "nays" and entered upon the journal; and, second, that a resolution of council confirming appointments made by the mayor under section 4384 G. C., must be adopted by the affirmative votes of a majority of the members constituting a quorum. See section 4237 G. C.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

1172.

**ROADS AND HIGHWAYS—WHEN COUNTY COMMISSIONERS ARE WITHOUT AUTHORITY TO REDUCE ROAD ASSESSMENTS MADE IN ACCORDANCE WITH SECTION 1214 G. C.**

*County commissioners, after having made and confirmed an assessment in accordance with section 1214 G. C. have no authority to reduce the amount apportioned to one or more of the persons affected by such assessment.*

COLUMBUS, OHIO, April 20, 1920.

HON. LEWIS STOUT, *Prosecuting Attorney, Wapakoneta, Ohio.*

DEAR SIR:—You have made inquiry of this department as follows:

"Have the board of county commissioners authority to reduce a county or state road assessment without reassessing, that is, can they reduce an assessment and have the county bear the loss?"

In response to a request for additional information, you have written as follows:

"The road in question is an inter-county highway extending between St. Marys and Wapakoneta, this county, known as I. C. H. No. 165, Sections A-3, B-1, B-2; the assessments were made October 11th, 1919; bonds had been issued prior thereto.

What I want to know is,—have the commissioners the authority to cut down individual assessments without making an entire re-assessment over the whole road. That is, can they reduce the assessments against certain parties and let the county stand the reduction, or, would it be necessary, if they feel that certain of the assessments are too high, that the whole road assessments be reassessed?"

In connection with what you have stated, it has been found upon inquiry at the state highway department that the sections of road you mention were improved on the so-called "state aid" plan; hence what is said herein will have reference to the statutes relating to that plan. Furthermore, the matter of purely clerical errors will not be considered herein, since your inquiry does not concern that subject directly or indirectly.

So far as a search reveals, there is no statute in connection with state aid

improvements authorizing a reduction of assessment once it has been made. Assessments of such character are provided for by section 1214 G. C., which statute after making recitals as to the proportion of cost to be assumed by property owners, the making of a tentative apportionment by county surveyor, notice of completion and filing thereof and time of hearing thereon, concludes:

"If any owner of property affected thereby desires to make objections he may file his objection to said assessment in writing with the county commissioners or township trustees, as the case may be, before the time for said hearing. If any objections are filed the county commissioners or township trustees shall hear the same and act as an equalizing board and they may change said assessments if in their opinion any change is necessary to make the same just and equitable, and such commissioners or trustees shall approve and confirm said assessments as reported by the surveyor or modified by them. Such assessments when so approved and confirmed shall be a lien on the land chargeable therewith."

Section 1216 G. C. provides in substance that the assessments so made are to be certified to the county auditor and placed by him upon a special duplicate to be collected as other taxes.

It thus appears that the law provides for full opportunity to an affected property owner to object to the amount of a prospective assessment. In the absence, as noted, of a statute expressly authorizing the county commissioners to make a reduction in such assessment after it is made and to cast the burden of such reduction upon the county, the conclusion follows that the commissioners are without such authority; for any theory of implied power in that connection is negatived by the rule as laid down by the supreme court in the case of Jones, Auditor, vs. Commissioners, 57 O. S. 189, whereof the first syllabus reads:

"1. The board of county commissioners represents the county, in respect to its financial affairs, only so far as authority is given to it by statute. It may pass upon and adjudicate claims against the county for services in a matter, which, under the statutes, may be the subject of a legal claim against the county. But it is without jurisdiction to entertain or adjudicate claims which in themselves are wholly illegal and of such a nature as not to form the subject of a valid claim for any amount. And an attempt by the board to allow a claim of such character will not bind the county."

Numerous other Ohio cases to the same effect are to be found.

It is to be borne in mind, in connection with what has been said, that in state aid road improvements the statutes require that the property owners bear a certain percentage of the cost. Provision is made for determining that percentage. Such provision will be of little force if the commissioners are at liberty to disregard it, in effect, by reducing the amount of the assessment share after the assessment has been made.

Your inquiry seems to assume that the commissioners may make a reassessment. No statute has been found conferring such authority.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*