

would include medical equipment since such would be in furtherance of the primary purpose for which the inmates are present in the Sanatorium, namely, medical treatment.

In view of the foregoing, I am of the opinion that the cost of equipment needed for the care of an inmate of the Ohio State Sanatorium cannot be charged to the county from which the patient came as an "incidental expense" of such patient under section 1816, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

3680.

APPROVAL, BONDS OF FULTON COUNTY, OHIO—\$23,000.00.

COLUMBUS, OHIO, October 22, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3681.

APPROVAL, BONDS OF EUCLID VILLAGE SCHOOL DISTRICT, CUYA-HOGA COUNTY, OHIO—\$10,000.00.

COLUMBUS, OHIO, October 22, 1931.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

3682.

COST OF ASSISTANTS RELATIVE TO VALUATION OF PROPERTY NOT CHARGEABLE TO IMPROVEMENT—WHERE COMPLICATED SITUATIONS ARISE COUNTY COMMISSIONERS MAY EMPLOY EXPERT APPRAISERS AND CHARGE AGAINST IMPROVEMENT FUND.

SYLLABUS:

1. *When the county commissioners have under consideration the construction of roads, bridges, or buildings, they may legally require the clerk to obtain data and information relative to the value of the property which they contemplate obtaining and for such purpose may employ assistants to the clerk to aid in obtaining such data or appraising such property. If such assistants are employed, the cost thereof can not be charged to the improvement.*

2. *Where complicated properties are required in connection with a county improvement the county commissioners have implied power to employ expert ap-*

praisers in connection with the obtaining of such property and the expenses of such employment are proper charges against the improvement fund.

COLUMBUS, OHIO, October 22, 1931.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Acknowledgment is made of your recent communication presenting the following question:

“When county commissioners have under consideration the construction of roads, bridges or buildings, may they legally employ experts to appraise property needed in connection with such improvements, and pay such experts out of funds available for said improvements?”

In considering your inquiry a number of the sections of the statutes have been examined which authorize the county commissioners to employ persons in conducting the county business.

Without reviewing these sections it may be stated that the only section of the General Code which it is believed necessary to consider in connection with your inquiry is Section 2409, which reads as follows:

“If such board finds it necessary for the clerk to devote his entire time to the discharge of the duties of such position, it may appoint a clerk in place of the county auditor and such necessary assistants to such clerk as the board deems necessary. Such clerk shall perform the duties required by law and by the board.”

It is believed there is no other section than the one quoted which could be construed as giving the county commissioners power to appoint an appraiser to assist them in arriving at the proper value of land taken in connection with the construction of roads, bridges or buildings. It is obvious that in many instances, where valuable property is being condemned, in counties having a large population, expert advice and assistance will be needed by the county commissioners in order to enable them to perform their duties in connection with the obtaining of such property.

Section 2409, *supra*, authorizes the county commissioners to employ such necessary assistants to the clerk as the board deems necessary. The section further requires the clerk to perform such duties as the board requires. It would appear that the board of county commissioners could require the clerk to obtain information and data with reference to the value of the property which they were seeking to appropriate or obtain for some lawful purpose, and likewise they could employ an assistant to aid the clerk in accomplishing such purpose if, in their judgment and discretion, all of the facts and circumstances justified and required such action to be taken, in the best interests of the county. Of course such action on the part of the board is always subject to being set aside on the grounds of an abuse of discretion in those instances wherein unreasonable employment and expenditures are made.

Your inquiry further presents the question as to whether payments for such services may be made from funds available for such improvements. In this connection, your attention is directed to an opinion found in Opinions of the Attorney General for the year 1919, at page 546, wherein there was discussed at length the question of paying county officers and employes from other than

the general county fund. In that opinion it was pointed out that the services of assistants to the county surveyor rendered in connection with the construction of county roads are to be paid for from the allowance made in accordance with sections 2787 and 2788 of the General Code, and could not be charged to a specific road improvement fund. It would follow that, applying the same logic to the question you present, an assistant clerk employed for making such appraisalment would have to be paid from the salary fund of the county and his services could not be charged against the improvement. However, in connection with your inquiry, it is believed that irrespective of the fact that there are no statutes other than those above mentioned which could be construed as granting authority to employ appraisers where such employments are absolutely necessary in view of the duties imposed upon the commissioners in connection with a given improvement it might well be argued that sufficient implied power exists so as to make such employment. In an opinion of the Attorney General found in Opinions of the Attorney General for 1929 at page 425, it was held as disclosed by the syllabus:

“When the county commissioners acquire land for widening or straightening of county roads, an abstractor may be paid from the county treasury for an abstract or search of the records in those instances wherein in the judgment of such county commissioners the same is necessary in order to properly determine who are the owners of the land to be so acquired.”

In the body of the opinion, it is pointed out that section 6860, General Code, grants the commissioners power to locate, establish, alter, widen or vacate roads. It is self-evident that one of the basic things necessary in connection with the construction of a given improvement is to acquire the necessary land. In cases where there were involved many complicated properties, such as would occur within a municipality expert knowledge should be communicated to the county commissioners from some source as to the value of the respective properties to be acquired or else the county would be liable to suffer a great financial loss. It is therefore believed by the same logic which would authorize the acquiring of an abstract, expert information in proper instances could be acquired, and in such an event the cost thereof would be a proper charge against the improvement.

Therefore, in specific answer to your inquiry, it is my opinion:

First, when the county commissioners have under consideration the construction of roads, bridges, or buildings, they may legally require the clerk to obtain data and information relative to the value of the property which they contemplate obtaining and for such purpose may employ assistants to the clerk to aid in obtaining such data or appraising such property. If such assistants are employed, the cost thereof can not be charged to the improvement.

Second, where complicated properties are required in connection with a county improvement the county commissioners have implied power to employ expert appraisers in connection with the obtaining of such property and the expenses of such employment are proper charges against the improvement fund.

Respectfully,

GILBERT BETTMAN,
Attorney General.