

1229.

APPROVAL, ONE GAME REFUGE LEASE.

COLUMBUS, OHIO, November 26, 1929.

HON. J. W. THOMPSON, *Commissioner, Division of Conservation, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval a lease executed by A. F. Clark which grants 480 acres of land to the State of Ohio for game refuge purposes, situated in the townships of Morgan and Springfield, Gallia County.

Finding said lease duly executed in proper legal form, I have indorsed my approval thereon and return the same herewith.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1230.

APPROVAL, BONDS OF VILLAGE OF MARYSVILLE, UNION COUNTY—
\$12,000.00.

COLUMBUS, OHIO, November 26, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

1231.

STORM SEWER—WITHIN MUNICIPALITY—MAY NOT BE PARTLY FI-
NANCED BY COUNTY COMMISSIONERS.

SYLLABUS:

In the absence of authority so to do, a county may not contribute a part of the cost of the construction of a storm sewer lying wholly within the limits of a municipality, notwithstanding the fact that such sewer construction may result in a saving to the county in connection with the construction or repair of bridges within the limits of such municipality.

COLUMBUS, OHIO, November 27, 1929.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

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

“The council of the city of P. has under consideration the construction of a storm sewer which, when completed, will eliminate seven bridges within the corporation which the county is required to build and keep in repair under the law. Several of these bridges are now in bad condition and will have to be rebuilt during the coming year if they are not eliminated by this improve-

ment. The county has been asked to contribute to the sewer improvement an amount which would be saved to the county by the elimination of these bridges. The amount to be determined by the estimated cost to rebuild these bridges.

When the above matter was presented to me for an opinion, I advised the commissioners and city authorities that there was no statute which would authorize the commissioners to make such contribution or participate in this improvement. They were not satisfied with my opinion and requested that the matter be presented to you for your opinion."

The bridges within the municipal corporation which you state the county is required to build and keep in repair are apparently such bridges as are referred to in Section 2421, General Code, as amended by the 88th General Assembly, 113 O. L. 52. This section provides in part as follows:

"The commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property therein. If they do not demand and receive a portion of the bridge tax, the commissioners shall construct and keep in repair all bridges in such cities and villages. The granting of the demand, made by any city or village for its portion of the bridge tax, shall be optional with the board of commissioners.

* * * "

It should be noted that it has been held that the duty resting upon the board of county commissioners as to bridges within municipalities is only to construct and keep in repair such bridges as form a part of a state or county road and that the county commissioners have no duty or responsibility whatever with respect to the construction and care and maintenance of any bridge which forms a part of a street established by a city which is not a part of a state or county road. *Interurban Ry. and Terminal Co. vs. City of Cincinnati*, 94 O. S. 269. This matter is thoroughly discussed in an opinion of my predecessor appearing in *Opinions of the Attorney General for 1927*, Vol. II, p. 2016, to which you are referred.

Upon the facts submitted in your letter, I assume that the storm sewer construction will lie wholly within the municipality. It is conceivable that a situation may arise whereby such construction within a municipality may effectuate a material saving in the expenditure of county funds for the repair and construction of bridges, and under such circumstances cooperation between the county and the municipality would seem to be fair and equitable. As you state, however, there appears to be no statutory authority for such cooperation. It is well established that public officers and boards have only such powers as are granted by law and as are necessary to carry out those powers. In the absence of any provision whereby a board of county commissioners and a municipality are authorized to co-operate in the construction of a storm sewer lying wholly within such municipality, I am compelled to conclude that the authority so to do must be denied. Of course, in the event a sewer construction were partly without and partly within a municipality, a very different question would be presented.

In specific answer to your inquiry, I am of the opinion that in the absence of authority so to do, a county may not contribute a part of the cost of the construction of a storm sewer lying wholly within the limits of a municipality, notwithstanding

the fact that such sewer construction may result in a saving to the county in connection with the construction or repair of bridges within the limits of such municipality.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1232.

ROAD—WHEN SUBJECT TO DESIGNATION AS PART OF COUNTY SYSTEM—SPECIFIC ROAD CONNECTING INTERCOUNTY HIGHWAYS OF TWO COUNTIES MAY NOT BE SELECTED.

SYLLABUS:

1. *A road may be designated as part of the county system of highways of a county which connects a village, hamlet, or center of rural population within such county with an intercounty highway or main market road within such county.*

2. *When a road only connects an intercounty highway within such county with an intercounty highway within an adjoining county, such road may not be designated as a part of the system of county highways of either county.*

COLUMBUS, OHIO, November 27, 1929.

HON. JOHN H. HOUSTON, *Prosecuting Attorney, Georgetown, Ohio.*

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

“Wish your opinion on Section 6966 G. C., and wish this question answered specifically. May a board of county commissioners designate a road on the county system of highways which connects with an intercounty highway in said county and runs into an adjoining county, there connecting with another intercounty highway, if the board of commissioners of the adjoining county does not designate their portion of said road on their county highway system?

It is noted that the road in the adjoining county is now being improved by the proceeds of the Sullivan-Bostwick gas money.”

Section 6965, General Code, provides that there shall be created in each county within the state a system of county highways. This section further provides that the township trustees of each township within the state shall supply the county commissioners with certain information bearing upon the establishment of such a system of county highways. Section 6966, General Code, provides in part as follows:

“It shall be the duty of the board of county commissioners of each county to determine from the statistics and information furnished by the several boards of township trustees within such county the relative importance and value for traffic of the various public highways of the entire county. They shall begin work as soon as the necessary information is furnished by the several boards of township trustees within the county, and after a careful review and consideration of the information furnished by such trustees shall select and designate a connected system of county highways of such mileage as they may deem proper and expedient, connecting with the intercounty highways and main market roads of such county all of the villages, hamlets,