

IN WITNESS WHEREOF, said state highway commissioner has hereto set his name and the board of county commissioners of said county have also hereto set their names this ----- day of -----, 1920.

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As State Highway Commissioner.  
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As the Board of County Commissioners  
of ----- County.”

As explained to Mr. Martin, the law authorizing such lease is not yet in effect; so that use should not be made of the forms prepared until on and after May 20, 1920.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1225.

ROADS AND HIGHWAYS—ROAD IMPROVEMENT COMMISSION MAY NOT DELEGATE TO IMPROVEMENT ASSOCIATION AUTHORITY TO EMPLOY SURVEYOR—NO ADVANCE FUNDS FOR DISBURSEMENT—WHAT FUNDS ARE NOT TO BE COUNTED AS PART OF TEN PER CENT CONTRIBUTION MENTIONED IN SECTION 6886-1 G. C.—COUNTY SURVEYOR NOT ENTITLED TO RETAIN FEES PAID HIM OUT OF FUNDS ON IMPROVEMENTS MADE IN ACCORDANCE WITH SECTION 6886-1 ET SEQ. G. C.

1. *The road improvement commission provided for in sections 6886-1 to 6886-12 G. C., may not delegate to the improvement association mentioned in section 6886-12 authority to employ a surveyor; nor may such commission advance to such association for disbursement by the latter, funds representing the estimated cost of an improvement.*

2. *Public funds paid into the county treasury by township trustees are not to be counted as part of the ten per cent contribution mentioned in section 6886-1 G. C.*

3. *By reason of the provisions of section 7181 G. C., the county surveyor is not entitled to retain fees paid him out of funds on improvements made in accordance with said sections 6886-1 et seq. G. C.*

COLUMBUS, OHIO, May 8, 1920.

HON. A. V. DONAHEY, Auditor of State, Columbus, Ohio.

DEAR SIR:—I am in receipt of your letter of recent date signed by Hon. John A. Bliss, supervising examiner, and reading as follows:

“We are making an examination of Portage county and find that they are improving their roads under the provisions of sections 6886-1 to 6886-12, inclusive of the General Code, by awarding the contracts to the Portage County Improvement Association on force account at actual cost, and desire

your opinion on the following points of said law at your earliest convenience:

1. May the commission legally delegate its authority, under the provisions of section 6 of said act, to said improvement association?
2. May said commission legally advance the estimated cost of any such improvement to said improvement association, the same to be disbursed by it? (See section 10 of said act.)
3. May public funds paid into the county treasury by township trustees as the townships' portion of said improvement be counted as part of the 10 per cent required by section 1 of said act?
4. May the county surveyor legally retain, for his own use, any fees paid to him out of the funds on such improvements in addition to his statutory salary? (See section 7181 G. C., and section 6 of said act)."

Your letter makes reference to the series of statutes known as sections 6886-1 to 6886-12 enacted 103 O. L. 732. This series of statutes sets forth a special plan of road improvement.

Section 6886-1 reads:

"When the county commissioners of any county have determined to improve one or more highways within such county and any person, persons, firm, partnership, corporation or association of persons desire to contribute a fund for the purpose of assisting in the improvement of such highway, such fund to be not less than ten per centum of the total cost of such improvement, the said person, persons, firm, partnership, corporation, or association may apply to a judge of the court of common pleas of the county, who may appoint four suitable and competent freeholders of the county who shall in connection with the county commissioners, constitute a commission for the purpose of the improvement of such road and serve until its completion."

The four sections next following the above, provide for payment of compensation to and expenses of the persons appointed in conformity with the section quoted, as well as for their bond and oath and the supplying of vacancies.

Sections 6886-6 and 6887 read:

"Section 6886-6. The commission shall employ a competent surveyor who shall go upon the line of such road and make such surveys as are necessary, and shall also make an estimate of the cost and expense of such improvement and transmit the same to the said commission, together with a copy of the plat, profile, cross-section, plans and specifications."

"Section 6886-7. After adopting plans, specifications and estimates, the commission shall invite bids for such construction and award the contracts therefor. Until the construction and improvement is completed and accepted by the commission, it may determine all questions connected therewith and shall be governed by the laws relating to the construction and improvement of public highways, with the same power to appropriate land and road material, establish grades of roads and other rights, given by law to boards of county commissioners, relating to the repair and improvement of public highways."

Provision is then made for the employment by the commission of engineers and other necessary employes and the approval by the commission of plans, specifications, etc.

Section 6886-10 reads:

"Resolutions for the adoption or alteration of plans or specifications, or awards of contracts, hiring of engineers, superintendents or other employes, and the fixing of their compensation, the approval of bonds and the allowance of estimates shall be in writing and require for their adoption the votes of five members of the commission taken by yeas and nays and recorded on the journal of the county commissioners. When signed by five members of the commission, the county auditor shall draw his warrant on the county treasurer for the payment of all bills and estimates of such commission."

Section 6886-11 provides for the keeping of records of the proceedings of the commission, while the concluding section of the series, section 6886-12, reads:

"Whenever, in any county in the state, there shall be a bona fide, voluntary association, either incorporated, or unincorporated, not for profit, of not less than one thousand citizens of any county, one of the purposes of which organization is the improvement, maintenance and repair of the public highways of said county, the commission as provided for in section 1 of this act, having the right to expend money in grading, draining, curbing and improving county and state highways by the use of gravel, macadam, stone, brick, slag, or other material, or expending money for improving, maintaining and repairing said highways from the public funds under their charge and control, applicable for the construction, maintenance or repair of public highways, may, without the necessity of petition being presented by property owners or of advertising for competitive bids, make contracts with said association, or its proper representatives, to do such work of grading, draining, repairing and improving county or state highways within said county, by the use of gravel, macadam, slag, or other material and for the betterment generally of the highways of said county and make payments therefor out of any road or bridge funds under the control of said respective boards of officials, in the treasury, or levied for the purpose of constructing, maintaining and improving the public highways in said county."

You inquire first whether the commission referred to in the above series of sections may legally delegate to the improvement association mentioned in the last section of the series, the authority conferred on the commission in the sixth section of the series, namely, authority to employ a surveyor. The answer to your question is in the negative. There is nothing in the series of sections which directly or by implication permits the commission to delegate such authority to any one.

The answer to your second question is likewise in the negative. The concluding section of the act, while giving the commission power to employ the improvement association to do road work, also makes provision for contracts with such association to do such work, and to pay it for doing the same. The authority of the commission does not go beyond the terms of the statute; and there is nothing in the statutes to indicate that the commission may delegate to the association authority to disburse funds. Furthermore, it is plain that the only function which the improvement association may exercise is that of entering into contracts to do road work and the receiving of payment therefor.

Your third question has reference to the provisions of the opening section of the series. Very plainly, the words "person, persons, firm, partnership, corporation or association of persons" as used in said opening section do not include a township. In other words, the ten per cent fund referred to as the basis for application

to a judge of the common pleas court for the appointment of a commission is to be contributed, not by political subdivisions of the state, but by private individuals, corporations or associations.

The answer to your fourth question is in the negative, by reason of the provision of section 7181 G. C., which is to the effect, among other things, that the salary of the county surveyor "shall be paid monthly out of the general county fund upon the warrant of the county auditor, and shall be instead of all fees, costs, per diem and other allowances and all other perquisites of whatever kind or description which the county surveyor may collect or receive."

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1226.

SCHOOLS—WHEN PART TIME SUPERINTENDENT EMPLOYED UNDER SECTION 4740 G. C. IS TO BE CONSIDERED AS A TEACHER WITHIN MEANING OF HOUSE BILL 615 PROVIDING FOR DISTRIBUTION OF CERTAIN TAXES.

*A part time "superintendent" employed under section 4740 G. C. is to be considered as a "teacher" with respect to such part of his salary as is referable, on a strict time basis, to the amount of teaching service required of him by the employing board or boards of education.*

COLUMBUS, OHIO, May 8, 1920.

HON. VERNON M. RIEGEL, *Superintendent of Public Instruction, Columbus, Ohio.*

DEAR SIR:—You have submitted for the opinion of this department the question as to whether or not a part time superintendent employed by a separate district under section 4740 of the General Code is, for any purpose and to any extent, a "teacher" within the meaning of the appropriate provisions of the sections amended in House Bill 615, providing for the distribution of certain taxes to a school district on the basis of the salaries of teachers employed.

By a previous opinion of this department you have been advised that the word "teacher" as it occurs in such sections as section 7600, 7603, etc., as amended in House Bill 615, is used in the same sense in which it has always been used in these sections of the General Code; and that that sense, generally speaking, excludes superintendents from the scope of the meaning of the term. The position referred to in section 4740 partaking more or less of the character both of teacher and of superintendent would seem to require separate consideration, which you now request.

Said section 4740 in its present form provides as follows:

(107 O. L. 621)

"Any village or wholly centralized rural school district or union of school districts for high school purposes which maintains a first grade high school and which employs a superintendent shall upon application to the county board of education before June 1st of any year be continued as a separate district under the direct supervision of the county superintendent until the board of education of such district by resolution shall petition to become a part of a supervision district of the county school district. Such superintendents shall perform all the duties prescribed by law for a district superintendent, but shall teach such part of each day as the board of education of the district or districts may direct."