

1572.

APPROVAL, BONDS OF SANDUSKY COUNTY, OHIO, IN AMOUNT OF
\$31,500 FOR ROAD IMPROVEMENTS.

Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, September 18, 1920.

1573.

APPROVAL, BONDS OF SANDUSKY COUNTY, OHIO, IN AMOUNT OF
\$31,200 FOR ROAD IMPROVEMENTS.

Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, September 18, 1920.

1574.

APPROVAL, BONDS OF VILLAGE OF LEIPSIC, OHIO, IN AMOUNT OF
\$12,750 FOR STREET IMPROVEMENTS.

Industrial Commission of Ohio, Columbus, Ohio.

COLUMBUS, OHIO, September 20, 1920.

1575.

RÓADS AND HIGHWAYS—SUBSTITUTION OF CONCRETE PAVEMENT
FOR GRAVEL SIDE DRIVE ON MAIN MARKET ROAD IMPROVE-
MENT—HOW TO PROCEED.

*State highway commissioner advised as to steps to be taken in the matter of
substitution of concrete pavement for gravel side drive called for in original plans
and contract for main market road improvement.*

COLUMBUS, OHIO, September 20, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*

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

'The county commissioners and county surveyor of Morrow county
have strongly urged upon the highway department certain changes in the

proposed construction of sections "E and F," Mansfield-Mt. Gilead road, I. C. H. No. 334, in Morrow county.

At the request of the county authorities and for the purpose of determining what, if any, action might with propriety be taken by this department, I desire to request your opinion on the matter.

A contract for the improvement of these sections has already been let to Brewer & Brewer Sons, the contract calling for the construction of a 10-foot concrete pavement. The plans also call for the construction of an 8-foot waterbound gravel side drive.

The commissioners and surveyor have informed me that under the plans and specifications for this work which were prepared early in 1919, the gravel side drive is to be constructed of local material obtained in the vicinity of the work, and it is now found, according to the county authorities, that the gravel side drive, if so constructed, will be of very small practical utility on a road of this character. I should also state that since this contract was let, the road in question has been made a main market road and is a part of one of the really important through lines of highway traffic.

The commissioners now suggest that the construction of the waterbound gravel side drive be omitted and that a supplementary contract be let for an additional six feet in width of concrete pavement. Through their attorney, they have suggested that this department would be authorized to omit the construction of the gravel side drive, inasmuch as the proposal sheet made out by the contractor refers to changes or alterations in plans and also fixes a definite amount which the contractor bid for this item of the work. The commissioners inform me that the contractor would offer no objection to this procedure and would, if requested, agree in writing that he might be excused from building the gravel side drive and suffer a deduction in his contract price of \$10,095.80, which was the estimated cost of the gravel side drive and also the amount bid by him for constructing the same.

The further plan suggested is that after the contractor agrees, at the suggestion of the department, to omit the construction of the gravel side drive, plans and estimates for an additional six feet of concrete pavement should be prepared, the extra work advertised and a contract let for same in the usual manner.

The estimated cost of the original improvement was fully \$117,000.00, of which the county furnished \$78,500.00 and the state \$38,500.00, all from the inter-county highway fund.

The plan suggested is that the \$10,095.80 saved out of the original estimated cost, by reason of omitting the gravel side drive, be by agreement between the state and county credited to and regarded as a saving out of the state's share and applied by the state together with such additional state funds, either main market or inter-county highway, as might be necessary and available to the construction of the additional work without county co-operation.

This department feels that if, upon thorough investigation, all of the above facts should be verified, it might be justified in view of the importance of this highway, in attempting to work out the above plan.

For my guidance in the handling of this matter, I, therefore, respectfully request your opinion as to the legality of the above suggested procedure, together with any suggestions which you may have to offer as to the proper safeguarding of the state's interests."

In addition to the facts set out in your letter, it has been ascertained upon

inquiry at your department that the total cost of the proposed additional six-foot width of concrete pavement would be approximately \$45,000 as compared with the \$10,095.80 which would be subtracted from the cost of the improvement as originally planned, by reason of the suggested abandonment of the gravel side drive; that in the 1920 assignment of road funds, you have set aside \$50,000 of main market road money to apply on inter-county highway No. 114 in Morrow county, no part of which \$50,000 has been used on said road because the county has not yet made application for its improvement and will probably not make application during 1920; and that of the \$38,500 appropriated by the state out of inter-county highway funds for the improvement named in your letter, there still remains unexpended approximately \$25,000,—in other words, expenditures out of the state's share of the expense of the work in question, including estimates to the contractor, have so far been approximately \$13,500.

Under the conditions, I can discover no vital obstacle to the proposed change. You indicate that the contractor is willing and that the county authorities are anxious for the change. So far as an adjustment between state and county is concerned, it will be borne in mind that when the project was originally agreed to between state and county, the county could have assumed more or less and the state could have assumed more or less than the respective sums of \$78,500 and \$38,500; so that if part of the original project is abandoned there is no reason why the total amount saved by such abandonment should not come out of the state's share. In line with your suggestion, the \$10,095.80, representing the cost of the work which is being abandoned, will go back into the inter-county highway fund to the credit of Morrow county. Then the state can on its own account undertake the building of the proposed six feet of concrete pavement as an entirely new and original state project without the co-operation of the county,—the road in question being a main market road (section 1231 G. C.).

As to the equitable side of the matter, you can adjust the situation with the county by decreasing its program for the year 1920 in that the \$50,000 originally assigned it for 1920 out of main market road funds will be depleted if not entirely used on the proposed six-foot pavement, as against which, however, the inter-county highway moneys to the credit of the county will be augmented to the extent of the \$10,095.80 above mentioned.

As to the practical steps to be taken, it is suggested that the county commissioners be called upon to pass a resolution requesting the state highway commissioner to take steps to omit the eight-foot waterbound gravel side drive and to deduct from the state's share of the original contract price the \$10,095.80 represented by said side drive; and that main market road funds assigned to the county be used by the state highway commissioner in substituting for said side drive a six-foot concrete pavement. Upon receipt of a certified copy of such resolution of the county commissioners you can then have the contractor file with you his consent in writing that there be withdrawn from his contract the side drive in question, and that there be deducted from his contract price said sum of \$10,095.80. You will then be in position, with the consent of the highway advisory board, to appropriate from said \$50,000 main market road funds, the estimated cost of the six-foot pavement, and after this is done you can proceed to advertise for the new work.

It should be noted in passing that by the provisions of section 1191 G. C. you will be compelled to assess against abutting property owners ten per cent of the cost of the proposed six-foot concrete pavement. Of course, on the other hand, the share that would otherwise be assessed for the cost of the road as originally planned will be reduced in proportion to the saving of the \$10,095.80 above mentioned.

Your letter does not show whether an assessment has already been made on the basis of the estimated cost of the improvement as originally planned; but that point is not believed to be material, because it is plain that an assessment made on an

estimated basis is subject to revision when the work is complete. (See in this connection two opinions of this department of date December 24, 1919, Opinions Attorney General 1919, pp. 1567 and 1573). This principle (when applied to the present case, will, if an assessment has already been made on an estimated basis, permit of a readjustment on account of the omission of part of the project as originally planned. The ten per cent assessment which your department is to make in connection with the proposed substitute pavement, will be a proceeding entirely independent of the assessment made by the county on account of the original project.

Respectfully,

JOHN G. PRICE,
Attorney-General.

1576.

ROADS AND HIGHWAYS—WHERE CENTER LINE OF SECTION OF TOWNSHIP ROAD IS DIVIDING LINE BETWEEN VILLAGE AND TOWNSHIP—HOW IMPROVEMENT MADE.

Where the center line of a section of township road constitutes the dividing line between a village and the township within which such village is situate, the village may improve the half of such section of road lying within its limits, and the township may improve the remaining half. Apportionment should first be made under section 7177 G. C.

COLUMBUS, OHIO, September 20, 1920.

HON. CHESTER A. MECK, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

“There is a road in this county which is the boundary line between a township and a municipal corporation and the council wish to reconstruct and improve the same. This road has never been apportioned according to section 7177 of the General Code and it is a query with me just what method to pursue in improving it. Can the township and the municipal corporation enter into an agreement to improve the same and each pay one-half of the costs thereof? Bonds will have to be issued for the payment of the expense of building this road. I wish you would advise me as to the proper procedure in this matter.”

In response to a request for additional information, you have advised that the municipal corporation in question is a village; that the whole of the section of highway proposed to be improved is within one township, the township being the same as that within which the municipal corporation is situated; that the center line of said section of highway marks the boundary between the municipal corporation and the township; and that the highway in question is a township road.

You make reference to section 7177 G. C., and that section reads as follows:

“If a road is established as a part of the line or boundary of a township or municipal corporation, the trustees of such adjoining townships and council of corporation, shall meet at a convenient place as soon after the first Monday of March as convenient, and apportion such road between the townships, or township and corporation, as justice and equity requires. The trustees of the respective townships, and council of the corporation, shall cause the road to be opened and improved accordingly, and shall thereafter cause their respective portions to be worked and kept in proper repair.”