

States constitution and laws, and as such is subject to extradition if his parole is revoked."

Your fourth question is therefore answered in the affirmative.

Respectfully,

JOHN G. PRICE,  
Attorney-General.

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2197.

ROADS AND HIGHWAYS—WHEN COUNTY COMMISSIONERS ARE AUTHORIZED TO EXPEND PROCEEDS OF LEVY UNDER SECTION 6926 G. C. FOR ORDINARY REPAIRS UPON SECTIONS OF INTER-COUNTY HIGHWAY OR MAIN MARKET ROAD WITHIN LIMITS OF CITY.

*County commissioners are authorized to expend the proceeds of levy under section 6926 G. C. for ordinary repairs upon such sections of an inter-county highway or main market road as lie within the limits of a city, provided that the prior consent of the city be first obtained as provided by section 6949 G. C.; and they may make like expenditure upon such sections of an inter-county highway or main market road lying outside a municipality as have not become subject to maintenance by the state. By reason of section 1203 G. C. the consent of the state highway commissioner to the improvement should first be obtained. Opinions Attorney-General 1920, Vol. I, p. 497; and Vol. II, p. 911, referred to.*

COLUMBUS, OHIO, June 25, 1921.

HON. EUGENE T. LIPPINCOTT, Prosecuting Attorney, Lima, Ohio.

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

"A part of section 6859-3 of the General Code of Ohio reads as follows:

'ROUTE NO. VII, to be known as the western route, commencing at Toledo, thence in a southerly direction passing through the municipalities of Perrysburg, Bowling Green, Findlay, Bluffton, Lima, Wapakoneta, Sidney, Piqua, Troy, Dayton, West Carrollton, Miamisburg, Franklin, Middletown, Hamilton, Cincinnati.'

The people of Allen county, Ohio, in November, 1920, voted, what we call, a two (2) mill levy. The following is the wording of the ballot:

'ALLEN COUNTY, OHIO,  
INCREASE OF TAX LEVY.

YES

For an additional levy of taxes for the purpose of constructing, reconstructing, maintaining and repairing county roads not exceeding two (2) mills for not to exceed five (5) years.

NO

For an additional levy of taxes for the purpose of constructing, reconstructing, maintaining and repairing county roads not exceeding two (2) mills for not to exceed five (5) years.'

Question No. 1. The county commissioners of this county desire

to know if they have the right to place stone for general repair and cover the same with tarvia, or some waterproof surfacing on that part of route No. 7 which lies within the city limits of Lima, Ohio, and to pay for the same out of this two (2) mill levy?

Question No. 2. Can the county commissioners of Allen county, Ohio, do any kind of repair work out of this two (2) mill levy on any part of route No. 7 or any other main market road or state highway on such part that is not improved by the state highway department, whether in the county or in a municipality?

Question No. 3. As a general proposition when does a county road, as described in section 7464, become a state road as described therein? Is it when the state highway department passes a resolution or marks off the road as a state road, or is it when the state highway department prepares plans and determines to improve a certain portion of the road?

These questions are asked at this time because the commissioners of Allen county, Ohio, have no money in their general road fund, and if they cannot repair, in the manner designated, the roads above referred to, out of the two mill levy, they cannot repair them at all."

Your reference to section 6859-3 G. C. shows that the route referred to in your letter is a main market road. However, this fact is not in point in the consideration of your inquiry, since a main market road is merely an inter-county highway as to which special powers are granted the state highway commissioner in the matter of expending main market road funds—in other words, the authority of both state and local officers in the matter of improvement and maintenance of an inter-county highway applies fully to a main market road.

You will therefore find that your inquiries have all been substantially answered, except in the one respect as noted below, by previous opinions of this department as follows: No. 1182, dated April 27, 1920, Opinions of Attorney-General, 1920, Vol. I, page 497; No. 1531, dated August 30, 1920, Opinions 1920, Vol. II, page 911. These opinions make reference to certain previous opinions of this department, to all of which your attention is invited.

The first headnote of the opinion first mentioned reads as follows:

"The proceeds of the tax levy authorized by section 6926 G. C. may be expended by county commissioners in the improvement of such sections of an inter-county highway within the county as have not become subject to maintenance by the state as provided by sections 1224, 7464 and 7465 G. C."

The headnote of the second opinion reads as follows:

"Subject to the prior consent of the village as provided by section 6949 G. C., the proceeds of the levy authorized by section 6926 G. C. may be directly expended by county commissioners in the improvement of a village street or part thereof, not theretofore improved by the state highway commissioner, and lying on the line of an inter-county highway. Question whether county commissioners may make like expenditure on village street if already improved by state highway commissioners, not passed upon.

(Second conclusion in Opinion No. 1182, dated April 27, 1920, revised.)"

Since the power of county commissioners in the matter of improvement of roads within municipalities is the same in cities as in villages (Sects. 6949, et seq.), it follows that the general principle stated in the headnote last quoted would apply as to cities exactly as to villages, excepting, of course, that the question not passed upon as noted in said headnote would not arise as to cities, because the state highway commissioner is not empowered to do road improvement work within cities as he is within villages.

What has been said, when read in connection with the several opinions noted, points to an affirmative answer to your first two questions, provided that this further question be answered in the affirmative: Does the authority of county commissioners to expend the accruals of levy under section 6926, G. C., on road improvements within municipalities, extend to ordinary repairs? You will see that in the headnote above quoted, the word "improvement" is used, and that the question of whether there is to be a distinction made as between improvements contemplating permanent construction and those having in view repairs was not considered. Your inquiry indicates that the work which your commissioners have in mind is ordinary repair work rather than permanent construction work.

It will be seen that the levy provided by section 6926, G. C., is for "constructing, reconstructing, improving, maintaining and repairing roads under the provisions of this chapter."

It is to be noted also that the form of ballot set out in section 6926-2 G. C. (which form, as shown by your letter, was followed in the election on the question of exempting from all tax limitations the levy authorized by section 6926) uses the words "constructing, reconstructing, *maintaining and repairing county roads.*" Moreover, section 6956-1a provides that section 6926 may be resorted to for levy in order to make up the mandatory maintenance and repair fund for improved county highways, thus showing that if there is any distinction at all as between permanent construction, or comprehensive and definite maintenance projects, on the one hand, and ordinary repairs on the other, the distinction is unsubstantial so far as use of funds arising under section 6926 is concerned.

The conclusion therefore clearly results that an affirmative answer is to be given to your first two questions. Your third question need not be answered specifically here, for the reason that for practical purpose, at least, it has already been answered in the previous opinions referred to above.

It is perhaps necessary to refer to section 1203, G. C. (part of the chapter relating to the state highway department), which reads:

"Nothing in this chapter shall be construed as prohibiting the county commissioners or township trustees from constructing, improving, maintaining or repairing any part of the inter-county highways within such county or township; provided however, that the plans and specifications for the proposed improvement shall first be submitted to the state highway commissioner and shall receive his approval."

In the light of this section, your county commissioners should, before proceeding with an improvement of any character upon an inter-county highway or main market road, procure the approval of the state highway commissioner to the making of the improvement.

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*