

with reference to the construction of such improvement, and the approval of the county commissioners is not required as a condition precedent to the payment of such wages.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3140.

BRIDGES—POWER OF COUNTY COMMISSIONERS TO RECONSTRUCT  
AND REPLACE BY FORCE ACCOUNT UNDER SECTION 7198, GEN-  
ERAL CODE.

*SYLLABUS:*

*Power of county commissioners to construct bridge by force account under section 7198, General Code, discussed.*

COLUMBUS, OHIO, April 10, 1931.

HON. SAM J. HETZLER, *Prosecuting Attorney, Sidney, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, which reads:

“The County Commissioners of Shelby County, O., have on hand the reconstruction and the replacing of two bridges, the reconstruction job is one involving the sum of \$3500.00.

The Commissioners have been offered, what seems to be in their opinion, an extraordinary value in a second-hand or used bridge, to be used on the replacement location and can be done for about \$6,000.00. The Commissioners feel that this is a particular instance where it would be impracticable to proceed under General Code, Secs. 2343 to 2361, and that it would be to the best public interest to proceed under Sec. 7198. (The County Surveyor advises that to build the same projects new it would cost between \$18,000.00 and \$20,000.00.)

There is no emergency existing in these bridge cases and there is no particular public demand for the reconstruction of these bridges, so in the face of these facts, I desire to be advised whether or not the Attorney General's Department considers it legal to proceed under Sec. 7198.”

Section 7198 of the General Code, to which you refer, reads:

“The county surveyor may when authorized by the county commissioners employ such laborers and teams, lease such implements and tools and purchase such material as may be necessary in the construction, reconstruction, improvement, maintenance or repair of roads, bridges and culverts by force account.”

It would seem that the exercise of the power granted in the section above quoted is not dependent upon there being an emergency. In other words, the commissioners in their discretion determine whether the surveyor may proceed by force account. In this connection, it may be noted that the Attorney General in an opinion found in Opinions of the Attorney General for 1921, at page 822, in considering section 7198, *supra*, recommended that public authorities follow the competitive bidding system unless adherence thereto is in particular instances either impracticable or against the public interest. It would therefore appear that it is in the discretion of the commissioners as to whether or not they will

authorize a given improvement to be constructed by force account.

However, in connection with the subject at hand, section 6948-1 should be noted, which reads:

"Before undertaking the construction, reconstruction, widening, re-surfacing, repair or improvement of a road, the county commissioners shall cause to be made by the county surveyor an estimate of the cost of such work, which estimate shall include labor, material, freight, fuel, hauling, use of machinery and equipment and all other items of cost and expense. If the county commissioners deem it for the best interest of the public they may, in lieu of constructing such work by contract, proceed to construct the same by force account. Where the total estimated cost of the work exceeds three thousand dollars per mile, the commissioners shall be required to invite and receive competitive bids for furnishing all the labor, materials and equipment and doing the work, as provided in G. C. § 6945, and to consider and to reject the same, before ordering the work done by force account. When such bids are received, considered and rejected, and the work done by force account; such work shall be performed by compliance with the plans and specifications upon which the bids were based. The provisions of this section shall apply both to new construction and to repair work."

An examination of the history of the above section would indicate that the three thousand dollars per mile would have no application to the construction of a bridge. It may have application if the bridge is being constructed as a part of a road construction project. Prior to the enactment of the so-called Norton-Edwards Act in 1927, the group of sections of which section 6948-1 is a part, applied only to roads, but by the amendment of section 6911 in said act, the commissioners were authorized to include the construction or reconstruction of bridges and culverts in a road improvement project by unanimous vote. See Opinions of the Attorney General for 1929, Vol. I, Page 790.

While section 7198 is a part of another group of sections, it could well be argued that it is in *pari materia* with section 6948-1. In any event, it is my opinion that it was not the intent of the legislature that the limitation of three thousand dollars per mile was to apply to the construction of a bridge not being constructed in conjunction with a road improvement. The term "mile" when used in such sections, it is believed, has reference to the road, as such term cannot logically apply to bridges.

By way of specific answer to your inquiry it is my opinion that the county commissioners under the provisions of section 7198, General Code, may authorize the county surveyor to purchase material and employ labor to construct a bridge by force account, and such power would include the right to purchase and reconstruct a second-hand bridge if in the judgment and discretion of said officials the same is for the benefit of the county.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3141.

APPROVAL, BONDS OF NEW CONCORD-UNION RURAL SCHOOL DISTRICT, MUSKINGUM COUNTY, OHIO—\$73,500.00.

COLUMBUS, OHIO, April 10, 1931.

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