

"In carrying out the provisions of Sections 14153-5 and 14153-6, General Code, you are authorized to use the general appropriations made to your department for the purpose of employing engineers, clerks and other employes, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections, and likewise any other general appropriation that may be necessary to accomplish the duties of the Director of Highways in carrying out the directions of the Legislature."

The Legislature having directed you to make surveys of certain portions of the Miami and Erie Canal abandoned by the provisions of Amended Senate Bill No. 39 (112 v. 388-390), together with maps and plats of the same, and further to make a plat or plan showing the highway proposed to be constructed thereon, its length, grades and width, you may expend any moneys appropriated to your department which have not been appropriated specifically for highway purposes. In other words, the Legislature has instructed you to carry out the provisions of the statutes referred to, and in doing so you may make use of the various appropriation items made to the Department of Highways and Public Works, Division of Highways, appearing at pages 44 and 45 of House Bill No. 502, enacted by the 87th General Assembly, this act making general appropriations for the fiscal period. As stated in my former opinion, these items are contained under the classifications "Personal Service" and "Maintenance." Under "Personal Service" various sums of money are appropriated to pay the salaries of the employes of your department, including a number of engineers, clerks, bookkeepers and other employes. In addition, under this classification, there is an appropriation for "wages" under the code symbol "A 2." Under "Maintenance" may be found many items which are available for the making of the surveys, plats and plans in question, namely, "Office," "Motor Vehicle," "General Plant," etc.

Affirming my former Opinion No. 1974, and replying specifically to your further inquiry concerning the matter of expenditure in carrying out the provisions of Sections 14153-5 and 14153-6 of the General Code, it is my opinion that you are authorized to use the general appropriations made to your department for the purpose of employing engineers, clerks and other employes, in paying wages and the necessary traveling expenses of persons employed in carrying out the provisions of said sections, and likewise any other general appropriation that may be necessary to accomplish the duties of the Director of Highways in carrying out the mandate of the Legislature.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2109.

COUNTY COMMISSIONERS—AUTHORITY TO PURCHASE ROAD MACHINERY—ADVERTISING—COMPETITIVE BIDDING.

SYLLABUS:

1. *A board of county commissioners has authority to 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, as authorized by Section 7200, General Code, without resorting to advertising or competitive bidding.*

2. *While there is no legal requirement as to purchasing such equipment by competitive bidding under ordinary circumstances the interests of the public will be best served by inviting bids and awarding the contracts to the lowest responsible bidder.*

COLUMBUS, OHIO, May 17, 1928.

HON. W. M. MCKENZIE, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—This will acknowledge your letter dated May 9, 1928, which reads:

“Section 7200 of the General Code provides that the county commissioners may purchase machinery, tools for the construction, improvement, repair or maintenance of highways, bridges and culverts under their jurisdiction as they may deem necessary.

In case the amount to be expended for machinery would exceed \$200.00, as provided in Section 2354, G. C., will it be necessary for the county commissioners to advertise for bids?”

Section 7200, General Code, in so far as pertinent, provides:

“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. \* \* \* All expenditures authorized by the provisions of this section shall be paid out of any available road funds of the county.”

The question that you present has been previously passed upon by this office. I refer to an opinion which appears in Vol. I, Opinions, Attorney General, 1916, at page 523, the syllabus of which reads:

“There is no statutory provision which requires county commissioners or township trustees in purchasing culvert pipe and road machinery, to let the contracts for the same by competitive bidding.”

The following language appears therein:

“Section 157 of the Cass highway law, Section 7200, G. C., contains the following provision:

‘The county commissioners may purchase such machinery or other equipment for the construction, improvement, maintenance or repair of the highways, bridges and culverts under their jurisdiction, as they may deem necessary, which shall be paid for out of any taxes levied and collected for the construction, improvement, maintenance and repair of roads, as provided in this chapter.’

\* \* \*

The Cass highway law contains a number of provisions requiring the letting of contracts at competitive bidding. Section 63 of the act, Section 3298-4, G. C., requires the township trustees to let contracts for road improvements to the lowest and best bidder after advertisement in the manner provided in said section. Section 124 of the act, Section 6945, G. C., requires county commissioners to award contracts for road improvements to the lowest and best bidder after advertisement for bids in compliance with the terms of the section. Section 156 of the act, Section 7199, G. C., provides that if in

the opinion of the county commissioners it is advisable to provide for the improvement, maintenance and repair of any portion of the highways of the county by contract, such contract, if the cost and expense exceeds two hundred dollars, shall be let by competitive bidding. There are other sections of the act which require competitive bidding, but all of the sections which require the letting of contracts by competitive bidding relate to construction, improvement, maintenance or repair by contract.

Where commissioners or trustees proceed to construct, improve, maintain or repair a highway by contract, they have no occasion to purchase material or machinery, the necessity for such purchase arising only where the commissioners proceed by force account. I am unable to find in the Cass highway law any provision which requires the commissioners, where they determine to proceed by force account and must, therefore, purchase material and machinery, to let the contracts for such material and machinery by competitive bidding, and I know of no general provision of law requiring them to so proceed.

I, therefore, advise you that there is no statutory provision which requires county commissioners or township trustees, in purchasing culvert pipe and road machinery, to let the contracts for the same by competitive bidding. While there is no legal requirement as to letting contracts for material and machinery by competitive bidding, it is my view that under ordinary circumstances the interests of the public will be best served by inviting bids and awarding the contracts to the lowest responsible bidder, in making the purchases referred to by you in your communication."

Your attention is further directed to an opinion of this office which appears in Vol. I, Opinions, Attorney General, 1919, at page 110, the syllabus of which reads :

"1. County commissioners may, under authority of Section 7200, G. C., (107 O. L. 115), purchase machinery, tools or equipment for the purposes specified in said section, without resorting to advertising or competitive bidding.

2. No authority exists for the issuing of bonds for the purpose of purchasing machinery, tools or equipment for the purposes named in said Section 7200.

3. County commissioners may, under authority of Section 7214, G. C., (106 O. L. 645), purchase materials for the purposes specified in said sections, without resorting to advertising or competitive bidding."

Although Section 7200, General Code, has been amended since these opinions were rendered (109 v. 611), the amendment in no wise affects the conclusions therein reached.

You refer to Section 2354, General Code, which reads as follows :

"When the estimated cost of a public building, bridge or bridge sub-structure or of making an addition thereto or repair thereof does not exceed two hundred dollars, it may be let at private contract without publication or notice."

Obviously the provisions of this section have no application to the question that you present.

In view of the foregoing and answering your question specifically, I am of the opinion that a board of county commissioners has authority to 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, as authorized by Section 7200, General Code, without resorting to advertising or competitive bidding. While there is no legal requirement as to purchasing such equipment by competitive bidding, it is my opinion that under ordinary circumstances the interests of the public will be best served by inviting bids and awarding the contracts to the lowest responsible bidder.

Respectfully,  
 EDWARD C. TURNER,  
*Attorney General.*

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2110.

COUNTY COMMISSIONERS—COMPELLED TO ACQUIRE RIGHT OF WAY  
 UNDER SECTION 1201, GENERAL CODE—FILING OF APPLICATION  
 FOR STATE AID IS PROCEEDING PENDING—NORTON-EDWARDS  
 ACT NOT APPLICABLE.

*SYLLABUS:*

*Where an application for state aid has been filed under the provisions of Section 1191, General Code, prior to the effective date of House Bill No. 67 (112 O. L. 430) the filing of such application constitutes a proceeding which is pending within the meaning of Section 26 of the General Code of Ohio so that in all instances where it is necessary to acquire right of way for a road improvement it is the duty of the board of county commissioners to proceed under the provisions of former Section 1201, General Code, to acquire the requisite right of way.*

COLUMBUS, OHIO, May 17, 1928.

HON. MERVIN DAY, *Prosecuting Attorney, Paulding, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication of recent date reading as follows:

“The State of Ohio is building a highway in Paulding County, participating in Federal Aid, and the same being a part of the Scenic Road from Toledo to Fort Wayne following the course of the Maumee River.

The proceedings to build this road started some time last year and a part of the work has been done at different points in Paulding County. It was the understanding between the commissioners of Paulding County and the State Highway Department that Paulding County was to furnish the right of way, this is to say, pay the expense of securing what extra right of way was needed.

At a certain point in Paulding County the road runs rather close to a high bank on the Maumee River where the river washes a great deal and it is desired to put the road back a little ways from the river close to a farmer's residence. This will crowd the premises in the vicinity of the farmer's house and the authorities are unable to agree as to the price to be paid for the lands to be taken which will be about one and a half acres.