

In your communication you further inquire whether a provision accepting this property on behalf of the State can be incorporated in the appropriation bill now pending, in which an appropriation will be made for the purpose of financing a centennial celebration at this historic site to be held next year. Although it would obviously be more appropriate for the legislature to accept the title to this property by special act enacted for the purpose, I am inclined to the view that the incorporation of a provision accepting the title to this property on behalf of the State could be incorporated in said appropriation act in connection with the appropriation therein made for the celebration above referred to, without offending the provision of section 16 of Article II of the Constitution that no bill shall contain more than one subject, which shall be clearly expressed in its title. Moreover, this constitutional provision is directory only, and its observance is a matter that must be left to the General Assembly. *Pim v. Nicholson*, 6 O. S. 177. It is not unusual for appropriation acts to contain provisions of an affirmative nature creating or defining rights and obligations with respect to some particular matter in connection with which an appropriation is made; and although it is no part of my duty to advise the General Assembly as to the manner in which the desired purpose should be accomplished with respect to the matter here presented, I am of the opinion, by way of specific answer to your question, that if appropriate provision is made in said appropriation act for the acceptance of this property on behalf of the State, after a proper deed conveying this property to the State has been executed and acknowledged, such provision will be effective to invest the title to the property in the State.

In connection with the matter above discussed, information has come to my attention to the effect that the title to the property here in question is owned and held by the Gnadenhutten Monument and Cemetery Association. However, I do not have any definite knowledge with respect to the ownership of this property, and it is suggested that careful attention be given to the question of the legal ownership of the property before any deed conveying the same to the State is executed for the purpose.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3223.

COUNTY COMMISSIONERS—UNAUTHORIZED TO ISSUE BONDS FOR  
A CADASTRAL SURVEY.

*SYLLABUS:*

*A county is not authorized to issue bonds to pay the cost of a cadastral survey.*

COLUMBUS, OHIO, May 13, 1931.

HON. DON ISHAM, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This acknowledges receipt of a communication from your assistant, which reads as follows:

“The County of Summit, for the general health, safety and convenience of its citizens, and specifically in order to comply with an order from the State Board of Health, must proceed with the purifying of the waters

of the Tuscarawas River, now subject to pollution from sewage wastes from the Akron-Barberton district. In order to do this it will be necessary to construct sewers, sewage disposal plants, water distribution systems, pumping stations, etc. The engineering authorities of the County consider a cadastral and topographic survey and map to be an absolute essential to the proper designing and building of these works as well as a permanent capital asset to the county for use by all county offices.

Briefly described, the cadastral and topographic survey and map collects and records in permanent form all of the essential facts relating to land and its occupation by real properties and the buildings and improvements thereon. The surveys necessary in its construction include: triangulation and traverse surveys which establish permanent monuments at critical points throughout the area, so that property lines may be perpetuated and made recoverable at any future date; precise level surveys, which establish permanent monuments known as bench marks furnishing basic elevations for all future engineering projects; mapping surveys which procure all other information necessary to construct the map. The map itself is plotted upon a scale of 1:2400, (1 inch equals 200 feet, or about one square inch per acre), and shows accurately the relative positions and dimensions of property lines, streets, roads, buildings, railroads, retaining walls, pavements, culverts, bridges, monuments, streams, lakes, marshes, canals, wooded areas, and all other physical data possible to be shown upon a map of this scale. In addition to these physical features which constitute largely the part of the survey and map known as cadastral, the map shows topography, or the shape and elevation of the ground's surface, by means of contour lines located at vertical intervals of two (2) feet.

While the need for the immediate beginning of the cadastral and topographic survey and map is occasioned by the aforementioned order of the State Board of Health, the survey and map has uses as varied and broad as the county's activities. It is the scientific and logical basis for equitable tax valuation, for location and design of new physical improvements, such as highways, sewers, drainage works, sewage disposal works, creek and river improvements, flood protection works, metropolitan parks, property subdivision layout, grade crossing eliminations, bridges, etc. The cadastral and topographic survey and map is also the only logical basis for determining benefit assessments for such projects as storm sewers, drainage works, flood protection works, etc. It is extremely useful also to the County Commissioners and the County Prosecuting Attorney in preparing for court cases regarding valuation of land, damages due to construction of improvements, etc. The map is the best type of evidence, being made upon a wholesale basis for general county use, and being accurate to definite specifications.

There is no doubt in our mind as to the authority of the county to construct such a survey out of its current revenue. What the county wishes to do is to issue bonds under the authority of the Uniform Bond Act to pay for this work.

Under date of March 25, 1929, you furnished to the Bureau of Inspection and Supervision of Public Offices an opinion affecting the city of Cincinnati, which, in my judgment, would answer the question which I have submitted to you as above. However, thinking that you might

make some distinction between the authority of the Board of County Commissioners and a municipality to issue bonds for a project of this kind, I am submitting this to you for your opinion."

The opinion to which you refer appears in Opinions of the Attorney General for 1929, Vol. I, page 345. The syllabus is as follows:

"A municipality is authorized by the Uniform Bond Act to issue bonds for the purpose of paying the cost of a cadastral survey."

Section 2293-2, General Code, being part of the Uniform Bond Act, provides that "The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct." The foregoing opinion holds that a cadastral survey is a permanent improvement within the meaning of the term as used in the Uniform Bond Act and that municipalities have authority to cause a cadastral survey to be made within their corporate limits.

Having determined, therefore, that a cadastral survey is a permanent improvement within the meaning of the term as used in Section 2293-2, *supra*, your inquiry resolves itself into a determination of whether or not a board of county commissioners has authority to acquire or construct a cadastral survey. If such authority or power is vested in a county, then, under the Uniform Bond Act, bonds may be issued therefor.

In Ohio the powers of a board of county commissioners are in an entirely different category than those of a municipal council. Since the adoption of the so-called home-rule provisions of the Constitution in 1912, the powers of municipalities are no longer enumerated powers. On the contrary, municipalities have all powers of local self government which are not taken away by the Constitution. They are derived from the people through the Constitution and not through the legislature. As stated in *Perrysburg v. Ridgway*, 108 O. S. 245, 250:

"Prior to 1912, all municipal power had been held by our courts to be by grant of the General Assembly. It was made in sections or segments by virtue of many statutes, the meaning and scope of them oftentimes being more or less uncertain and difficult. But in 1912, a new order was established with relation to municipal powers, by which the sovereign people of Ohio, through constitutional provisions (Section 3, Article XVIII), made a broad blanket grant of 'all power of local self-government' to all municipalities."

The powers of a county on the other hand are enumerated powers. Boards of county commissioners can exercise no powers not expressly conferred by the legislature. *State, ex rel. v. Snyder, et al. Commissioners*, 2 N. P. (N. S.) 261. Judge Ranney discussed this matter in the case of *W. C. & Z. R. R. Co. v. Commissioners of Clinton County*, 1 O. S. 77, 89, as follows:

"But what is a county? It is not *imperium in imperio*, in any sense. It is invested, as such, with no single attribute of sovereignty; and for reasons already stated, it cannot be. Rightly considered, it is a mere instrumentality, a means in the hands of the legislative power to accomplish its lawful purposes; and to this extent, a creature in the hands of its creator, subject to be moulded and fashioned as the every varying

exigencies of the State may require. It would seem to follow, that it may, from time to time, be clothed with such powers, and charged with such duties, of a local administrative character, not vested elsewhere by the constitution, as the General Assembly may see fit to direct. And so they have always been treated and used."

What authority, then, has the legislature vested in boards of county commissioners to make cadastral surveys of their respective counties? Sections 2463 to 2469, General Code, both inclusive, relate to the power of the commissioners with respect to having the boundary lines of the counties surveyed by the county surveyor. Section 2470, General Code, provides as follows:

"When the commissioners consider that the public good so requires, they shall authorize and require the county surveyor to ascertain, by actual survey and evidence, the corners of each or any of the originally surveyed townships of such county, and there place, or cause to be placed, perpendicularly in the ground, a stone post, not less than ten inches in diameter, nor less than three feet long. The commissioners shall furnish the posts, and all expenses of the county shall be paid from the county treasury."

The authority to place posts at the township corners can obviously not be construed as authority to make a cadastral survey.

Sections 2471, et seq., relate to surveying and platting Virginia Military lands within counties which are composed in whole or in part of such lands. Section 2480, General Code, provides for the establishment of meridian lines in the various counties. These sections clearly do not contain the authority sought.

Section 2411, General Code, should next be considered. This section provides as follows:

"When the services of an engineer are required with respect to roads, turnpikes, ditches or bridges, or with respect to any other matter, and when, on account of the amount of work to be performed, the board deems it necessary, upon the written request of the county surveyor, the board may employ a competent engineer and as many assistant engineers, rodmen and inspectors as may be needed, and shall furnish suitable offices, necessary books, stationery, instruments and implements for the proper performance of the duties imposed on them by such board."

If it were possible to segregate each phrase contained in a statute and consider that phrase as if it stood alone, the foregoing section might be construed as affording authority to make a cadastral and topographic survey. The contention would be that this section authorizes the commissioners when requested in writing by the county surveyor to employ a competent engineer whose services may be required for any matter whatsoever. The doctrine of *ejusdem generis*, however, precludes such a construction.

A rather parallel question with respect to Section 2411, *supra*, was under consideration by this office in an opinion appearing in *Opinions of the Attorney General* for 1917, Vol. II, p. 1011. It was held therein that this section does not authorize the employment of an engineer for the purpose of securing data to enable him to testify in a conservancy court concerning the advisability of adopting

plans outlined by the Conservancy Board for flood protection in the district. The language of the opinion appearing on p. 1013 is directly in point. It is as follows:

"Neither do I think the subject matter of the contract falls within the terms of section 2411. Section 2411 G. C. provides in part: that an engineer may be employed by the county commissioners 'when the services of an engineer are required with respect to roads, turnpikes, ditches or bridges or with respect to any other matter.'

In Lewis' Sutherland Statutory Construction, volume II, page 814, section 422, it is stated:

'When there are general words following particular and specific words, the former must be confined to things of the same kind.'

This doctrine has been accepted by the courts of this state in many decisions which may be cited.

'General words, following particular and specific words, must, as a general rule, be confined to things of the same kind as those specified.' *Shultz v. Cambridge*, 38 O. S., 659.

See *State v. Johnson*, 64 O. S., 270.

The plain effect of these authorities on section 2411 G. C. is to make us view it as though it read as follows:

When the services of an engineer are required with respect to roads, turnpikes, ditches or bridges, or with respect to any other SIMILAR matter."

In your letter you refer to the value of a cadastral and topographic survey to a county in connection with tax valuation of property. As you indicate, this would, of course, be only one of the uses of such a survey. The legislature has made express provisions with respect to the preparation of tax maps. These are contained in Sections 5549, et seq. of the General Code. Section 5549 provides in part as follows:

"If, in the opinion of the county commissioners, it is necessary to the proper appraisal of the real estate of such county, on or before their June session, one thousand nine hundred and thirteen, and every fourth year thereafter, they may advertise for four consecutive weeks in one or more newspapers of general circulation in the county, for sealed proposals to construct the necessary maps and plats to enable the assessors in the county, or any district thereof, to correctly reappraise all real estate. The maps and plats shall be made under the supervision of the county auditor, and such advertisement shall particularly specify the extent and character of the work to be done. \* \* \*"

Under the foregoing section, the commissioners are authorized to determine the extent and character of the work to be done in the preparation of such maps as are "necessary \* \* \* to enable the assessors of the county or any district thereof to correctly reappraise all real estate." It is obvious without further discussion that this section does not authorize the commissioners to advertise for bids for the preparation of a cadastral survey of the county. Such a survey contains a far greater amount of data than is necessary to enable the assessors to appraise real estate.

Section 5551, General Code, being another section relating to tax maps, provides as follows:

"The board of county commissioners may appoint the county surveyor, who shall employ such number of assistants as are necessary, not exceeding four, to provide for making, correcting, and keeping up to date a complete set of tax maps of the county. Such maps shall show all original lots and parcels of land, and all divisions, subdivisions and allotments thereof, with the name of the owner of each original lot or parcel and of each division, subdivision or lot, all new divisions, subdivisions or allotments made in the county, all transfers of property showing the lot or parcel of land transferred, the name of the grantee, and the date of the transfer, so that such maps shall furnish the auditor, for entering on the tax duplicate, a correct and proper description of each lot or parcel of land offered for transfer. Such maps shall be for the use of the board of equalization and the auditor, and be kept in the office of the county auditor."

In the foregoing section the legislature has itemized the various things which a tax map shall show. The comment hereinabove made upon the applicability of Section 5549 to the question at hand may also be reiterated with respect to Section 5551, *supra*. Even if this were not true, an application of the doctrine of *expressio unius est exclusio alterius* would clearly preclude a construction of this section as giving authority for making level surveys establishing bench marks, furnishing basic elevations, etc., all of which are a part of a cadastral and topographic survey.

I have cited and discussed the sections of the General Code which I consider pertinent to a determination of the question before me. I do not find, in considering these sections individually, or considering all sections in *pari materia*, legislative authority for a board of county commissioners to expend public funds for a cadastral and topographic survey. These statutory powers must be strictly construed. In *Treadwell v. Commissioners*, 11 O. S. p. 100, the court, after referring to a board of county commissioners as a quasi corporation, said:

"A grant of power to such a corporation must be strictly construed, and when acting under a special power, it must act strictly on the conditions under which it is given."

In conclusion, it should be added that there is probably little doubt as to the benefit which a county may derive from such a survey as is here under consideration. Possibly a grant of such power by the legislature would be for the best interests of the counties and their citizens, but until the legislature takes some step in this direction, for the Attorney General to say that public funds may now be spent for such a purpose, would constitute, I think, an attempted usurpation of the legislative function. The laws may only be interpreted as they are in the light of rules of statutory construction which have been laid down by the courts. In the last analysis, as stated in my Opinion No. 2887, it is a lawful purpose, not a laudable purpose, which warrants an expenditure of the taxpayers' money.

It is my opinion that a county is not authorized to issue bonds to pay the cost of a cadastral survey.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*