

NEW JERSEY COURT OF ERRORS AND APPEALS.

EMORY R. RUBY and FRANK T.
BLAIR,

Prosecutors-Respondents,

vs.

BOARD OF CHOSEN FREEHOLDERS OF
THE COUNTY OF HUDSON and
WILLIAM BAKER, INC.,

Defendants-Appellants.

On
Certiorari.
On Appeal
from
Supreme
Court.

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BRIEF OF COLLINS & CORBIN IN FAVOR OF THE PROSECUTORS.

1.

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Statement of the Case.

The writ of certiorari in this case was allowed to review certain proceedings of the Board of Chosen Freeholders of the County of Hudson for the widening and improvement of that part of the Newark Turnpike Road in said county lying between the westerly end of the bridge across the Hackensack River and Schuyler Avenue, the dividing line between the townships of Kearny and Harrison. The prosecutors are taxpayers of the County of Hudson. Numerous reasons were assigned in the Supreme Court by the prosecutors why the proceedings should be set aside (State of Case, pp. 128, et seq.).

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The writ was heard before the Supreme Court on February 17, 1916, and on April 21, 1916, the opinion of the Supreme Court was filed. The Supreme Court set aside the proceedings under

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review because the resolution awarding the contract for the improvement was not adopted by the affirmative vote of at least three-fourths of all the members of the Board of Chosen Freeholders (pp. 136, et seq.). The numerous other reasons assigned by the prosecutors for setting aside the proceedings were not referred to by the Supreme Court, but we assume that this Court, under its well settled rule, will affirm the judgment of the
 10 Supreme Court if correct on any legal grounds.

Gillespie vs. Ferguson Co., 78 N. J. L., 470-473;

Sadler vs. Young, 78 N. J. L., 594-597;

Meisel vs. Merchants National Bank, 85 N. J. L., 253;

Herrera vs. Manhattan Electric Co., 85 N. J. L., 248.

We do not mean to suggest that the ground
 20 upon which the Supreme Court based its judgment is erroneous but, on the contrary, we urge it most strongly in this Court. However, we do not desire to waive the other reasons urged for reversal. We shall therefore discuss all of the points raised in the Supreme Court.

It will be noted that only one defendant has appealed from the judgment of the Supreme Court, namely, William Baker, Inc., the contractor who claims that the contract in question was legally
 30 awarded to it (p. 1). The Board of Chosen Freeholders of the County of Hudson has not appealed from that judgment.

The brief on behalf of the appellant, William Baker, Inc., does not conform to the rule of this Court promulgated at the June Term, 1912, to take effect November Term, 1912. The appellant's brief does not contain a "statement of the case presenting succinctly the questions involved, in the manner in which they were raised." Also it
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does not set forth "separately and particularly each ground of appeal asserted and intended to be urged." The brief merely sets forth the contentions of the appellant and then the argument.

In this brief we shall argue the points contended for by the appellant and also some of the other reasons urged in the Supreme Court. We shall discuss the questions involved in their logical order instead of in their numerical order.

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Brief of the Argument.**I.**

The statute under which said proceedings were taken, to wit, an act entitled, "An Act concerning county roads," approved March 20, 1900 P. L. 1900, p. 91), as amended by Chapter 25 of the Laws of 1902, p. 47, 20 is unconstitutional because

(a) It is a special law regulating the internal affairs of counties;

(b) It unlawfully delegates legislative powers.

Under Point IV. of the brief for the appellant, counsel says that counsel for the prosecutors stated at the argument in the Supreme Court "that very little reliance was put on the question of the constitutionality of the Act." We do not remember making such a statement, but assuming that we did, the statement as quoted shows that we did place "some" reliance on this point and we now urge it. 30

The following is the pertinent section of the statute in question (P. L. 1902, pp. 47, 8) :

"1. Whenever, in any county of this State, any county road is not built and improved to 40

the authorized or full width thereof and in the judgment of the Board of Chosen Freeholders of such county it is desirable that such road should be so built and improved, for the accommodation of public travel, such Board may, upon the affirmative vote of at least three-fourths of all its members, so build and improve the same; and if any street railway company has its rails laid on said road or any part thereof, said Board may enter into an agreement with such street railway company, whereby said company, in consideration of the work being undertaken, will bear and pay a portion of the cost thereof; and in the event of said road being crossed by a steam railroad at grade, it shall and may be lawful for such Board to enter into an agreement with the railway company owning or operating said steam railroad and the street railway company using said road, to change the grade of the road or tracks of the steam railroad and abolish such grade crossing, in the manner provided by law, and the funds for these purposes shall and may be raised by such Board in the manner provided by the fifth section of the act amended hereby."

(a)

It is a special law regulating the internal affairs of counties.

1. The classification of county roads by the circumstances of whether or not they have been built and improved to the authorized or full width thereof has no logical basis. Under it a road having a pavement in perfect condition but not the full or authorized width thereof is brought within the range of the statute and may be subjected to an entirely new pavement for the whole width of the road; while on the other hand, a road having a pavement for its full width but which has fallen into disrepair is excluded from the range of the act. To be general, the statute should have applied to all county roads which the Board of

Chosen Freeholders should deem it advisable to build and improve, and there should have been no requirement that the improvement should be for the full width of the road. Very few roads are so improved, and to impose on a county an obligation to improve a road its full width irrespective of the necessity therefor, while depriving the county of the benefit of the act merely because some inadequate previous improvement that may have become absolutely ruinous and insufficient for public travel happened to extend over the full width of the road, is special legislation of a very objectionable character. Had the act provided that roads that had been built and improved for less than their full width might be extended to the full width, there would be some reasonable basis of classification; but to permit and require an improvement for the whole width, although a pavement for part of the width might be perfectly good and sufficient, is unjustifiable.

2. Provisions with regard to street railways and steam railroads render the act special because there must be both a street railway having rails on the road or some part thereof and a steam road crossing at grade to render the provision for abolishing a grade crossing applicable in a given case.

3. The provisions as to street railways and steam railroads are not within the title, "An Act concerning county roads," and therefore they render the act special, because it is incredible that the legislature would have passed the act without these provisions being contained therein. While the provisions are that the freeholders *may* enter into an agreement with the street railway company and that "it shall and may be lawful for" the freeholders to enter into an agreement with the steam railroad company, it is plain that the words quoted are mandatory (*Hugg v. Camden*, 39 N. J. L., 620, and cases cited), and not permissive merely.

As applied to the Newark Turnpike, where, as the evidence shows, there is both a street railway and a steam railroad crossing it, the legislative intent must have been to require said companies to bear a part of the cost of the improvement. Instead of that, the freeholders have permitted the street railway company to take its tracks entirely off the road without bearing any part of the cost of the improvement, and have made no agreement
 10 whatever with the steam railroad company.

It is possible that the reasons filed are not explicit enough to cover the objections that the provisions with regard to street railways and steam railroads are not within the title of the act, and that the freeholders have undertaken to make the improvement without entering into binding agreements with said companies; if so, the court should permit an amendment of the reasons. Probably
 20 the mere addition of the general reason would cover the objections, as they appear on the face of the record.

Paterson v. Freeholders of Passaic, 56 N. J. L., 459, 462, and cases cited.

(b)

It unlawfully delegates legislative powers.

The act delegates to boards of chosen freeholders the power to make agreements with street railway companies to bear a portion of the cost of the
 30 improvement of a county road without any criterion of the measure of the cost to be imposed, *e. g.*, the usual provision for the railway company to pay the cost of the pavement between the rails and for a reasonable distance outside the rails. Under the act the freeholders might agree that a railway company should pay one dollar. While
 40 by inveterate usage legislative powers may be delegated to municipal corporations within certain limits, we have found no precedent for delegating such power to counties with respect to street railway construction.

The provision with regard to the abolishing of a grade crossing of a steam railroad is even more objectionable, for under it the grade of the road or the tracks of the steam railroad may be changed, and the *whole* cost of abolishing the grade crossing may be imposed upon the county, to be borne by a bond issue under section 5 of the original act (P. L., 1900, p. 91). Furthermore, the grade crossing is to be abolished "in the manner provided by law." The law has provided no manner for the abolishing of railroad grade crossings of county roads of which we are aware, and the act is void for indefiniteness because this important provision, so blended with the enactment as to be inseparable from it, is impossible of intelligent execution. Statutes authorizing municipalities to contract with railroad companies for the charge or election of railroad tracks to secure greater safety to persons and property have been upheld, but only under titles sufficiently comprehensive, *e. g.*, P. L., 1901, p. 116; but never as incidental to a street or road improvement or by an arbitrary exercise of power. It is not permissible for a public body to make a street or road improvement at public cost and later make contracts with street railway companies or steam railroad companies to bear some portion of the cost. If an act like that *sub judice* can be upheld at all, the improvement thereunder must be an entirety including the antecedent or contemporaneous agreements with the companies.

Lastly, the whole subject of abolition of grade crossings has, since the enactment of the legislation of 1901-2, been committed to the Board of Public Utility Commissioners, and in a proper case the whole cost of the change or elevation of highways and railroad tracks must be borne by the railroad company (P. L., 1913, p. 91).

The Supreme Court did not pass upon this point.

II.

10 **The alleged resolution of the said Board of Chosen Freeholders of the County of Hudson, dated May 27, 1915, purporting to authorize the repairing, rebuilding and improving of the Newark Turnpike Road and approving plans and specifications prepared therefor by the County Engineer is void because the said plans and specifications were not submitted and certified to the supervisor of the County of Hudson for his approval or disapproval.**

The alleged resolution purporting to authorize the improvement of the Newark Turnpike Road provides (pp. 11-12).

20 “Resolved, That pursuant to the authority of and entitled, ‘An Act concerning county roads,’ approved March 20, 1900 (Laws of 1900, p. 91), and an act entitled, ‘An Act to amend “An Act concerning county roads,” approved March 20, 1900,’ which amendatory act was approved March 20, 1902 (Laws of 1902, p. 47), the plans and specifications for the repairs, rebuilding and improvement of the Newark Turnpike Road, for public travel, as prepared by the county engineer, be and the same is hereby approved of: and be it further

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“Resolved, That the clerk of this board be and he is directed to advertise for bids or proposals for said work, in accordance with said plans, and specifications in the ‘Hudson Observer’ and ‘Jersey Journal’; said bids to be received at a meeting of this board to be held Thursday, June 24, 1915, at 3 o’clock p. m.”

40 Chapter 89 of the Laws of 1900 (P. L. 1900, p. 170; 1 Comp. Stat. 530, pl. 192) provides:

"Every resolution or ordinance passed by the board of chosen freeholders, shall, before it takes effect, be presented to the 'county supervisor' by the clerk of the board of chosen freeholders, duly certified by the director and clerk of said board; if he approve it, he shall sign it; if not, he shall return it with his objections, and file it with the clerk of the board of chosen freeholders within ten days after receiving it; * * * "

The clerk of the Board of Chosen Freeholders testified that he did not certify to the supervisor the plans and specifications for the improvement of the Newark Turnpike road (p. 90, ll. 30-40). A reading of the resolution shows that these plans and specifications are part and parcel of the resolution, and without them the resolution is unintelligible. The resolution is, "Resolved, that the plans and specifications for the repairs, rebuilding and improvement of the Newark Turnpike road, for public travel, be and the same *is* (are) hereby approved." It is clear that the supervisor could not perform his duty in a reasonable and intelligent manner without the plans and specifications. In this particular instance (p. 13) the supervisor returned the resolution without his approval or disapproval for this very reason, stating, "I have made repeated efforts to secure a copy of these plans and specifications, but have been unable." The plans and specifications were in the hands of the printer and the statement of the supervisor that he tried to inspect them and could not show that they were not available (p. 91, ll. 1-10). Furthermore, it is immaterial, for under the statute the clerk was bound to certify the *entire* resolution, and it would not make any difference if the supervisor had actually been present at the meeting of the Board of Chosen Freeholders on May 27, 1915, when the resolution was adopted.

State v. Newark, 25 N. J. L., 399.

Where a resolution or ordinance is required by

statute to be submitted to a mayor or other executive officer for his approval or disapproval, the resolution or ordinance must either be approved by him or passed over his veto in the prescribed manner. If not so submitted, it is void.

State v. Newark, 25 N. J. L., 399;
Booth v. Bayonne, 56 N. J. L., 268;
Wilson v. Trenton, 56 N. J. L., 469;
Mittag v. Park Ridge, 61 N. J. L., 151;
Pierson v. Dover, 61 N. J. L., 404;
Hendrickson v. Pt. Pleasant, 65 N. J. L.,
 535;
Sturr v. Elmer, 75 N. J. L., 443.

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In the case at bar the statute provides:

"If such resolution or ordinance shall not be returned within ten days as aforesaid, it shall take effect in like manner as if the county supervisor already had signed it."

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The resolution in question was returned within ten days, but it was neither approved or disapproved by the supervisor. He stated in his communication of June 10, 1915, to the board his objections thereto and, although he said that he did not approve or disapprove, his communication was in effect a disapproval, for the statute further provides that if he does not approve of the resolution "he shall return it with his objections and file it with the clerk of the board within ten days after receiving it," and then the board shall note his objections at length on the minutes of the board and shall proceed to re-consider the same, and if two-thirds of all the members of the board agree to pass the same it shall take effect. The objections of the supervisor were entered at length on the minutes of the board and are contained in the return made by the clerk of the board to the writ herein (p. 13). The board did not reconsider the resolution or take any action in regard to it after

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it was returned by the supervisor. In view of the

fact that the statute provides that the resolution shall take effect only if not returned by the supervisor within ten days, we submit that the board ought to have reconsidered the resolution when it was returned and pass same as required by law.

The Supreme Court did not pass upon this point or say anything about it in its opinion.

III.

There has not been an affirmative vote of at least three-fourths of all the members of the Board of Chosen Freeholders of the County of Hudson to build and improve the Newark Turnpike Road from the westerly end of the bridge across the Hackensack River to Schuyler avenue, the dividing line between the towns of Kearney and Harrison.

This is the ground upon which the Supreme Court set the proceedings aside (pp. 136, et seq.). The reasoning of that Court is unanswerable. We shall not recite the opinion of the Supreme Court in full; it is contained in the State of Case at pages 13 et seq. and embodies to a great extent the points made in our argument and briefs in that Court. However, so that this Court may see just how the matter was presented to the Supreme Court, we shall here set forth in full Point III of our brief in the Supreme Court, which dealt with this reason for setting aside the proceedings.

The proceedings for the improvement of the Newark Turnpike road were taken under chapter 58 of the laws of 1900 (P. L. 1900, p. 91) as amended by chapter 25 of the laws of 1902 (P. L. 1902, page 47); section 1 of the act of 1900 is the only section amended by the act of 1902 and as amended provides as follows:

"Whenever, in any county of this state, any county road is not built and improved to the authorized or full width thereof and in the judgment of the board of chosen freeholders of such county it is desirable that such road should be so built and improved, for the accommodation of public travel, such board may, upon the affirmative vote of at least three-fourths of all its members, so build and improve the same; * * * "

10 There was not an affirmative vote of three-fourths of the Board of Chosen Freeholders for the following alleged resolutions:

(a) The alleged resolution, dated December 20, 1915, purporting to appropriate \$250,000 towards the improvement of said Newark Turnpike road (p. 67, ll. 30-40).

(b) The alleged resolution, dated December 20, 1915, purporting to award the contract for the improvement of said Newark Turnpike road to

20 William Baker, Incorporated (p. 68, l. 30 to p. 71 l. 10).

(c) The alleged resolution, dated December 31, 1915, purporting to direct the county counsel to prepare the necessary contract and bond for the improvement of said Newark Turnpike road (p. 76 ll. 10-20).

It is undisputed that the foregoing resolutions were not passed by a three-fourths vote as required by the statute.

30 The first resolution set forth above had six votes in its favor and three against it (p. 68, ll. 1-10). The board consists of nine members and three-fourths of the board would be seven members. The second resolution set forth, *supra*, had six in its favor and three against it (p. 71, l. 10). The third resolution set forth, *supra*, had six votes in its favor and two against it; the holder of the other vote was absent (p. 76, l. 20).

40 The question presented is whether it is necessary only to have a three-fourths vote for the ori-

ginal resolution authorizing the improvement, or whether it is necessary that all resolutions which have to do with the improvement must be passed by a three-fourths vote. The original resolution of May 27, 1915 (see subhead II hereof) was passed by a three-fourths vote (p. 6, l. 20).

This improvement will cost \$500,000 (p. 107, ll. 20-30).

The three resolutions, (1) award of the contract, (2) providing for the raising of the money to pay for the improvement and (3) providing for the preparation of the contract and bond of the contractor; three of the most important acts of the board in regard to this improvement were not passed by a three-fourths vote. It does not seem possible that the legislature intended that only the original resolution should have a three-fourths vote. A number of the board may very well vote for the improvement of a road, yet when it is ascertained that the cost of the improvement will be very great and bonds to pay therefor must be sold at a sacrifice he will change his mind and come to the conclusion that it is best for the county not to make the improvement until conditions are more favorable. A member of the board who, for such good reasons as these, changes his mind is unable to give effect to his change of mind simply because he votes for the original resolution authorizing the improvement. Such a state of affairs necessarily exists in the case at bar, otherwise there would be the three fourths vote.

Futhermore, this statute provides, "Whenever any county road is not built and improved," and etc., "such board may, upon the affirmative vote of at least three-fourths of all its members, *so build and improve* the same."

The alleged resolution of Dec. 20, 1915, purporting to award the contract for this improvement to William Baker, Inc. (p. 69), is the resolution that

provides for the *building* and *improving* of the Turnpike road. All that went before is merely preliminary, leading up to this, the main resolution awarding the contract. This resolution surely ought to have had an affirmative three-fourths vote, for it is to this resolution in particular that the statute is directed.

IV.

- 10 **By the alleged award of said alleged contract for the improvement of said Newark Turnpike road to William Baker, Incorporated, on December 20, 1915, the said Board of Chosen Freeholders of the County of Hudson incurred an obligation in excess of existing lawful appropriations.**

20 The law is settled in this State that a contract to incur an obligation or indebtedness in excess of existing appropriations for the purposes for which the contract is made is illegal.

Atlantic City Water Works v. Reid, 50 N. J. L., 665;

Humphreys v. Bayonne, 55 N. J. L., 241;

Hurley v. Trenton, 66 N. J. L., 538; affirmed 66 N. J. L., 350;

Niles v. Board of Education, 70 N. J. L., 1;

30 *Bew v. Ventnor City*, 81 N. J. L., 207.

The statute in the case at bar (P. L. 1906, 92, sec. 5) provides:

“In order to raise the funds necessary to pay the cost of such improvement, or its share thereof, such board of chosen freeholders, if it has not in hand funds available for such purpose, may issue bonds therefor; said bonds to run for a period not exceeding ten years, to bear interest at not exceeding five per centum,

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and shall be sold at public sale, but for not less than par and accrued interest, and to be executed in the manner that bonds of such county are usually executed."

If we are right in our contention that the alleged resolution, dated December 20, 1915, purporting to appropriate \$250,000. toward this improvement is void because it did not receive a three-fourths vote (see Point III. hereof) and our position seems to be impregnable, then there is no doubt that the Board by its passage of the above alleged resolution incurred an obligation in excess of lawful existing appropriations. However, there are numerous other reasons why said resolution is illegal. 10

The testimony shows that the County Engineer estimated that the improvement would cost \$593,522.62. The successful bidder bid 82% of this amount, or \$486,688.55; in other words, the improvement would cost approximately \$500,000 (p. 107, ll. 20-30). 20

On June 10, 1915, the Board passed a resolution in which it stated that it did not have "available funds wherewith to pay the cost of said improvement," and it was resolved that in order to provide funds necessary to pay the cost that \$250,000. worth of coupon bonds be issued (p. 13, l. 25; p. 14, l. 40). On July 8, 1915 the State Road Commissioner advised the Board that he could allot to Hudson County for this work an amount not to exceed \$146,000 (pp. 25 and 26). If we regard this \$146,000 as funds available for the improvement we have a total of \$390,000. There is a balance of \$114,000 to be accounted for and raised. 30

In addition to this amount the testimony shows that for the fiscal year beginning December 1, 1915, \$45,000. was allowed in the yearly budget for the improvement of county roads (p. 82, l. 25). 40

The testimony also shows, however, that this \$45,000 would not be available for the purpose of the improvement of the Newark Turnpike road but would be used for the ordinary repair and maintenance of the county roads in general, exclusive of the improvement of the Newark Turnpike road (p. 112, ll. 20-40).

It is therefore clear that without the alleged appropriation under the resolution of December 20th appropriating the further sum of \$250,000. the Board did not have sufficient funds to meet the obligation incurred by the alleged award of the contract for this improvement. Realizing that they did not have sufficient funds the Board on December 20, 1915, the same day on which it passed the alleged resolution awarding the contract, passed this other alleged resolution appropriating the further sum of \$250,000 to be applied to the cost of the improvement (p. 67, l. 30; p. 68, l. 10). The resolution is as follows:

“Resolved that the sum of Two Hundred and Fifty Thousand Dollars (\$250,000) be and is hereby appropriated to be applied to the cost of the repairing, rebuilding and reconstruction of the Newark Turnpike Road.”

The question presented is whether this resolution was legally adopted, and whether it worked a lawful appropriation of the sum of \$250,000. We contend, first, of course, that it is illegal because it did not have a three-fourths vote. This phase of the case is covered under Point III. And secondly, we contend that the alleged resolution did not work a lawful appropriation of the said sum of \$250,000. Counsel for the appellant, on page 15 of his brief, contends that this resolution was within the terms of two different statutes viz.: An act to incorporate the Chosen Freeholders in the respective counties of the State (Rev. 1877, p. 127; 1 Comp. Stat., 474, pl. 4) and

General Tax Act of 1903 (P. L. 1903, p. 394; 4 Comp. Stat., 5075, p. 24).

Taking up the first statute referred to, counsel cites Section 4 as authority for the legality of the resolution. Section 4 provides:

"That it shall be the duty of every such corporation at their *stated or annual* meeting, or at any other meeting *duly held for the purpose to vote, grant and raise* such sum or sums of money for the building, purchasing or repairing of * * * and doing, fulfilling and executing all the legal purposes, objects, business and affairs of such county as they or a major part of them shall deem adequate or proper; all of which money *so raised* shall be applied, paid and expended under the direction and management of said corporation."

It will be noted that Section 4 plainly authorizes the Board at their *stated or annual* meeting or at a meeting *duly held for the purpose to vote, grant and raise* money in any amount for the purposes of this improvement and the money *so raised* shall be applied, paid and expended, etc.

The resolution before the Court was not passed at the *stated or annual* meeting nor does it appear that it was passed at a meeting *duly held for the purpose of voting upon such a grant*.

In order to raise money at a meeting other than the *annual* meeting, compliance with this section requires a call by the Board of a meeting especially for the purpose of voting, granting and raising the money, and this must affirmatively appear from the proceedings because the Board for this purpose is a special statutory tribunal.

Also the mere passage of this resolution does not make an appropriation under this statute without a compliance with Section 12 of the Act which provides for the adoption of a further resolution directing the assessors to assess the sum upon the county, etc. Merely adopting a

resolution to appropriate a certain amount of money does not raise the money, nor does the resolution to appropriate a certain amount of in motion so as actually to make an appropriation and until this is done the resolution is of no effect.

10 It will also be noted in the reading of Sections 12 and 13 of the Act, together with Section 4, that this statute contemplates the granting, vot-
ing and raising of more than one county tax in
any one year and at any time. We shall herein-
after show that this is not the law at present.

20 Under Chapter 86 of the Laws of 1874 (P. L. 1874, p. 202) a law that applies to Hudson County only, it is provided in Section 5 "That the ex-
penditures of the Board of Chosen Freeholders in
any fiscal year, shall not exceed the amount raised
by tax for said year, etc." It will be noted that
Section 5 provides that the expenditures shall
not exceed the amount *raised* by tax. Therefore,
under both statutes, it is necessary that the money
be "raised" before the obligation can be incurred.
The case of *Hurley vs. Trenton*, 66 N. J. L., 538,
supra, is in point. In that case the prosecutor
attacked the repaving contract on the ground that
no fund existed out of which to pay the costs and
expenses incurred by the contract. The act under
which money was to be raised in that case to pay
30 for the work was Chapter 24 of the Laws of 1898,
which provided:

40 "The proceeds of such bonds, including any
premium thereon, shall be used by the board
having charge and control of the streets in
such city in the payment of the costs and
expenses hereafter incurred by such city in
the repavement of any paved street or streets
therein, which said last-mentioned board shall
hereafter decide to so repave out of said
fund; *provided, however*, that nothing herein
contained shall be construed as authorizing
any city to carry out any contract hereto-

fore awarded, but under which no work has been performed on the street."

It was admitted in that case as in the case *sub judice* that there was no money on hand or available, and that no bonds had been issued, to meet the expenses of the proposed improvement. The Supreme Court speaking through Fort, J., said:

"It will be noted that it is '*the proceeds of such bonds*' which shall be used for the 'cost and expenses incurred in repaving of any paved street' which the city council shall 'decide to so repave out of said fund.' 10

"The contention of the prosecutor is, and we think rightly, that no contract can be made for repaving under this statute until the fund is secured, or at least authorized, for the purpose under the authority of this statute.

"Take the case in hand. No authority to issue bonds to pay the costs and expenses of the proposed repaving in this case has been given by the city council. Such authority must be given by ordinance, in the manner provided for the issuance of bonds by the city charter. 20

"Can it be said that because the city council has the right to so authorize, that it will so do, and that because it may so do, there exists a fund out of which such costs and expenses may be paid.

"It would hardly be so contended. Suppose the city council in office is a different one from the one authorizing the repaving, and they refused to issue the bonds to raise the fund. Can they be compelled so to do? 30

"We think that before the council can contract any debt to be paid under the authority of this statute it must possess the proceeds of the bonds issued under it, as a fund out of which the cost and expenses not only may, but, the fund being raised for that specific purpose, must be paid.

"It is insisted that it is better for the city that the fund be not raised before the cost and expense is incurred. That question is for the legislature, not for the courts." 40

It is, therefore, clear that the money necessary to make the improvement in the present case *was not raised* within the meaning of either of the above statutes when the contract was awarded on December 20, 1915. The word "raised" in these statutes means collected and in hand and if it is given that meaning no contract could be entered into until after the money had actually been raised.

- 10 Taking up the second statute relied on by counsel for the appellant, viz.: "General Tax Act" entitled "An act for the assessment and collection of taxes" (P. L., 1903, page 394; 4 Comp. Stat., 5075), we find counsel on page 16 of his brief relies on Section 24 which provides as follows:

20 “The board of chosen freeholders *shall* at their *annual meeting* or at an adjourned or special meeting *not later than the last Tuesday of August*, determine and appropriate specifically, the amount to be raised for current expenses, debt and interest, *public works and for all other county purposes*; provided that *such amount* shall in no case exceed in the aggregate fifty cents for each one hundred dollars of assessed valuation in such county. The county collector shall transmit to the county board of assessors, at its next *annual meeting* a statement of the *total amount* so appropriated and otherwise required by law to be raised by taxation *in that year* for county purposes; the said board shall apportion the tax among the taxing districts as in this act directed.”

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We contend that this is the statute that controls the situation in the case at bar if the resolution is to be regarded as a taxing resolution.

It was contended by counsel for the appellant in the Supreme Court that an act entitled "An Act in relation to the County expenditures" (P. L., 1878, p. 248; 1 Comp. Stat., 492, pl. 70) was controlling but in his brief in this Court counsel makes no mention of that statute and we

therefore assume that he has abandoned this contention. If the resolution of December 20th is intended to operate as a taxing resolution, Section 24, *supra*, of the General Tax Act of 1903, certainly deals with that subject and repeals all inconsistent legislation (P. L., 1903, 9, 435; 4 Comp. Stat., 5141, pl. 66). The General Tax Act is the latest act dealing with the subject. Comparison of the language of Section 24 of the Act, *supra*, with the language of Section 1 of the Act concerning expenditures, will disclose that the three topics of classification—current expense, debt and interest, and public works—appear by the same names and in the same order in the latter act. It is therefore clear that the General Tax Act superseded the act concerning county expenditures and governs the present situation in the case at bar. 10

If we examine Section 24 of the General Tax Act, *supra*, we find that the Board *shall* at their annual meeting or at an adjourned or special meeting *not later than the last Tuesday of August*, determine and appropriate specifically, the amount to be raised for current expenses, debt and interest, public works, and for all other county purposes. In other words, it provides a period of time in each year within which the county budget must be made up. It must be done between the date of the annual meeting of the Board and the last Tuesday of August following. The statute fixes the second Wednesday in May as the day upon which the annual meeting shall be held. 20 30

Rev., 1877, p. 128; 1 Comp. Stat., 476;
Wright vs. Campbell, 74 N. J. L., 82;
Aff'd. 74 N. J. L., 609.

Therefore the budget must be made up between the second Wednesday in May and the last Tuesday in August. 40

Wright v. Campbell, 74 N. J. L., 82; on appeal, 74 N. J. L., 609.

10 The resolution in the present case was passed on December 20, 1915, or after the last Tuesday of August, and for that reason the present resolution is not a valid resolution under the controlling statute. It is also clear that the alleged resolution is not in its very nature such a resolution as is contemplated under Section 24, *supra*. That
 20 section contemplates the making up once a year of a budget showing the total amount to be appropriated and raised by taxation for all the county purposes, including public works. The alleged resolution purporting to appropriate \$250,000 toward the cost of improving the Newark Turnpike road does not measure up to this requirement. On its face it does not represent the total amount to be raised by taxation in the
 30 County of Hudson for the fiscal year 1916-1917, but on the contrary, it is an appropriation for a specific purpose to improve one road; in other words, it is not a county budget. If it is contended that it can be placed in the county budget for the year 1916-1917 when that budget is made up the answer is that this will depend solely upon the future will of the board which will be otherwise constituted than the board which adopted the resolution and this new board cannot be compelled thus to place this sum of money in its
 40 budget. The case of *Hurley vs. Trenton*, 66 N. J. L., 538, *supra*, it controlling.

There is still another reason why the resolution appropriating \$250,000 cannot operate as a taxing resolution. Counsel for the appellant concedes (p. 16, l. 30 of brief) that the resolution as a taxing resolution can only become effective as part of the tax levy for the fiscal year 1916-1917, beginning December 1, 1916. It follows that the
 40 resolution cannot operate as a present existing appropriation at the time of its adoption on De-

cember 20, 1915, and therefore it follows that the award of the contract on the same day, viz.: December 20, 1915, amounted to the incurring of an obligation in excess of existing lawful appropriations at that time.

However, in the final analysis of the question, consideration must be given to the statute under which the present proceedings were taken to improve the Newark Turnpike road. The controlling statute is Chapter 58 of the Laws of 1900 (P. L., 1900, p. 91) as amended by Chapter 25 of the Laws of 1902 (P. L., 1902, page 47). The amendatory act of 1902 provides: "The funds for these purposes (to build and improve the road, etc.) shall, and may be, raised by such board in the manner provided by the 5th section of the act amended hereby." Section 5 of the Act of 1902 provides: "In order to raise the funds necessary to pay the cost of such improvement, or its share thereof, such board of Chosen Freeholders, if it has not in hand funds available for such purpose, may issue bonds therefor; * * *."

It is undisputed that the Board in the present case did not have any funds available for this improvement. It so stated in the resolution that authorized the first bond issue of \$250,000 on June 10, 1915 (p. 13, l. 40). The Board also at that time concluded that it would be too burdensome upon the taxpayers to include the amount of \$250,000 in the tax levy for any one fiscal year (p. 14, ll. 1-4).

The Board having decided that there were no available funds and that it would be too burdensome to include the large amount needed in the tax levy for any one fiscal year, had only one alternative, namely, to raise the money needed in accordance with the provisions of the statute under which the contract was to be awarded, namely, Section 5 of the Act of 1900, *supra*.

The section in question provides a complete

scheme to raise the funds providing there are no available funds.

The Act does not allow the Board to raise part of the funds by taxation and another part by bond issue. The act itself does not allow the raising of any funds by taxation for the improvement in question. Either the funds must be available funds in hand, or a bond issue must be made to cover the cost.

- 10 For these reasons we submit that the alleged resolution of December 20, 1915, purporting to award said contract for the improvement of the Newark Turnpike road, is void because it calls for the expenditure of more money than has been lawfully provided by the county for the making of the improvement in question.

V.

- 20 **No resolution awarding a contract for the improvement of the said Newark Turnpike road was ever lawfully passed and adopted by said Board of Chosen Freeholders of the County of Hudson.**

- 30 This is reason six. Under sub-division III of this point we also deal with this alleged resolution and show that it is void because it was not passed by a three-fourths vote as required by the act of 1900 as amended by the act of 1902. Under subdivision V we also deal with this resolution and show that it is void because by it the board incurred an obligation in excess of existing lawful appropriations. The return shows that the alleged resolution of December 20, 1915, purporting to award the contract for the improvement of the Newark Turnpike road to William Baker, Incorporated, is in fact a report of the Committee on Public and County Roads of the
- 40 Board of Chosen Freeholders of the County of Hudson to the board itself and not a resolution

of that board (p. 68, l. 20, *et seq.*). The clerk of the board testified that this report was submitted at the meeting of the board on December 20, 1915, (p. 101, ll. 1-10). It was presented before the board went into meeting (p. 102, ll. 30-40). The clerk read the report and a director of the board then said "the question is on the adoption of the resolution. As many as are in favor thereof vote in the affirmative; those contrary in the negative," and the clerk then called the roll. Upon the call of the roll, six voted in favor of the adoption and three against. No motion was made so far as the clerk remembers moving the adoption or rejection of the committee report (p. 104, ll. 10-30). The minutes show no such motion. 10

It is this so-called anomalous resolution which is in fact nothing more than a report of the Committee on Public and County Roads that was submitted to the county supervisor for his approval or disapproval. It is clear that there was, in fact, no formal resolution passed by the board itself, and, of course, no formal resolution was submitted to the supervisor. The minutes in the return show that the only addition made to the report of the Committee on Public and County Roads is the sentence: 20

"Adopted by the following vote: Yeas, Freeholders Boylan, Meehan, Prior, Stuhmann, Untereinor and Director Keilt—6. Nays, Freeholders Auf der Heide, Helerl and Lally—3." (P. 71, ll. 1-10.) 30

When this committee report was submitted to the supervisor, it was not signed by the members of the Committee on Public and County Roads (p. 74, ll. 30-40). It is ambiguous on its face. The statute provided that every resolution passed by the board shall, before it takes effect, be presented to the county supervisor, duly certified by the director and clerk of said Board of Chosen 40

Freeholders (P. L., 1900, p. 168; 1 Comp. State, 530, pl. 192). It is impossible to ascertain from the document submitted to the supervisor what part of the report of the Committee on Public and County Roads was adopted by the board; for all that appears by the paper itself a resolution might have been adopted rejecting the entire report. If the document be taken literally as an affirmative adoption, then the board adopted the

10 report of the Committee on Public and County Roads recommending the adoption of a resolution. If the board merely adopted a resolution recommending the adoption of a resolution for the award of a contract, then, of course, no resolution was, in fact, adopted awarding the contract.

If, on the other hand, we say that a formal resolution was adopted by the Board of Chosen Freeholders awarding the contract for the im-

20 provement of the Newark Turnpike road, no such formal resolution was ever in fact brought up or certified to the county supervisor. Because the document submitted to the county supervisor was so ambiguous he returned it to the board stating that he could not ascertain what action the board had taken on the report of the Committee on Public and County Roads from the document submitted to him. He requested the board to certify to him a proper resolution and he would

30 then either approve or disapprove of the same (p. 75, ll. 20-40). Instead of complying with this very reasonable request, the board regarded the resolution as effective because the supervisor did not veto it (p. 76, ll. 10-30). Here again, we submit, that the board should have reconsidered the resolution for the statute provides that a resolution shall only become effective if it is not returned within ten days after it is certified to the supervisor; in this case it was returned within

40 ten days and should have been reconsidered by

the board and passed by a three-fourths vote. In other words, the failure of the supervisor to approve or disapprove within ten days is not a test, but the test is whether the resolution is returned by the supervisor within ten days. If it is not, then it shall take effect as if the supervisor had signed it, but if it is then it must be reconsidered, and passed by a three-fourths vote (P. L., 1900, p. 17).

VI.

William Baker, Incorporated, to whom the said alleged contract for the improvement of said Newark Turnpike road was awarded by the alleged resolution of the Board of Chosen Freeholders of the County of Hudson, dated December 20, 1915, is not a corporation of the State of New Jersey or a foreign corporation authorized to do business in this State.

It is admitted on the record that William Baker, Incorporated, to whom the alleged contract for the improvement of the Newark Turnpike road was awarded on December 20, 1915, is and was at all times a foreign corporation, that is, a corporation of the State of New York.

Testimony was taken in this case on February 5, 1916, showing that on February 4, 1916, an examination was made of the records in the office of the Secretary of State in relation to corporations and that such examination revealed that William Baker, Incorporated, was not a corporation of this State or a foreign corporation authorized to do business in this State. Thereafter, on February 8th, William Baker, Incorporated filed a certificate as provided by law and this fact is stipulated on the record (p. 115, ll. 20-35). Section 97 of the act concerning corporations (P. L., 1896, p. 307;

2 Comp. Stat., 1657) provides that every foreign corporation before transacting any business in this State shall file in the office of the Secretary of State a copy of its charter, etc. The contract was awarded to William Baker, Incorporated, on December 20, 1915, and William Baker, Incorporated, did not comply with the statute until February 8, 1916. After testimony had been taken in this cause showing that it was not a legal entity

10 under the laws of this State, the law was complied with. William Baker, president of William Baker, Incorporated, called by the prosecutors, testified that his company has been in existence something like two and one-half years and that about a year and one-half ago it had a contract with a Jersey City firm for some \$5,000 or \$6,000 worth of fill to be put on a private right of way of the Public Service Railway Company between Newark and Jersey City (p. 125, ll. 1-10). He

20 also testified that the company had at the present time three automobiles and a few concrete mixers, one of the automobiles is at his plant in Jersey City, 137 South Street, in said city. Mr. Baker lives at 101 South Street, aforesaid. The other two automobiles are at Poughkeepsie, New York, where the company is doing some work. The concrete mixers are down on Long Island, New York. The company has no other property of any kind. The only plant that either William

30 Baker, individually, or William Baker, Incorporated, has is located at 137 South Street, Jersey City. William Baker testified that he has been in the contracting business for twenty years or more and that he has resided in Jersey City during that period of time.

We submit that the taking of a contract for the laying of \$5,000 to \$6,000 worth of fill in Hudson County involving the carrying of the fill through

40 the county, the employment of labor, the purchase of material, etc., is a transacting of business in this

State in violation of the statute. In addition, we have the award of the contract for the improvement of the Newark Turnpike road, involving a cost of \$500,000. The doing of this work would require the employment of a large number of men, the purchasing of a large amount of material and this employment of men and purchase of material would extend over a long period of time. We submit that the performance of this contract would necessarily involve a transacting of business in this State within the meaning of Section 97 of the act concerning corporations. The status of William Baker, Incorporated, as a legal entity, as a person capable of contracting under the law of this State, must be determined as of the date of the award of the contract, *viz.*, December 20, 1915.

The facts here distinguish this case from the case of *Canal Company v. Mahlenbrock*, 63 N. J. L., 281, where there was a single transaction, that is a single sale of goods. Furthermore, the question here presented is entirely different from that presented in the *Mahlenbrock* case, for here an attack is being made on the validity of a contract by a public body. At the time of the award of this contract there was no such person as William Baker, Incorporated, recognized by the laws of this State. That being so, the award of the contract by the resolution of December 20, 1915, was a mere nullity for a contract cannot be awarded to a person who does not exist.

Any other conclusion will open the door wide and permit foreign corporations to transact business in this State without complying with our law, which was passed for the protection of the inhabitants of this State, for, when such corporations are discovered violating the law, they can calmly comply with the law and there will be no redress to prevent such practices.

VII.

The effect of the resolution of June 24, 1915, directing that certified checks be returned to all bidders except to the lowest bidder, William Baker, Inc., was merely to release the funds of the other bidders from the certifications when it appeared clearly to the board that the other bidders had no hope of securing the award of the contract.

This phase of the case is covered in Point I of appellant's brief. It is a new point and was not urged in the Supreme Court. The only mention of this resolution in the brief of the appellant in the Supreme Court is at page 4. In the giving of the history of the proceedings it is stated that such resolution was passed. This point is raised for the first time in the brief of the appellant in this Court. The law is settled that a point not urged in the lower court cannot be urged in the Appellate Court.

Marten vs. Brown, 81 N. J. L., 599;

Battschinger vs. Robinson, 83 N. J. L., 739;

Travisano vs. Stefanelli, 84 N. J. L., 767.

However, there is nothing in this contention.
 30 The resolution is as follows (p. 20, ll. 10-30) :

"WHEREAS, The several bids received at this meeting for the widening and improvement of the Newark Turnpike Road were accompanied by indemnity bonds, in addition to certified checks, which fully protect the interest of the county, and

"WHEREAS, Several of the bidders of whose proposals are high, requested the return of their certified checks, explaining that it would entail a hardship upon them to retain their checks in the sum of sixty thousand dollars

each for any lengthy period; therefore be it
“Resolved, That all certified checks, except that of the lowest bidder, be returned forthwith, upon the request of the respective owners thereof, save that deposited with the lowest bid received.

“Adopted by the following vote:

“Yeas—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann and Director Keilt—8.

“Absent—Freeholder Untereiner—1.”

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It will be noted that the resolution itself states that several of the high bidders had requested the return of their certified checks explaining that it would be a hardship upon them to have the checks retained, the checks being in the sum of \$60,000 each and that for that reason it was resolved that the checks be returned. It is impossible to read into this resolution an award of the contract to William Baker, Inc. The most that can be said is that pending the deliberations of the Board as to whether or not the contract should be awarded to William Baker, Inc., the Board decided to return the checks of the high bidders so as to release the certifications; in other words, the checks of the high bidders were returned and the check of William Baker, Inc., was retained by the Board only for the purpose of further considering whether the contract should be awarded to William Baker, Inc.

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An examination of Point I of appellant's brief will reveal the great error into which opposing counsel has fallen. His contention is that the Board was compelled to award the contract to the appellant because it was the lowest responsible bidder and counsel cites Chapter 58 of the Laws of 1900 (P. L. 1900, p. 91) as amended by Chapter 25 of the Laws of 1902 (P. L. 1902, p. 47). Section 2 of this act provides as follows:

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“Where the cost of such improvement shall exceed the sum of one thousand dollars, bids

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shall be invited for the performance thereof by publication in one or more newspapers in such county, for two weeks prior to the time appointed for receiving the same; *and the contract shall be awarded to the lowest responsible bidder*, who shall furnish good and sufficient security for the performance thereof, to the satisfaction of such board."

10 It will be noted that the italicized portion of the statute provides "the contract shall be awarded to the lowest responsible bidder." Counsel for the appellant argues from this statute at page 6 of his brief, "This statute does not expressly give the Board 'power to reject any and all bids.'" At page 7 of this brief the opposing counsel says: "The Board could contract only with the 'lowest responsible bidder.' Any other contract would have been wholly unauthorized and void." Also at page 7 counsel says: "As the Board did not
20 adjudge that William Baker, Inc., was not responsible, the power of the Board was circumscribed to the acceptance of the lowest bid." Also counsel says: "The power of the Board was limited to making the award to William Baker, Inc., the lowest responsible bidder."

The great difficulty with this argument is that counsel is laboring under a misapprehension as to what statute governs the Board in the award of this contract. The statute that governs is
30 Chapter 342, p. 593, Laws of 1912, approved April 1, 1912, which provides as follows:

"1. Where and whenever hereafter it shall be lawful and desirable for a public body in any *county*, city, town, township, borough or village to let contracts or agreements for the doing of any work or for the furnishing of any materials or labor, where the sum to be expended exceeds the sum of five hundred dollars, the action of any such public body entering into such agreement or
40 contract, or giving any order for the doing of

any work or for the furnishing of any materials or labor, or for any such expenditures, shall be invalid unless such public body shall first publicly advertise for bids therefor, and shall award said contract for the doing of said work or the furnishing of such materials or labor to the lowest responsible bidder; *provided, however, that the said public body may, nevertheless, reject any and all bids.*

"2. Such advertisement shall be published for two weeks in at least two daily or weekly newspapers of the county wherein such work is to be done. 10

"3. This act shall take effect immediately."

This act was held to be constitutional and to be applicable to the contract for the repaving of a street in *McGovern vs. City of Trenton*, 84 N. J. L., 237. The same act was referred to in *Johnson vs. Atlantic City*, 85 N. J. L., 45. It will be noted that this statute expressly provides that the "public body may, nevertheless, reject any and all bids." It will also be noted that the notice to contractors for bids in the case at bar provided (p. 19, ll. 1-10): "The Board reserves the right to reject any and all bids if it be deemed for the best interest for the county so to do." The Board was not bound to accept any bid, but could reject any and all bids and readvertise. 20

The conclusion necessarily follows, therefore, that since the Board had the right to reject any and all bids, and since the resolution of June 24, 1915, *supra*, was passed merely for the purpose of releasing the checks of the high bidders and for no other purpose, that said resolution cannot be regarded for a moment as a resolution awarding the contract to William Baker, Inc. The most that can be said is that the bid of William Baker, Inc., was retained pending further consideration by the Board of the question whether or not it would award the contract at that time 30 40

to William Baker, Inc. If it could for a moment be regarded as a resolution of award, it is void because it is undisputed that at that time, viz., June 24, 1915, there were not sufficient funds appropriated and, therefore, the resolution would be void because it would be an attempt to incur an obligation or indebtedness in excess of lawful existing appropriations. Also the alleged resolution does not impose any contractual obligation, because under the decision of this Court in the case of *Jersey City v. Harrison*, 72 N. J. L., 186, the law is settled first, that a contract with a municipal body is within the Statute of Frauds and, therefore, there must be a memorandum and etc., by the municipality, and secondly, that a resolution directing the officers of a municipality to execute a contract does not impose any obligation on the municipality, so as to prevent it from rescinding the resolution.

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Conclusion.

The judgment of the Supreme Court should be affirmed with costs to the prosecutors.

Respectfully submitted,

COLLINS & CORBIN,

Attorneys of Prosecutors.

GILBERT COLLINS,

30 EDWARD A. MARKLEY,

Of Counsel.

Dated November Term, 1916.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

JOSEPH F. KENNEDY, <i>Prosecutor,</i> <i>vs.</i> BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON and WILLIAM BAKER, INC., <i>Defendants.</i> (William Baker, Inc., Plaintiff-in- Error.)	10
EMORY R. RUBY and FRANK T. BLAIR, <i>Prosecutors,</i> BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON and WILLIAM BAKER, INC., <i>vs.</i> <i>Defendants.</i> (William Baker, Inc., Plaintiff-in- Error.)	20 30
On Certiorari. APPEALS FROM SUPREME COURT.	

POINTS FOR WILLIAM BAKER, INC.

We contend:

1. When the Board, by the Resolution of June 24, 1915, directed that the certified checks be returned to all bidders except to the lowest bidder, William Baker Inc., and did not reject the vote of that bidder, and retained the check of that

bidder, such action was tantamount to the acceptance of that bid; and by such action William Baker Inc., acquired rights, and the Board imposed on itself obligations, to which a subsequent formal award to William Baker Inc., would add nothing of a contractual nature.

2. The proceedings necessary to be taken by the board received the required number of votes to legally accomplish the purposes sought.

10 3. Any appropriation legally necessary to be made for the doing of the work was provided for, and legally made.

4. The "Act Concerning County Roads," approved March 20, 1900, as amended by Chapter 25 of the Laws of 1902, is constitutional.

I.

20 When the Board by the Resolution of June 24, 1915 directed that the certified checks be returned to all bidders except the lowest bidder, William Baker, Inc., and did not reject the vote of that bidder, and retained the check of that bidder such action was tantamount to the acceptance of that bid; and by such action William Baker Inc., acquired rights, and the Board imposed on itself obligations, to which a subsequent formal award to William Baker, Inc., would add nothing of contractual nature.

The opinion of Mr. Justice Trenchard, in the Supreme Court, does not touch this question at all.

This question was raised in our brief in the Supreme Court, and it was referred to on the oral agreement, but it may well be that it was not sufficiently explained or insisted upon to en-

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gage the attention of the Justices who heard the case.

The board advertised for bids for the improvement of the Newark Turnpike Road. Forms of proposals were issued by the Board. The plans and specifications for the work and form of contract were deposited with the clerk of the board for examination by bidders. The terms under which bids were to be made were specified in the advertisement of sale, which is found at p. 10 17 of the Case. In the advertisement was this statement:

"The board reserves the right to reject any and all bids if it be deemed for the best interest of the county so to do."

William Baker, Inc., bid, by executing one of the forms of proposal issued by the board, as follows:

IN THE MATTER OF THE WIDENING AND 20
THE IMPROVEMENT OF THE NEWARK TURN-
PIKE ROAD, LYING BETWEEN THE WESTER-
LY END OF THE BRIDGE ACROSS THE HACK-
ENSACK RIVER AND SCHUYLER AVENUE, THE
DIVIDING LINE BETWEEN THE TOWNS OF
KEARNEY AND HARRISON, HUDSON COUN-
TY, N. J.

TO THE HONORABLE, THE BOARD OF CHOSEN FREE-
HOLDERS OF THE COUNTY OF HUDSON, STATE 30
OF NEW JERSEY:

GENTLEMEN:

The undersigned having examined the notice for proposals, form of contract, plans, specifications and bond on file in the offices of the Clerk of said Board, as well as the advertisement for bids, will contract to do all the work and furnish all the materials mentioned in said plans and specifications for the entire work of the above widening 40

and improvement at eighty-two percent. (82%) of the unit of price set opposite the various items, as follows:

(Here follow unit prices.)

10 And agree to execute said contract and bond, with the surety signing the annexed proposition of sureties, in strict accordance with the notice of the proposals preceding said contract, and complete all the work herein bid for within the time allowed by said contract, and also agrees to furnish a maintenance bond as required by said contract and specifications.

Enclosed herewith is certified check in the sum of not less than 10% of the County Engineers' estimate of the cost of the improvement upon the terms and conditions set out in the notice of proposals aforesaid.

Dated, June 24th, 1915.

WILLIAM BAKER, INC.,
Name WILLIAM BAKER,
President.

20 Residence 26 Cortlandt Street,
New York City.

Attest:
A. H. Faust,
Secretary.
(Seal.)

PROPOSITION OF SURETIES.

30 For and in consideration of the accompanying proposal of WILLIAM BAKER, INCORPORATED, and the receipt and consideration of the same by the Board of Chosen Freeholders of the County of Hudson, New Jersey, and of the other proposals for said work and materials, we the undersigned, do here agree that the said WILLIAM BAKER, INCORPORATED shall within five days from the date of award to him or them, attend at the office of the Clerk of the Board of Chosen Freeholders of the County of Hudson, and execute and deliver a contract, according to the form of contract prepared for the work mentioned in the annexed proposal and now on file with the Clerk of said Board and that

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we will and do hereby become sureties in the sum of \$150,000 to the Board of Chosen Freeholders of Hudson County, for the faithful and satisfactory performance of said contract and do hereby agree that after the award of said contract and within five days from the date of such award, that we will attend with such William Baker, Incorporated, at the office of the Clerk of the Board of Chosen Freeholders of the County of Hudson and execute a bond to the Board of Chosen Freeholders in the County of Hudson, in the State of New Jersey, in the sum aforesaid, according to the form on file with said Clerk. **10**

We also hereby agree as aforesaid, that if the contract for said work be awarded by said Board to said WILLIAM BAKER, INCORPORATED, on its proposal and if said WILLIAM BAKER, INCORPORATED, shall omit or refuse to execute said contract and bond or we should refuse to execute said bond, in manner aforesaid, we will pay to said Board of Chosen Freeholders of the County of Hudson, New Jersey, and difference between the sum which the said WILLIAM BAKER, INCORPORATED, would be entitled to on the completion of said work and such amounts as the said Board might subsequently be obliged to pay in the preparation for and the performance of such work. **20**

GLOBE INDEMNITY COMPANY,
By Geo. W. Yuengling,
Resident Vice-President.

Attest: **30**
(Seal.) Wm. G. Koenig,
Resident Asst. Secretary.
(Here follows affidavit showing qualification of surety.)

Seven bids in all were received. pursuant to the advertisement for bids, and, on motion, they were referred to the Committee on Roads, which Committee, after consideration, reported to the board, and the board, on June 24, 1915 (p. 20 Case), adopted a resolution by an affirmative vote of eight freeholders, that **40**

"All certified checks, except that of the lowest bidder, be returned forthwith, upon the request of the respective owners thereof, save that deposited with the lowest bid received."

This resolution was certified to and approved by the Supervisor, and became effective.

Thus the board, by an affirmative vote of three-fourths of the board, acted on all the bids received, and thus it acted on the bid of William Baker, Inc., "the lowest bid received."

All the resolutions of the board on the building and improvement of the Newark Turnpike up to this vote, were manifested and adopted by an affirmative vote of three-fourths of the board.

The \$60,000 certified check of William Baker, Inc., which accompanied its bid, "the lowest bid received," was retained by the board.

The bid of William Baker, Inc., was acceded to by the board. There was not, on the part of the board, only a mere intention to accept. There was intention, plus action. The board acted by returning the checks of the other bidders and retaining the check of William Baker, Inc., the lowest bidder; and this action appears on the minutes of the board.

After public hearings, and on November 18, 1915, the board, by a vote of 6 to 3, expressly awarded the contract to William Baker, Inc., and the County Counsel was directed to "prepare the necessary contract and bond," and it was directed that when the contract and bond should have been executed, they should be filed in the office of the board.

The Statute (Laws 1900, p. 92) under which bids were solicited, provides that *the contract shall be awarded to the lowest responsible bidder.*

This statute does not expressly give the board the power "to reject any and all bids".

"If the statute directs that the contract be awarded to the lowest responsible bidder, an ordinance reserving to the authorities the right to reject any proposal is nugatory."

Cases cited in *McQuillin Municipal Corporations*, Ed. 1913, §1230, Note 81.

The board could contract only with the "lowest responsible bidder"; any other contract would have been wholly unauthorized and void.

Dickinson v. Poughkeepsie, 75 N. Y., 65;
Elliott on Contracts, Sec. 3622;
Shaw v. Trenton, 49 N. J. Law, at p. 342.

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As the board did not adjudge that William Baker, Inc., was not responsible, the power of the board was circumscribed to the acceptance of the lowest bid.

Shaw v. Trenton, 49 N. J. Law, at p. 342.

The power of the board was limited to making the award to William Baker, Inc., the lowest responsible bidder.

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Jackson v. Elizabeth, 64 Atl., 609.

While the board reserved the right to reject any and all bids, the fact is that the board did not expressly reject any bid; but, impliedly, it rejected all the bids received except the lowest bid, that of William Baker, Inc.

As the board did not reject the bid of William Baker, Inc., and as the statute directed that the contract should be awarded to the lowest responsible bidder, and William Baker, Inc., was such bidder, what reason is perceived why the contract was not awarded to William Baker, Inc.?

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We contend that the resolution of June, 1915, was an acceptance of the Baker bid, and that William Baker, Inc., can compel the board to proceed to the execution of a formal contract, if a formal contract is held to be necessary.

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The action of the board in rejecting the bids of all bidders except the bid of William Baker, Inc., amounted to an acceptance of the William Baker, Inc., bid, since the other bids were rejected only because the William Baker, Inc., bid was the bid of "the lowest bidder."

10 The fact is, and the resolution discloses, that William Baker, Inc., was "the lowest bidder"; and the responsibility of William Baker, Inc., is not attacked. Indeed, its responsibility is manifested by its certified check of \$60,000 and its bond, with surety, to execute formal contract, when called upon to do so, and its bond conditioned for the providing of a maintenance bond.

What did the board do, if it did not accept the proposal of William Baker, Inc.?

All details were settled at the time the board received the Baker proposal, and retained the Baker check.

20 The plans and specifications and form of contract were agreed to by William Baker, Inc. Neither the board nor William Baker, Inc., could alter the plans or the specifications or the form of the contract after the Baker proposal was received by the board; nor could the board demand that William Baker, Inc., should enter into a contract different in form or in substance from the one proposed, and theretofore assented to by the board and the bidder.

30 If the bid of William Baker, Inc., was accepted then a contract was agreed to; and if such acceptance was only to be followed by the appending of signatures to the form of contract, such appending did not call for a vote of three-fourths of the board.

40 "A bid is not of itself a contract, in ordinary cases; but it is usually held that the acceptance of a valid bid by the proper municipal authorities, where all legal requirements

are observed, constitutes a binding contract; and this is the theory on which the action for damages for refusing to execute a contract with the accepted bidder is based."

McQuillin, *Municipal Corporations*, Ed. 1913, Vol. 3, §1236.

"The plaintiff in response to an advertisement by the Park Commissioners, made a definite bid for the work and the Park Commissioners accepted his bid as made. The bid and its acceptance constituted a contract between the parties and the execution thereafter of a formal written acceptance embodying the terms of the contract would not be the contract itself but merely evidence of it." 10

Park Commissioners v. Carmody, 139 Ill. App., p. 640.

The action of the board was "an overt act" indicating an acceptance of the proposal of William Baker, Inc. 20

White v. Corlies, 46 N. Y., 469.

"A contract arises when an overt act is done, whether such overt act comes to the knowledge of the proposer or not."

Hallock v. Insurance Co., 26 N. J. Law, p. 268; 27 N. J. Law, 646;

Batterman v. Batterman, 76 N. Y., 624.

"It does not need that the acceptance shall come to the knowledge of the one making the offer before he shall be bound." 30

Ibid.

The question is one merely of acceptance. And, as there was an intention to accept, plus action, which intention and action are manifested by the minutes of the board, we contend there was an acceptance.

It is William Baker, Inc., who is insisting that

the board made a contract with it; we are not dealing with a case where the board is seeking to hold William Baker, Inc., to a contract, and the company is contending that it received no notice of the acceptance of its proposal by the board, and therefore, is not bound.

10 "The person making an offer has a right to dispense with notice of acceptance; and if the form of the offer shows that this was not to be required, then it is not necessary."

9 Cyc., 270-271.

"Notification of acceptance is required for the benefit of the person who makes the offer."

Ibid., Cases, note 58.

It can hardly be said that the William Baker, Inc., bid was retained by the board only for further consideration; for, that bid being the lowest, the board was bound to accept it, if they accepted any of the bids; and, rejecting the
20 checks of the other bidders clearly indicated that no bid, other than the Baker bid, was to be, or could be, considered; so that any consideration of the Baker bid, leading to the rejection of that bid, at some later meeting of the board, would leave no bids at all before the board. If the board intended only to further consider the Baker bid, it is but reasonable to say that the other bids would have been retained before the board, until such consideration was finished, so that, should the board
30 determine to reject the Baker bid, the next lowest bid would be before the board for consideration.

2.

The proceedings necessary to be taken by the board received the required member of votes to legally accomplish the purposes sought.

This work is sought to be done under Chapter 58 of the Laws of 1900 as amended by Chapter 25 of the Laws of 1902, Page 47, which statute provides that,

10

“Whenever, in any county of this State, any county road is not built and improved to the authorized or full width thereof and in the judgment of the Board of Chosen Freeholders of such county it is desirable that such road should be so built and improved, for the accommodation of public travel, such Board may, upon the affirmative vote at least three-fourths of all its members so build and improve the same. * * * and the funds for these purposes shall and may be raised by such Board in the manner provided by the Fifth Section of the Act amended hereby.”

20

The Second Section provides that “the contract shall be awarded to the lowest responsible bidder.”

The Fifth Section provides that,

“In order to raise the funds necessary to pay the cost of such improvement, or its share thereof, such Board of Chosen Freeholders, if it has not in hand funds available for such purpose, may issue bonds therefor; such bonds to run for a period not exceeding ten years, to bear interest not exceeding five per centum and shall be sold at public sale, but for not less than par and accrued interest and to be executed in the manner that the bonds of such county are usually executed.”

30

The return to the writs clearly shows that the

40

work contemplated is within the purview of the above statute.

At a meeting of the Board of Freeholders held on May 27th, 1915 (the Board then consisting of nine members) a resolution was adopted by the affirmative vote of eight members (one absentee) wherein the Board declared;

10 "That the repairs, rebuilding and improvement of the Newark Turnpike road for public travel, from the westerly end of the bridge across the Hackensack River to Schuyler Avenue, to be a public necessity."

And further, that pursuant to the authority of the statute above mentioned

 "the plans and specifications for the repairs, rebuilding and improvement of the Newark Turnpike road, for public travel, as prepared by the County Engineer, be and the same is hereby approved of"; and further,

20 That the Clerk of the Board be directed to advertise for bids or proposals for said work in accordance with such plans or specifications, "said bids to be received at a meeting of this Board to be held Thursday, June 24th, 1915, at three o'clock P. M."

This resolution received more than three-fourths of the affirmative votes of the Board.

30 It became effective without action of the Supervisor. In returning it without his action the Supervisor stated his reason to be;

 "Because I have no desire to retard the progress of any public improvement that is necessary, and I consider the Newark Turnpike repair absolutely necessary."

40 Pursuant thereto advertisement was duly made and at the meeting of the Board of June 24th, 1915 (eight Freeholders being present) on motion the regular order of business was suspended for

the purpose of receiving bids, in accordance with the advertisement, one of the conditions wherein was.

"The Board reserves the right to reject any and all bids if it be deemed for the best interests of the County so to do."

Pursuant to such advertisement, at said meeting seven bids were received, and on motion were referred to the Committee on Roads which Committee, after consideration, reported to the Board, and the said Board, at an adjourned meeting on the same date, adopted a resolution by an affirmative vote of eight Freeholders, that

"all certified checks, except that of the lowest bidder be returned forthwith, upon the request of the respective owners thereof, save that deposited with the lowest bid received" (bid of William Baker, Inc.)

This resolution was approved by the Supervisor.

Prior to the passage of the foregoing resolution and at a meeting held on June 10, 1915, a resolution was adopted providing for the raising of \$250,000 by the sale of county bonds, for this improvement.

This was adopted by an affirmative vote of seven members (two absent).

After due advertisement for bids for said bonds, bids were received on July 8th, 1915, and were rejected, and a resolution was adopted that the Clerk further advertise for bids to be received at a meeting to be held July 29th, 1915.

Upon this resolution nine votes were recorded in the affirmative.

At a meeting held on said last date bids were received and a resolution was adopted awarding and selling to the highest bidder \$250,000 bonds chargeable to the Newark Turnpike improvement, by the vote of eight Freeholders (one absent).

The foregoing resolution was vetoed by the Supervisor, and it was passed notwithstanding the veto, by an affirmative vote of eight Freeholders (one absent).

These bonds were subsequently delivered and the money received therefrom is now in the hands of the County Collector to be applied to the purposes for which it was raised.

10 In connection with the proposed improvement, at the meeting of July 8th, 1915, other action was taken by the Board through various resolutions, granting consent to Public Service Railway Company to construct, operate and maintain certain tracks upon the turnpike, which were adopted by an affirmative vote of more than three-fourths of the members. The Public Service Railway Company accepted and adopted the action of the Board, and it removed its tracks, except parts thereof.

20 We submit that the foregoing are all the actions of the Board which required a three-fourths vote of all its members, if, indeed all of the foregoing did require such three-fourths vote, within the intendment of the statute.

We contend that a reasonable construction of the language of the statute would require a three-fourths affirmative vote upon the question of the desirability of building and improving, and of 30 the determination and purposes to build and improve, and the actual adoption of the scheme to affect such improvement, such as the adoption of the plans and specifications, and perhaps the provisions for raising the necessary funds; and that the mere act of awarding the contract to the lowest responsible bidder is an incident, and not an essential; and, therefore, such contract may be awarded by the Board, as all other contracts may be awarded, viz: by an affirmative vote.

40 After public hearing and on November 18,

1915, the board, by order of 6 to 3, awarded the contract to William Baker Inc.

To give the language of the act the meaning attributed to it by the prosecutors would make nugatory all the preceding acts of the Board; would involve the county in great expense, in that its bonds for \$250,000 are now outstanding and are drawing interest, accompanied by sinking fund charges, and yet would leave this money unavailable to the county or for county purposes, not only indefinitely but perpetually, if a three-fourths vote of all the members could not be secured to simply award a contract which, under the law, necessarily must be awarded to the lowest responsible bidder. 10

3.

Any appropriation legally necessary to be made for the doing of the work was provided for, and legally made. 20

The State of the Case shows that there are now in hand \$250,000 raised from the sale of bonds and also an allotment of \$146,000 from the State through its State Road Commissioner, and also a further appropriation of \$45,000 available for improvement of county roads under the Budget, and in addition, an appropriation of \$250,000 by resolution passed on December 20, 1915, (Case Page 65). 30

The entire amount of money necessary to fully complete the work, will not be needed prior to 1917.

Comp. Stat., Page 475, Section 4, provides for the raising of such sums of money for the fulfilling and executing of the legal purposes, objects, business and affairs of the county at the stated or annual meeting or at any other meeting duly held for the purpose; and Comp. Stat., Page 492, 40

Section 70 provides that in ordering, in each year, the amount of money to be raised for county purposes, the Board of Chosen Freeholders shall declare the amount necessary to be raised for each of the following classes, to wit: * * * 3rd— for the improvement and repair of public highways, where the power to expend money therefor has been vested by law in any such Board; and Section 71 provides, “that the amount so as
 10 aforesaid declared to be necessary for the several purposes specified, shall thereby become appropriated for such purposes.”

Section 24 of the Tax Act of 1903 (P. L., 1903, Page 409) as amended in 1905 (P. L. 1905, Page 177) provides,

“that the Board of Freeholders shall, at their annual meeting or at an adjourned or special meeting not later than the last Tuesday of August, determine and appropriate specifically the amount to be raised for current
 20 expenses, debt and insurance, public works, and for all other county purposes, etc.”

The county fiscal year begins on the 1st day of December in each year and ends upon the 30th day of November the following year.

Therefore, the appropriation made upon the 20th of December, 1915, was within the terms of the statutes above mentioned, and may properly be placed in the Budget for the year 1916-7.

30 The Prosecutors (under Reason No. 5 in the Ruby Case, on page 127, line 32 and Reason No. 5 in the Kennedy Case, page 132, line 15) challenge the legality of the appropriation resolution upon the ground that it did not receive an affirmative vote of three-fourths of all the members of the Board (Brief in Ruby Case, under Point No. 4).

40 The statute does not require that such a resolution should receive a three-fourths vote; the only

statutory requirement for the three-fourths vote is when an appropriation has been made and is to be altered; in other words, where moneys appropriated for one object are to be transferred to another account or appropriation. This proviso does not apply to original appropriations, and the resolution in question was an original appropriation for a specified purpose.

In the Ruby Reasons, it is also suggested that this appropriation exceeds the limit of expenditure provided by law, but this suggestion is not substantiated by any testimony. **10**

On page 16 of the Ruby Brief, counsel state it to be settled law in this state that a contract to incur an obligation or indebtedness in excess of the existing appropriation for the purpose for which the contract is made is illegal, and cite a number of cases.

The cases cited refer generally to a situation where the improvement is to be paid for out of the sale of bonds and where no other source of revenue is provided by law. **20**

Such is not the case under consideration, nor is the reason for the rule, as stated in those cited cases, applicable to the case at bar. In this case there is an adequate appropriation and money in hand, and such sources of revenue are available for the purposes contemplated.

See the very language of the Freeholders' Act: **30**

"The amount so as aforesaid declared to be necessary for the several purposes specified, shall thereby become appropriated for such purposes." (Under Comp. Stat., page 493, Section 71.)

The requisites of a valid appropriation are that there should be manifested an intent to set aside a sum of money which is limited in amount and subject to certain uses.

See cases collected in 49 L. R. A., at page 73. **40**

Such moneys may be appropriated in anticipation of their receipt, whether there be funds in the treasury to meet them or not (37 L. R. A. [N. S.], at page 1080).

In *Mueller vs. Boulevard Commissioners*, 87 Law, 703, Mr. Justice Swayze said:

10 "I see no objection to the Commissioners taking the necessary preliminary steps before the Freeholders had sold the bonds. What is forbidden is the prosecution of the work."

20 The improvement under consideration has not only received the approval of the State Commissioner of Public Roads, but it has received an allotment of state moneys, for its prosecution, under Chapt. 395 of the Laws of 1912, page 803, and under Comp. Stat., page 3443, Section 37 (P. L. 1906, page 197, as amended P. L. 1908, page 621; P. L. 1909, page 368, and P. L. 1910, page 349).

 The contention of the prosecutors under Point 8 of the Ruby Brief, we respectfully submit, cannot be entertained on this Certiorari. The bonds were issued and sold, and are now in the hands of bonafide purchasers, who are not before the Court in this suit. If any attack is to be made upon that resolution, and if there is still time to make it, the purchasers of the bonds at the original sale, at least, should be before the Court.

30 In the *Ruby* case, the following reasons and their subdivisions are either not true in fact, as disclosed by the return and evidence, or are unsupported by any evidence or by the return, viz: Reason No. 2, Subdivisions (a) and (b); Reason No. 3; Reason No. 5, Subdivision (b); Reason No. 6, Subdivisions (d), (e) and (f); Reason No. 7; Reason No. 9.

40 This statement applies to the following Reasons in the *Kennedy* case: Nos. 2, 3, 6, 8, 9, 10, 11 and 12.

4.

The "Act Concerning County Roads," approved March 20, 1900, as amended by Chapter 25 of the Laws of 1902, is constitutional.

As counsel for the prosecutors, stated at the argument, that very little reliance was put on the question of the constitutionality of the Act, we do not deem it necessary to argue the question, but submit it to the Court. 10

We feel justified in stating, however, that this Act has received consideration by eminent members of the bar who make a specialty of passing on acts providing for the issuing of bonds, and that other roads have been built and bonds issued under this statute,—and it has been approved by such lawyers as Messrs. Hawkins, Delafield & Longfellow. 20

We respectfully submit that the proceedings should be affirmed.

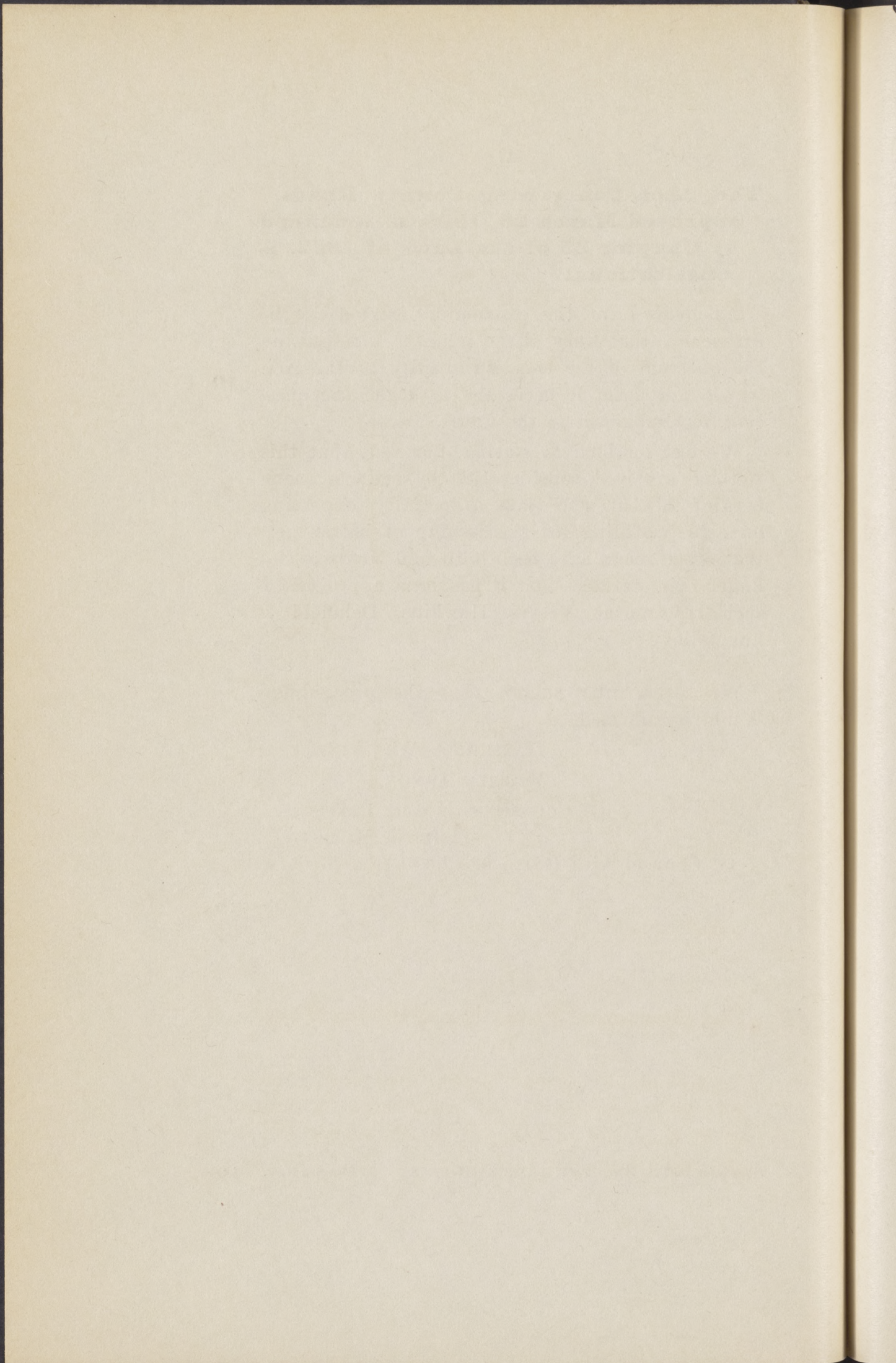
MARSHALL VAN WINKLE,

WARREN DIXON,

Of Counsel with Wm. Baker, Inc.

JAMES J. MURPHY,

Of Counsel with Board of Chosen Freeholders. 30



NEW JERSEY COURT OF ERRORS AND APPEALS.

JOSEPH F. KENNEDY, <i>Prosecutor,</i> <i>vs.</i> BOARD OF CHOSEN FREEHOLDERS, OF THE COUNTY OF HUDSON and WILLIAM BAKER, INC., <i>Defendants.</i> (William Baker, Inc., Plaintiff-in- Error.)	10
EMORY R. RUBY and FRANK T. BLAIR, <i>Prosecutors,</i> <i>vs.</i> BOARD OF CHOSEN FREEHOLDERS, OF THE COUNTY OF HUDSON and WILLIAM BAKER, INC., <i>Defendants.</i> (William Baker, Inc., Plaintiff-in- Error.)	20
	30

**Supplemental Point for William Baker,
Inc.**

The opinion printed herein, not having been reported, is added to the main brief on behalf of William Baker, Inc., by request of the Court and made a part of said brief.

**Opinion (which has not been reported)
in Jail Case.**

NEW JERSEY SUPREME COURT.

FEBRUARY TERM, 1916.

10	HENRY G. AUF DER HEIDE, <i>Prosecutor,</i>	}	On
	<i>vs.</i>		Certiorari.
	THE BOARD OF CHOSEN FREEHOLD- ERS OF THE COUNTY OF HUDSON, et al.,		
	<i>Defendants.</i>		

Argued February 21, 1916.

Decided April 7th, 1916.

20 Before Justices GARRISON, TRENCHARD and
BLACK.

J. EMIL WALSCHEID, Esq., for Prosecutor.

JAMES J. MURPHY, Esq., for Board of Chosen
Freeholders of County of Hudson.

Messrs. EDWARDS & SMITH, for W. H. & F. W.
Cane, Inc.

Per Curiam:

30 The certiorari in this case was brought to review
the awarding of three contracts for the construc-
tion, plumbing work and heating of the new county
jail of Hudson County, awarded to W. H. & F. W.
Cane, Inc. The award was made on December 28,
1915. The amount for the main building was
\$861,665; plumbing work, \$55,000; the heating
contract was awarded November 24, 1915, for
\$93,000; the contract for the electric wiring was
awarded November 24, 1915, for \$9,300. The cost
of the land was \$80,600. The total cost of the

building and lands was \$1,099,565 and the total appropriation \$1,150,000. The contracts were awarded under the Act of 1914, P. L. 1914, Chap. 81, page 127, which empowers the Board of Chosen Freeholders to acquire by purchase or condemnation such lands situated and located adjacent to the county jail as, in the judgment of the Board of Freeholders, are necessary, and "to erect thereon a new county jail and to furnish and equip the same."

10

The act also provides that if the cost thereof when placed in the tax levy for any one year would be too burdensome, it shall be lawful for such board to issue bonds, which shall state upon their face for what purpose the same are issued. The bonds may be sold either at public or private sale for the best price that can be obtained, but not less than par and accrued interest. On July 9, 1914, \$100,000 of bonds were issued and on June 10, 1915, \$500,000 of bonds were issued and on December 20, 1915, a resolution was passed appropriating \$550,000 to be applied to the cost of erecting the new county jail.

20

There are a number of reasons assigned for setting aside these awards. We think there is no legal merit in any of them, and only two require any discussion.

The first is, that there has not been a sufficient appropriation of money at the time the contracts were awarded and that the contracts were awarded in excess of existing appropriations for the purpose for which the contracts were made, citing as authority the cases of *Atlantic City Water Co. vs. Read*, 50 N. J. L., 665; *Humphreys v. Bayonne*, 55 N. J. L., 241; *Hurley v. Trenton*, 66 N. J. L., 538; *Niles v. West New York*, 70 N. J. L., 1, and *Bew. v. Ventnor City*, 81 N. J. L., 207. The case under discussion is distinguished from those cases

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because in the cases cited, the improvements were to be made from a specific sum, and there was no other source from which the money could be had to meet the cost, but in this case there are two methods, either by bonds or by appropriation in the tax levy, or a third method, by combining the two. The contract in this case also provides that the contractor is to be paid from the issue and sale of bonds authorized by this act and not otherwise. It is also urged that there was no common standard for the comparison of the bids, citing the case of *Armitage v. Newark*, 86 N. J. L., 5, and this is so, it is argued, because (a) there is to be retained five per cent. for repairs; (b) materials other than those specified; (c) no changes unless authorized by the board; (d) may use power house material; (e) jail equipment; (f) plumbing selected from James B. Clow & Co.

We do not think this is sufficient to vitiate the contracts. In the *Armitage* case it was held, that if the length of time required to do the work is to enter into the estimate, it should be the same for all bidders, since if each bidder determines the time for himself, no two bids will be on the same basis, which is the very essence of competition.

The proceedings of the Board of Chosen Freeholders of the County of Hudson in awarding the contracts in this case will be affirmed, with costs.

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Notice of Appeal.

(RUBY CASE.)

(Filed July 11th, 1916.)

New Jersey Supreme Court

EMORY R. RUBY and FRANK T.
BLAIR,

Prosecutors-Respondents.

vs.

THE BOARD OF CHOSEN FREEHOLD-
ERS OF THE COUNTY OF HUDSON
and WILLIAM BAKER, INC.,

Defendants-Appellants.

10

On
Certiorari.

20

To:

COLLINS & CORBIN, Esqs.,
Attorneys of the Prosecutors.

PLEASE TAKE NOTICE, that the Defendant Wil-
liam Baker, Inc., appeals to the Court of Errors
and Appeals from the whole of the judgment en-
tered in this Court in the above entitled case.

Dated, June 20th, 1916.

Yours very truly,

30

MARSHALL VAN WINKLE,

Attorney for William Baker, Inc.

Service of a copy of the foregoing Notice is
hereby acknowledged this 22nd day of June, 1916.

COLLINS & CORBIN,
Attorneys for Prosecutors.

JAMES J. MURPHY,
Attorney for the Board of Chosen
Freeholders of the County of Hudson. 40

Notice of Appeal.

(KENNEDY CASE.)

(Filed July 11th, 1916.)

NEW JERSEY SUPREME COURT.

10

JOHN F. KENNEDY,

*Prosecutor-Respondent,**vs.*THE BOARD OF CHOSEN FREEHOLD-
ERS OF THE COUNTY OF HUDSON
and WILLIAM BAKER, INC.,*Defendants-Appellants.*On
Certiorari.

20

To:

J. EMIL WALSCHEID, Eqs.,
Attorney of the Prosecutor.PLEASE TAKE NOTICE, that the Defendant Wil-
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Attorney for Prosecutor.JAMES J. MURPHY,
Attorney for the Board of Chosen
Freeholders of the County of Hudson.

40

Grounds of Appeal.

(RUBY CASE.)

(Filed July 11th, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

EMORY R. RUBY and FRANK T.
BLAIR,

Presecutors-Respondents,

vs.

THE BOARD OF CHOSEN FREEHOLD-
ERS OF THE COUNTY OF HUDSON
and WILLIAM BAKER, INC.,

Defendants-Appellants.

On
Certiorari.

10

The Appellant, William Baker, Inc., states the following grounds of appeal: 20

The appellant, William Baker, Inc., appeals from the whole of the judgment on the following grounds:

Because the Court should have found in favor of the Appellant, William Baker, Inc., and against the Prosecutor.

Because the writ of certiorari should have been dismissed.

Because the Court found that there was not an affirmative vote of three-fourths of the Board of Chosen Freeholders of the County of Hudson for the resolution purporting to award the contract for the improvement of the Newark Turnpike road to the Appellant, William Baker, Inc. 30

Because the Court found that under the statute it was essential that the resolution awarding the contract for the improvement of the Turnpike road should have the affirmative vote of at least 40

Grounds of Appeal.

three-fourths of all the members of the Board of Chosen Freeholders of the County of Hudson.

Because the Court should have sustained the proceedings under review.

10 Because the Court should have found that the requisite number of votes was cast in favor of the prosecution of the work and in furtherance of all proceedings necessary to be undertaken therefor.

Because the Court should have found that the proceedings under review were regular and according to law.

Because the Court should have found that William Baker, Inc., had legally entered into a contract with the Board of Chosen Freeholders of the County of Hudson for the widening and improvement of the Newark Turnpike road.

20 Because the Court should have found that William Baker, Inc., was entitled to have a contract for the widening and improvement of the Newark Turnpike road by and between William Baker, Inc., and the said Board of Chosen Freeholders of the County of Hudson, executed by the said Board of Chosen Freeholders of the County of Hudson.

MARSHALL VAN WINKLE,
Attorney of William Baker, Inc.

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Grounds of Appeal.

(KENNEDY CASE.)

(Filed July 11th, 1916.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

JOHN F. KENNEDY, <i>Prosecutor-Respondent,</i> <i>vs.</i> THE BOARD OF CHOSEN FREEHOLD- ERS OF THE COUNTY OF HUDSON and WILLIAM BAKER, INC., <i>Defendants-Appellants.</i>	}	On Certiorari.	10
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Because the writ of certiorari should have been dismissed.

Because the Court found that there was not an affirmative vote of three-fourths of the Board of Chosen Freeholders of the County of Hudson for the resolution purporting to award the contract for the improvement of the Newark Turnpike road to the Appellant, William Baker, Inc. 30

Because the Court found that under the statute it was essential that the resolution awarding the contract for the improvement of the Turnpike road should have the affirmative vote of at least three-fourths of all the members of the Board of Chosen Freeholders of the County of Hudson. 40

Grounds of Appeal.

Because the Court should have sustained the proceedings under review.

Because the Court should have found that the requisite number of votes was cast in favor of the prosecution of the work and in furtherance of all proceedings necessary to be undertaken therefor.

10 Because the Court should have found that the proceedings under review were regular and according to law.

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20 Because the Court should have found that William Baker, Inc., was entitled to have a contract for the widening and improvement of the Newark Turnpike road by and between William Baker, Inc., and the said Board of Chosen Freeholders of the County of Hudson, executed by the said Board of Chosen Freeholders of the County of Hudson.

MARSHALL VAN WINKLE,
Attorney of William Baker, Inc.

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40

Writ of Certiorari.

(RUBY CASE.)

NEW JERSEY, TO WIT:

The State of New Jersey to the Board of
(SEAL.) Chosen Freeholders of the County
of Hudson.

GREETING:

We being willing for certain reasons to be certified of certain proceedings taken by said Board of Chosen Freeholders of the County of Hudson, for the widening and improvement of the Newark Turnpike Road in said County, lying between the westerly end of the bridge across the Hackensack River and Schuyler avenue, the dividing line between the Townships of Kearny and Harrison, including the alleged award of a contract for the widening and improvement of said Newark Turnpike Road aforesaid, to William Baker, Inc., and all proceedings subsequent to said alleged award, do command you that said proceedings, together with all matters of said Board of Chosen Freeholders of the County of Hudson, touching and concerning the same, to our Supreme Court of Judicature at Trenton, on the 20th day of January, 1916, next, you certify and send together with this writ, that therein may be done what of right and according to the laws and Constitution of this State ought to be done.

WITNESS, WILLIAM S. GUMMERE, Esquire,
Chief Justice of our Supreme Court at
Trenton, this 31st day of December, in
the year of our Lord, one thousand nine
hundred and fifteen.

WILLIAM C. GEBHARDT,
Clerk.

Collins & Corbin,
Attorneys.

Allocatur.

I allow this writ. Let it be sealed.

Dated, Dec. 31, 1915. 5:33 P. M.

F. J. SWAYZE,
J. S. C.

Writ of Certiorari.

(Kennedy Case.)

10

NEW JERSEY, SS

The State of New Jersey to the Board of
Chosen Freeholders of the County
(SEAL.) of Hudson, and Walter O'Mara,
Clerk of said Board.

GREETING :

20 We being willing for certain reasons to be certified of a certain resolution of the Board of Chosen Freeholders of the County of Hudson, adopted on the twentieth day of December, A. D., 1915, and again adopted on the thirty-first day of December, 1915, awarding a contract for the widening and improvement of the Newark Turnpike between the westerly end of the bridge crossing the Hackensack River and Schuyler avenue, the dividing line between the towns of Kearny and Harrison, to William Baker, Inc.;

30 Do command you that the said resolution and all proceedings taken thereunder or in pursuance thereof, made or pretended to be made, together with all proceedings of said Board of Chosen Freeholders, leading up to the adoption of said resolution, and all things touching or concerning the same as they may remain of record before you, by whatsoever name, the same may be called therein, to our Supreme Court of Judicature, at Trenton, on the 19th day of January, A. D. 1916, you do
40 certify and send, together with this writ, that

therein may be done what of right and according to law ought to be done.

WITNESS, WILLIAM S. GUMMERE, Esq., Chief
Justice of our Supreme Court of Judicature, at Trenton, this 31st day of December, in the year one thousand nine hundred and fifteen.

WILLIAM C. GEBHARDT,
Clerk. 10

J. Emil Walscheid,
Attorney.

Allocatur.

I allow this writ. Let it be sealed.

Dated, December 31, 1915. 5:30 P. M.

F. J. SWAYZE,
J. S. C. 20

Return.

I, WALTER O'MARA, Clerk of the Board of Chosen Freeholders of the County of Hudson, do hereby certify that the following are true copies of all resolutions and proceedings taken by the Board of Chosen Freeholders, of the County of Hudson, for the widening and improvement of the Newark Turnpike road, in said County, lying between the
 10 westerly end of the bridge across the Hackensack River and Schuyler avenue, the dividing line between the Townships of Kearny and Harrison, including the award of a contract for the widening and improvement of said Newark Turnpike Road as aforesaid, to William Baker, Inc., and all proceedings subsequent to said award, together with all matters of said Board of Chosen Freeholders of the County of Hudson, touching and concerning the same, as mentioned in the writs of
 20 certiorari hereto annexed.

And I do herewith send to the Supreme Court of the State of New Jersey the within writs as therein commanded.

Witness my hand and seal this 20th day of January, A. D. Nineteen hundred and Sixteen.

30 WALTER O'MARA,
 Clerk Board of Chosen Freeholders
 County of Hudson.

(Seal.)

Minutes of Meeting, Board of Chosen Freeholders.

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, May 27, 1915.)

(Improve Newark Turnpike Road).

No. 119—By Freeholder Prior:

WHEREAS, The Newark Turnpike Road, lying between the westerly end of the bridge across the Hackensack River and Schuyler avenue, the dividing line between the Towns of Kearny and Harrison, is in poor condition and this Board is of opinion that said road should be repaired, rebuilt and improved with a permanent pavement and the railroad grade crossing thereon eliminated; and

WHEREAS, A survey of said road has been made under the direction of the State Commissioner of Public Roads and approved of by him; and

WHEREAS, The officials of the Delaware, Lackawanna and Western Railroad Company are ready to enter into an agreement with this Board to eliminate the grade crossing at Sanford's Crossing on said road; and

WHEREAS, The County Engineer, acting under the direction of the Committee on Public and County Roads of this Board, has prepared plans and specifications for the repairs, rebuilding and improvement of said road; therefore be it

Resolved, That this Board hereby declares that the repairs, rebuilding and improvement of the Newark Turnpike Road, for public travel, from the westerly end of the bridge across the Hackensack River to Schuyler avenue aforesaid to be a public necessity; and be it further

Resolved, That pursuant to the authority of an act entitled "An Act concerning county roads," approved March 20, 1900 (Laws of 1900, p. 91), and an act entitled "An Act to amend 'An Act

Minutes of Meeting, Board of Chosen Freeholders.

concerning county roads,' approved March 20th, 1900," which amendatory act was approved March 20, 1902 (Laws of 1902, p. 47), the plans and specifications for the repairs, rebuilding and improvement of the Newark Turnpike Road, for public travel, as prepared by the County Engineer, be and the same is hereby approved of; and be it further

10 ther

Resolved, That the Clerk of this Board be and he is directed to advertise for bids or proposals for said work, in accordance with said plans and specifications in the "Hudson Observer" and "Jersey Journal;" said bids to be received at a meeting of this Board to be held Thursday, June 24, 1915, at 3 o'clock, p. m.

Adopted by the following vote:

20 Yeas—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann and Director Keilt—8.

Absent—Freeholder Untereiner.

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, June 10, 1915.)

(Improve Newark Turnpike).

Jersey City, N. J., June 10, 1915.

30 *Hon. Director and Members of the Board of Chosen Freeholders, Court House, Jersey City, N. J.*

GENTLEMEN:

I return herewith resolution adopted by your Board calling for the repairing, rebuilding and improvement of the Newark Turnpike Road. You will notice that this resolution has not received my approval or disapproval. My reason for returning

40 this without any action on my part, is because I have no desire to retard the progress of any public

Minutes of Meeting, Board of Chosen Freeholders.

improvement that is necessary, and I consider the Newark Turnpike repair absolutely necessary. However, this resolution calls for the adoption of certain specifications and plans prepared by the County Engineer, under the direction of the Committee on Public and County Roads of your Board, and I have made repeated efforts to secure a copy of these plans and specifications, but have been unable to do so. This condition was caused, I am told, by some contingencies that have arisen, that perhaps, may be beyond control of your Board. I have repeatedly called your attention to the fact that when resolutions are presented to me calling for approval of plans and specifications that the latter must be presented to me with the resolution. In the future, I would thank you to kindly see that this suggestion is carried out.

Very truly yours,

JOHN MAGNER,
County Supervisor.

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, June 10, 1915.)

(Newark Turnpike Bonds).

No. 127—By Freeholder Auf der Heide:

WHEREAS, The Newark Turnpike Road, lying between the westerly end of the bridge across the Hackensack River and Schuyler avenue, the dividing line between the towns of Kearny and Harrison, is not built and improved to the authorized or full width thereof, and in the judgment of this Board it is desirable that said road should be so built and improved, for the accommodation of public travel; and

WHEREAS, This Board has not in hand available funds wherewith to pay the cost of said improvement, which it is estimated will be in excess of

Minutes of Meeting, Board of Chosen Freeholders.

\$250,000, and in the opinion of this Board to place this amount in the tax levy for any one fiscal year would be too burdensome upon the taxpayers of the County; therefore be it

10 *Resolved*, That in order to provide funds necessary to pay the cost of building and improving as aforesaid the Newark Turnpike Road from the westerly end of the bridge across the Hackensack River to Schuyler avenue, the dividing line between the towns of Harrison and Kearny, this Board hereby orders the issue of two hundred and fifty (250) coupon bonds of the County of Hudson of the denomination of one thousand dollars (\$1,000) each (with the privilege of registration), pursuant to the authority of an Act entitled "An Act concerning county roads" approved March 20, 1900 (Laws of 1900, p. 91), and the acts amendatory thereof and supplemental thereto. Said bonds shall bear date of July 1, 1915, and shall become due and payable July 1, 1925; shall bear interest at the rate of four and one-half per centum ($4\frac{1}{2}$) per annum, payable semi-annually on the first days of January and July in each year. Said bonds shall be signed by the Director and Clerk of this Board, be countersigned by the County Collector and the seal of the Board shall be thereunto affixed and the coupons attached to said bonds shall bear the lithographic fac simile signature of the County Collector; and said bonds and coupons shall be substantially in the following form:

20

30

Number
\$1,000

Number
\$1,000.

UNITED STATES OF AMERICA
STATE OF NEW JERSEY.
(State Coat of Arms.)

40

HUDSON COUNTY.

NEWARK TURNPIKE IMPROVEMENT BOND.

Know all men by these presents, That the Board

Minutes of Meeting, Board of Chosen Freeholders.

of Chosen Freeholders of the County of Hudson, in the State of New Jersey, hereby acknowledges itself to be indebted for value received and promises to pay the bearer, or if this bond be registered, to the registered holder hereof, one thousand dollars in gold coin of the United States of America, on the first day of July, 1925, with interest thereon from the first day of July, 1915, at the rate of four and one-half per centum ($4\frac{1}{2}\%$) per annum, payable semi-annually on the first days of January and July in each year in like gold coin, on presentation and surrender of the annexed coupons, as they respectively become due. 10

This bond may be registered in the name of the owner on the books kept by the Collector of said county, and the coupons hereof detached and cancelled and thereafter the principal and interest shall be payable to the registered holder. Both principal and interest on this bond are payable at the office of the County Collector in Jersey City, N. J. 20

This bond is one of an issue of two hundred and fifty (250) bonds of like tenor, date and amount, numbered from one (1) to two hundred and fifty (250) issued under authority of an Act of the Legislature of the State of New Jersey, entitled "An Act concerning county roads" approved March 20, 1900, and the acts amendatory thereof and supplemental thereto, and pursuant to the authority of a resolution of the Board of Chosen Freeholders of the County of Hudson, adopted at a meeting of said Board held the tenth day of June, 1915. 30

It is hereby certified and recited that all conditions, acts and things required by the Constitution and statutes of the State of New Jersey to exist, to have happened and to be performed precedent to 40

Minutes of Meeting, Board of Chosen Freeholders.

and in the issuance of this bond exist, have happened and have been performed, and that the issue of bonds of which this is one, together with all other indebtedness of said county is within every debt and other limit prescribed by the Constitution and laws of said State and that the faith and credit of the County of Hudson are hereby irrevocably pledged to the punctual payment of the principal and interest of this bond, according to its terms.

IN WITNESS WHEREOF, The Board of Chosen Freeholders of the County of Hudson has caused the seal of said county to be hereto affixed and this bond to be signed by the Director and Clerk of said Board and to be countersigned by the Collector of said county the first day of July, 1915.

Director.

20

Clerk.

Countersigned:

County Collector,

(Form of Coupon.)

\$22.50.

The County of Hudson, in the State of New Jersey, will pay to the bearer, twenty-two dollars and fifty cents on the first day of , 19 , at the office of the County Collector in Jersey City, N. J., being six month's interest then due on its Newark Turnpike Improvement Bond No. dated July 1, 1915.

Collector, Hudson County.

and be it further

Resolved, That annually hereafter there be placed in the tax levy a sum sufficient to pay the interest on said bonds as it becomes due, as well as the principal thereof at maturity; and be it further

40 *Resolved*, That the Clerk of this Board be and he

Minutes of Meeting, Board of Chosen Freeholders.

is hereby directed to advertise, in the usual manner, in the "Hudson Observer" and the "Jersey Journal" and any out of town financial newspapers the County Collector may select for bids for the purchase of said bonds; said bids to be received at the meeting of this Board to be held Thursday, July 8, 1915, at 3 o'clock, p. m.

Adopted by the following vote:

10

Yeas—Freeholders Auf der Heide, Heller, Lally, Meehan, Prior, Stuhmann and Director Keilt—7.

Absent—Freeholders Boylan and Untereiner—2.

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, June 24, 1915.)

(Improve Newark Turnpike.)

Adjourned meeting of the Board of Chosen Freeholders of the County of Hudson held in the Court House, Jersey City, N. J., Thursday, June 24th, 1915, at 3 o'clock p. m. 20

Present at roll call—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann and Director Keilt—8.

Absent—Freeholder Untereiner—1.

On motion of Freeholder Stuhmann the regular order of business was suspended for the purpose of receiving bids for the improvement of the Newark Turnpike Road, in accordance with the following advertisement: 30

NOTICE TO ROAD BUILDERS AND CONTRACTORS.

Notice is hereby given that sealed proposals for the widening and improvement of the Newark Turnpike Road, between the westerly end of the bridge across the Hackensack River and Schuyler avenue, the dividing line between the Town of 40

Minutes of Meeting, Board of Chosen Freeholders.

Kearny and Harrison (mentioned in the contract, plans and specifications) will be received in open meeting of the Board of Chosen Freeholders of the County of Hudson, to be held at the Court House, in the City of Jersey City, on Thursday, June 24, 1915, at 3 o'clock, p. m.

- Printed conditions under which proposals must
- 10 be made, plans and specifications for the work, notice to bidders, form of contract, bond and propositions of sureties to be executed can be examined at the office of the Clerk of the Board of Chosen Freeholders of the County of Hudson, Court House, Jersey City, at which place forms of proposals and propositions of sureties can be obtained. Further notice is hereby given that the work above mentioned with the contract and obligation to be made therefor, are to be done and
- 20 made under and in pursuance of acts of the Legislature of the State of New Jersey. Each estimate or proposal must be accompanied by a certified check of cash in the sum of not less than (10%) per cent. of the Engineer's estimate of the cost of improvement, payable to Frederic Rider, the County Collector of the County of Hudson, and also the proposition of a surety company authorized to transact business in the State of New Jersey, in the form of a bond to the amount of \$150,-
- 30 000 enclosed in the sealed envelope with the bid, as a guarantee that the successful bidder will within five days from the date of the award enter into a contract for the faithful performance of the work.

The attention of bidders is particularly called to be the clauses in the specifications requiring affidavits and samples of certain kinds of materials to be used in the improvement to be submitted by the bidder five days prior to the time of submitting the

40 bids. No bid will be considered by the Board un-

Minutes of Meeting, Board of Chosen Freeholders.

less it fully complies with all the requirements of the plans and specifications and terms of bidding.

The Board reserves the right to reject any and all bids if it be deemed for the best interest of the county so to do.

By order of the resolution of the Board, adopted May 27, 1915.

WALTER O'MARA, **10**
Clerk.

Bidders desiring blue prints of the drawings, specifications, etc., may obtain them from the Clerk of the Board on depositing twenty-five (\$25) dollars to secure their return in good condition.

Filed.

Director announced that all persons having bids to submit to hand them to the Assistant Clerk and appointed as tellers, Freeholders Lally and Auf der Heide. **20**

From Hornung & Blair, of West New York, requesting the Board not to receive bids under advertisements for the improvement.

Filed.

(Bids.)

The following bids were received :

Joseph Ledger, 83.9% based on the engineer's unit of prices for the several items. **30**

Van Keuren Contracting Co., 82.5% based on the engineer's unit of prices for the several items.

William Baker, Inc., 82.0% based on the engineer's unit of prices for the several items.

R. Wadding & Sons, Inc., 85.0% based on the engineer's unit of prices for the several items.

Nolan & Hornung Construction Co., 87.0% based on the engineer's unit of prices for the several items. **40**

Minutes of Meeting, Board of Chosen Freeholders.

Charles T. Kavanagh, Inc., 84.9% based on the engineer's unit of prices for items.

William J. Coughlin, 82.9% based on the engineer's unit of prices for the several items.

On motion of Freeholder Prior the bids were referred to the Committee of Roads.

10

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, June 24, 1915.)

No. 138—By Freeholder Prior:

WHEREAS, The several bids received at this meeting for the widening and improvement of the Newark Turnpike Road were accompanied by indemnity bonds, in addition to certified checks, which fully protect the interest of the county, and

20

WHEREAS, Several of the bidders of whose proposals are high requested the return of their certified checks, explaining that it would entail a hardship upon them to retain their checks in the sum of sixty thousand dollars each for any lengthy period; therefore be it

Resolved, That all certified checks, except that of the lowest bidder, be returned forthwith, upon the request of the respective owners thereof, save that deposited with the lowest bid received.

30

Adopted by the following vote:

Yeas—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann and Director Keilt—8.

Absent—Freeholder Untereiner—1.

Minutes of Meeting, Board of Chosen Freeholders.

(Regular Meeting, Board of Chosen Freeholders, Thursday, July 8, 1915.)

(Advertise Sale of Bonds.)

PROPOSALS FOR BONDS.

HUDSON COUNTY, N. J., BONDS.

By virtue of three separate resolutions, adopted **10**
by the Board of Chosen Freeholders of the County
of Hudson at the meeting held June 10, 1915, public
notice is hereby given that sealed bids or proposals
will be received and opened at the meeting
of said Board to be held in the Court House, Jersey
City, N. J., on Thursday, July 8, 1915, at 3
o'clock p. m., for sale of bonds to provide funds for
the following improvements, viz.:

1. \$250,000 Newark Turnpike Improvement
Bonds, issued under authority of Chapter 58 of the **20**
Laws of 1900 and Chapter 25 of the Laws of 1902,
to run for a period of ten years.

2. \$300,000 Hudson County Park Bonds, issued
under authority of Chapter 277 of the Laws of 1902
and Chapter 19 of the Laws of 1908, to run for a
period of fifty years.

3. \$500,000 New County Jail Bonds, issued under
authority of Chapter 81 of the Laws of 1914, to
run for a period of forty years. **30**

All of the above issues of bonds to bear interest
at four and one-half per centum ($4\frac{1}{2}\%$) per annum,
payable semi-annually and to bear date the
first day of July, 1915. Said bonds to be Coupon
Bonds with the privilege of registration both as to
principal and interest.

The validity of all the above issues will be passed
upon by Messrs. Hawkins, Delafield & Longfellow,
of New York City, and the bonds will be pre- **40**

Minutes of Meeting, Board of Chosen Freeholders.

pared under the supervision of the U. S. Mortgage & Trust Co., of New York City, who will certify to the genuineness of the signatures of the county officials and the seal impressed thereon.

Each bid must be accompanied by a bank or certified check drawn upon some National Bank or Trust Company, payable to the order of Frederic
 10 Rider, County Collector, or cash to the amount of one per cent (1%) of the bid, enclosed in the sealed envelope with said bid.

Bidders may bid for the whole of said bonds or any part of each issue thereof.

The Board reserves the right to reject any or all bids if it be deemed for the best interest of the county so to do.

WALTER O'MARA,
 Clerk Board of Freeholders.

20 Filed.

The following bid was received:

(Bond Bid)

New York, July 8, 1915.

Walter O'Mara, Clerk, Board of Chosen Freeholders, Hudson County, New Jersey:

Dear Sir:

Referring to the \$1,050,000 Hudson County, New
 30 Jersey, Bonds, bearing interest at the rate of 4½% per annum, payable semi-annually on January 1, and July 1, dated July 1, 1915, issued in the denomination of \$1,000 in coupon form, with the full privilege of registration, both as to principal and interest, \$500,000 New County Jail Bonds, maturing July 1, 1955, without option of prior payment, \$300,000 Hudson County Park Bonds, maturing July 1, 1965, without option of prior payment, \$250,000 Newark Turnpike Improvement Bonds,
 40 maturing July 1, 1925, without option of prior pay-

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ment, we will pay 100.091% and accrued interest to date of delivery for \$550,000 of any of the above issues, provided you grant us an option for sixty days at 100.181% on the remaining \$500,000; we to have the right to exercise our option from time to time during the life of the option on any part of the remaining 500,000 bonds in block of not less than \$10,000.

10

Prior to the delivery of the bonds to us we shall expect to be furnished with a signed original copy of Messrs. Hawkins, Delafield & Longfellow's opinion approving the legality and regularity of the issue.

In accordance with the terms of your advertisement and our bid, we are enclosing you herewith duly certified check for \$11,000.

This bid is made on the understanding that it will be accepted to-day July 8th, 1915, or rejected and our deposit check returned to our representative.

20

Very truly yours,

N. W. HALSEY & Co.,
HARRIS FORBES & SON,
J. S. RIPPEL,
A. B. LEACH & Co.

(Regular Meeting, Board of Chosen Freeholders, Thursday, July 8, 1915.)

30

(Reject Bond Bid.)

Resolution No. 144.

Freeholder Auf der Heide, Chairman Finance Committee, thereupon offered the following resolution:

Resolved, That the joint bid (the only one received) for the three issues of bonds, to wit; \$500,-

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Minutes of Meeting, Board of Chosen Freeholders.

000 New County Jail Bonds; \$300,000 Hudson County Park Bonds, and \$250,000 Newark Turnpike Improvement Bonds, submitted by N. W. Halsey & Co., Harris Forbes & Son, J. S. Rippel and A. B. Leach & Co., be and the same is hereby rejected for the reason that the same is informal; and be it further

- 10** *Resolved*, That the certified check which accompanied said bid be returned forthwith; and be it further

Resolved, That the Clerk of this Board be and he is hereby directed to readvertise for bids for the purchases of said three issues of bonds, upon the same conditions under which bids were invited for this meeting, in the Jersey Journal and the Hudson Observer, and any out-of-town financial newspaper the County Collector may select; said bids to be received at the meeting of this Board to be held

20 Thursday, July 29, 1915, at 3 o'clock P. M.

Adopted by the following vote:

Yeas—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann, Untereiner and Director Keilt—9.

On motion of Freeholder Stuhmann a recess was taken to meet at the call of the chair.

- After recess, present at roll call: Freeholders
- 30** Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann, Untereiner and Director Keilt—9.

The minutes of meetings of June 10, 17 and 24, 1915, were approved as printed.

Minutes of Meeting, Board of Chosen Freeholders.

(Regular Meeting, Board of Chosen Freeholders,
Thursday, July 8, 1915.)

(State Aid Turnpike Improvement.)

To the Director and the Board of Chosen Freeholders of the County of Hudson, Jersey City, New Jersey:

GENTLEMEN :

10

I have to-day made a requisition on the Comptroller for \$90,000.00 to be set aside out of the Motor Vehicle Fund as part of the State's contribution for the Newark Turnpike. I have set aside from the receipts of previous years, for this purpose, the sum of \$56,000.00, and these sums amounting together to \$146,000.00 have been lumped in allotment No. 580 which will be forwarded to you as soon as the afore-named requisition has been approved. In addition to the above I intend to set aside from this year's receipts \$15,000.00, making a total of \$161,000.00, the amount I stated that you might expect to receive on this work. If the proposition meets with the approval of your Board, I would suggest that the sums that can be set aside by the State next year be also applied against this work.

20

I trust that the next Legislature will so amend the law that a portion of the Road Fund will be available for work of this character.

30

The plans and specifications submitted by your engineer meet with my approval.

Very truly yours,

E. A. STEVENS,
Commissioner.

Filed.

State of New Jersey.

Allotment No. 580.

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Department of Public Roads.

Hudson County.

Minutes of Meeting, Board of Chosen Freeholders.

Certificate of Allotment for Maintenance of Improved Roads.

Issued to Hudson County for work to be done on the Newark Turnpike on specification and plans approved by Freeholders, May 27,—'15.

An amount not to exceed one hundred and forty-six thousand 00/100 Dollars, \$146,000.00.

- 10 Will be paid as soon after return hereof properly filled out as the balance available will justify; this date is now thought to be on demand. Work will be done by contract. If work is to be done by contract award must be approved by the Commissioner before work is commenced.

This certificate replaces—

Cert. No. 253 for \$50,000

Cert. No. 529 for 6,000

20 and allots 90,000 additional.

\$146,000

Allotment approved, June 29, 1915,

E. A. STEVENS,

State Commissioner of Public Roads.

(Regular Meeting, Board of Chosen Freeholders, Thursday, July 8, 1915.)

30 (Supervisor Turnpike Bids.)

Jersey City, N. J., July 8th, 1915.

Hon. Director and Members of the Board of Chosen Freeholders, Court House, Jersey City, N. J.

GENTLEMEN:

Two weeks ago to-day your Board received bids for the reconstruction of the Newark Turnpike. I am writing you for the purpose of urging that all of the bids so received be rejected and the work be
40 proceeded with upon a different plan. I do this be-

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cause I deem it to be part of my duty to call to your attention the necessity of such action on your part.

My reason for suggesting that the bids be rejected and the work be proceeded with differently are as follows:

1. This roadway is one of two arteries connecting the downtown section of New York with the County of Essex and the suburban territory that lies adjacent thereto. The other road that I refer to is, of course, the Lincoln Highway. The Newark Turnpike is a much traveled roadway and is used largely by heavily loaded wagons. In my judgment, and I am informed that persons who are qualified upon the subject agree with me, the roadway should be constructed of granite block. Under no circumstances, in my judgment, should this roadway be laid with wooden blocks, as now planned. That character of pavement is entirely unsuitable for the purposes for which the road is to be used. It will be but a short while, if wood block is used, before the road will have to be torn up again and reconstructed. In this connection I might call your attention to the fact that the maintenance bond on this job is only \$10,000. In view of the well known history of short longevity of wooden block, it is almost criminal to exact only a \$10,000 maintenance bond.

2. If wood block is to be used, I believe the interest of the County will be served by rejecting these bids and re-advertising for the furnishing of blocks of "long leaf Southern yellow pine"—that is the standard specification in calling for wood blocks. I do not understand why these specifications do not call for long leaf pine.

3. I call your attention to the fact that the

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specifications fail to specify the quality of fill to be used for the making of the embankments. In my judgment this is an important detail—sufficiently so, if no other reason existed—to justify the rejection of all bids and the reforming of these specifications.

- 10 4. Likewise, equally important is the failure of the specifications to specify the character of stone to be used for the Telford base.

20 It is impossible under these specifications that limestone and Manhattan Island stone may be supplied and used as the foundation for the Telford. These stones are notoriously unfit for such use and the ideal foundation is a sound, hard trap rock. Unless trap rock is used, in my judgment—and I am confirmed in it by others—after a year or less of the travel to which this road will be subjected this foundation will be worn and sunk into the fresh fill until it will be out of grade the whole length of the road.

- 30 It is not my purpose to question the honesty or sincerity of the motives of anyone, and such thought would properly have no place in this statement. But in view of the statements and circumstances surrounding this proposed work, it is to my mind imperative that the job be not proceeded with, and that if for no other reason that the wood block appears to have been selected as the character of pavement after the plans were drawn.

It may seem a harsh criticism for me to say that any Freeholder who votes for this job as now planned will be recreant to his trust. I confidently hope that the entire Board will be a unit in rejecting the bids and examining with more care into this proposed job.

Yours very truly, -

40

JOHN MAGNER,
County Supervisor.

Minutes of Meeting, Board of Chosen Freeholders.

**(Regular Meeting, Board of Chosen Freeholders,
Thursday, July 8, 1915.)**

(Hearing on Turnpike Improvement.)

*To the Honorable, the Director and Members of the
Board of Chosen Freeholders of the County of
Hudson:*

GENTLEMEN:

10

Your committee on County Roads would respectfully report on the subject of the proposed improvement of the Newark Turnpike, for which bids were received at the last meeting, as follows:

While we are entirely convinced that the proceedings in regard to this improvement have been conducted with the greatest care and with absolute publicity and perfect frankness, and are in every respect above just criticism, yet we are aware that there has been, recently especially, a great deal of misrepresentation about the matter, and that this misrepresentation in some instances has gone so far as to attack the good faith and integrity of the Board in respect thereto. We, therefore, deem it advisable that before any contract shall be awarded there should be an opportunity afforded to those who oppose and to those who favor this improvement to give public expression to their arguments in support of their respective views.

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We are, therefore, of the opinion that, in order to have the matter thoroughly discussed by all who are interested for or against the improvement, a public meeting, to which all our citizens shall be invited, should be held at the earliest convenient date consistent with adequate notice to all concerned. For this reason, namely, that the minds of the people may be entirely satisfied as to the wisdom of the course we have pursued and not because we

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Minutes of Meeting, Board of Chosen Freeholders.

have any doubt as to the propriety of our conduct in the premises, we recommend that a public meeting, to be held in the largest available room in the County Court House, at 3 P. M., on Thursday, July 15th, at which time and place all persons who have anything to say for or against the said improvement may be fully heard in regard to it; and
10 that said meeting be advertised in the Jersey Journal and the Hudson Observer.

We also recommend that, in addition to the general invitation to the public, a personal invitation be sent to the editors of the papers that have adversely and openly criticised the action of the Board, and to Supervisor Magner, who is responsible for most of this criticism, so that they may have an opportunity to make good their assertions.

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T. J. PRIOR,
 HARRY HELLER,
 D. H. STUHRMANN,
 Committee.
 BERNARD J. KEILT,
 Director.

(Regular Meeting, Board of Chosen Freeholders, Thursday, July 8, 1915.)

30

(Tracks P. S. Railway on Turnpike.)

No. 148—By Freeholder Prior:

WHEREAS, Public Service Railway Company, a corporation of the State of New Jersey, presented its petition to this Board on the 8th day of July, Nineteen hundred and Fifteen, from which it appears that said Public Service Railway Company had received consent and permission from the Town Council of the Town of Kearny, to locate,
40 construct, operate and maintain connections be-

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tween its tracks in the Newark and Jersey City Turnpike and private property, situated on the northerly side of said turnpike, west of the Hackensack River, and that the location of said connecting tracks has been fixed and determined, and that such consent was granted by an ordinance entitled "An ordinance granting consent and permission to Public Service Railway Company, its successors and assigns, to locate, construct, operate and maintain connections between its tracks in the Newark and Jersey City Turnpike and private property, situated on the northerly side of said Turnpike, west of the Hackensack River, in the Town of Kearny, County of Hudson and State of New Jersey, which ordinance was passed on the twenty-sixth day of May, Nineteen hundred and Fifteen, and,

WHEREAS, Said Petitioner did further pray the Board of Chosen Freeholders of the County of Hudson to grant to it the consent of this Board to construct, operate and maintain said connecting tracks as provided in said ordinance; now, therefore, be it

Resolved, That consent be and the same is hereby given to Public Service Railway Company, its successors and assigns, to construct, operate and maintain said connecting tracks in the Newark and Jersey City Turnpike, west of the Hackensack River, together with the wires and poles necessary for the proper, safe and economical operation of same, the location of said tracks being described as follows:

(a). Is a connection between the northerly track in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, west of the Hackensack River, the center line of which begins at a point in the center line of

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said northerly track, distant two hundred eighty-six feet and sixty-seven hundredths of a foot (286.67) northwestwardly from the point of intersection of said center line with the transverse center line of the draw span of bridge spanning the Hackensack River between Newark avenue, in the City of Jersey City, and said Turnpike, in the Town of
10 Kearny, measured along the center line of said northerly track, extending thence as follows: (1) north forty-nine degrees, forty-four minutes (49.44) west, a distance of one hundred three feet and forty-five hundredths of a foot (103.45) to a point in the northerly side line of the Newark and Jersey City Turnpike west of the Hackensack River.

(b). Is a connection between the southerly track in the Newark and Jersey City Turnpike and private property situated on the northerly side of said
20 Turnpike, west of the Hackensack River, the center line of which begins at a point in the center line of said southerly track, distant two hundred forty-four feet and eight hundredths of a foot (244.08) northwestwardly from the point of intersection of said center line with the transverse center line of the draw span of bridge spanning the Hackensack River between Newark avenue, in the
30 City of Jersey City, and said Turnpike in the Town of Kearny, measured along the center line of said southerly track, extending thence as follows: (1) northwestwardly curving toward the left with a radius of two hundred two feet and thirty-five hundredths of a foot (202.35), a distance of seventy-five feet and eighty-seven hundredths of a foot (75.87) to a point of tangent; thence (2) north forty-nine degrees, forty-four minutes (49.44) west, a distance of one hundred two feet and
40 seventy-five hundredths of a foot (102.75) to a

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point in the northerly side of the Newark and Jersey City Turnpike west of the Hackensack River.

The tracks above described are shown on map numbered 13039 C attached to the petition on which this resolution is based.

The Company shall restore the parts of the highway disturbed by it to proper condition within sixty days from laying of tracks to the satisfaction of the Board of Chosen Freeholders of the County of Hudson. 10

Adopted by the following vote:

Yeas—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann, Untereiner and Director Keilt—9.

(Regular Meeting, Board of Chosen Freeholders, Thursday, July 8, 1915.) 20

(P. S. R'lway Tracks on Turnpike.)

No. 149—By Freeholder Prior:

WHEREAS, Public Service Railway Company, a corporation of the State of New Jersey, presented its petition to this Board on the 8th day of July, Nineteen hundred and Fifteen, from which it appears that said Public Service Railway Company had received consent and permission from the Town Council of the Town of Kearny to locate, construct, operate and maintain connections between its tracks in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, west of Belleville Turnpike, and that the location of said connecting tracks has been fixed and determined and that such consent was granted by an ordinance entitled "An ordinance granting consent and permission to Public Service 30 40

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Railway Company, its successors and assigns, to locate, construct, operate and maintain connections between its tracks in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, west of Belleville Turnpike, in the Town of Kearny, County of Hudson and State of New Jersey," which ordinance was passed on the twenty-sixth day of May, Nineteen hundred and Fifteen; and

WHEREAS, Said petitioner did further pray the Board of Chosen Freeholders of the County of Hudson to grant to it the consent of this Board to construct, operate and maintain said connecting tracks as provided in said ordinance; now, therefore, be it

Resolved, That consent be and the same is hereby given to Public Service Railway Company, its successors and assigns, to construct, operate and maintain said connecting tracks in the Newark and Jersey City Turnpike, west of Belleville Turnpike, together with the wires and poles necessary for the proper, safe and economical operation of same, the location of said tracks being described as follows:

(a). Is a connection between the northerly track in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, west of Belleville Turnpike, the center line of which begins at a point in the center line of said northerly track, distant five hundred thirty-one feet and forty-nine hundredths of a foot (531.49) westwardly from the point of intersection of said center line produced with the center line of Belleville Turnpike produced, extending thence as follows: (1) Westwardly curving toward the right with a radius of five hundred feet (500), a distance of one hundred thirty-nine feet and sixty-three hundredths of a foot (139.63) to a point of tang-

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ent; thence (2) north fifty-three degrees thirty minutes (53.30) west, a distance of one foot and seventy-two hundredths of a foot (1.72) to a point in the northerly side line of the Newark and Jersey City Turnpike, west of Belleville Turnpike.

(b). Is a connection between the southerly track in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, west of Belleville Turnpike, the center line of which begins at a point in the center line of said southerly track, distant five hundred twenty-three feet and ninety-one one hundredths of a foot (523.91) westwardly from the point of intersection of said center line produced with the center line of Belleville Turnpike produced, extending thence as follows: (1) Westwardly curving toward the right with a radius of five hundred feet (500), a distance of one hundred thirty-nine feet and sixty-three hundredths of a foot (139.63) to a point of tangent; thence (2) north fifty-three degrees, thirty minutes (53.30) west, a distance of seventy feet and forty-four hundredths of a foot (70.44) to a point of curve; thence (3) westwardly curving toward the left with a radius of five hundred feet (500) a distance of twenty-nine feet and eighty-six hundredths of a foot (29.86) to a point in the northerly side line of Newark and Jersey City Turnpike, west of Belleville Turnpike.

The tracks above described are shown on map numbered 13562-K attached to the petition on which this resolution is based.

The Company shall restore the parts of the highway disturbed by it to proper conditions within sixty days from laying of tracks to the satisfaction of the Board of Chosen Freeholders of the County of Hudson.

Adopted by the following vote:

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Yeas—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann, Untereiner and Director Keilt—9.

(Regular Meeting, Board of Chosen Freeholders, Thursday, July 8, 1915.)

10 (P. S. R'lway Tracks on Turnpike.)

No. 150—By Freeholder Prior:

WHEREAS, Public Service Railway Company, a corporation of the State of New Jersey, presented its petition to this Board on the 8th day of July, Nineteen hundred and Fifteen, from which it appears that said Public Service Railway Company had received consent and permission from the Town Council of the Town of Kearny to locate, construct, operate and maintain connections between
20 its tracks in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, east of Franks Creek, and that the location of said connecting tracks has been fixed and determined and that such consent was granted by an ordinance entitled: "An Ordinance granting consent and permission to Public Service Railway Company, its successors and assigns, to locate, construct, operate and maintain connections
30 between its tracks in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, east of Franks Creek, in the Town of Kearny, County of Hudson and State of New Jersey," which ordinance was passed on the twenty-sixth day of May, Nineteen hundred and Fifteen; and

WHEREAS, Said petitioner did further pray the Board of Chosen Freeholders of the County of Hudson to grant to it the consent of this Board to
40

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construct, operate and maintain said connecting tracks as provided in said ordinance; now, therefore,

Be it Resolved, That consent be and the same is hereby given to Public Service Railway Company, its successors and assigns, to construct, operate and maintain said connecting tracks in the Newark and Jersey City Turnpike, east of Franks Creek, together with the wires and poles necessary for the proper, safe and economical operation of same, the location of said tracks being described as follows:

(a). Is a connection between the northerly tracks in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, east of Franks Creek, the center line of which begins at a point in the center line of said northerly track, distant two hundred twelve feet (212) eastwardly from the point of intersection of said center line with the transverse center line of the bridge spanning Franks Creek, extending thence as follows: (1) eastwardly curving toward the left with a radius of two hundred two feet and thirty-five hundredths of a foot (202.35), a distance of seventy feet and sixty-three hundredths of a foot (70.63) to a point of tangent; thence (2) north seventy-three degrees, fifty-three minutes (73.53) east, a distance of forty-seven feet and thirty-one one hundredths of a foot (47.31) to a point in the northerly side line of the Newark and Jersey City Turnpike, east of Franks Creek.

(b). Is a connection between the southerly track in the Newark and Jersey City Turnpike and private property situated on the northerly side of said Turnpike, east of Franks Creek, the center line of which begins at a point in the center line of said

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southerly track, distant two hundred five feet (205) eastwardly from the point of intersection of said center line with the transverse center line of the bridge spanning Franks Creek, extending thence as follows: (1) south eighty-six degrees, seven minutes (86.07) east, a distance of sixteen feet and seventy-two hundredths of a foot (16.72)
10 to a point of curve; thence (2) eastwardly curving toward the left with a radius of two hundred two feet and thirty-five hundredths of a foot (202.35), a distance of seventy feet and sixty-three hundredths of a foot (70.63) to a point of tangent; thence (3) north seventy-three degrees fifty-three minutes (73.53) east, a distance of seventy-four feet and thirty hundredths of a foot (74.30) to a point in the northerly side line of the Newark and Jersey City Turnpike, east of Franks Creek.

20 The tracks above described are shown on map numbered 13040-C attached to the petition on which this resolution is based.

The company shall restore the parts of a highway disturbed by it, to proper condition within sixty days from laying of tracks, to the satisfaction of the Board of Chosen Freeholders of the County of Hudson.

Adopted by the following vote:

30 Yeas—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann, Untereiner and Director Keilt—9.

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(Adjourned Meeting, Board of Chosen Freeholders, Thursday 15th, 1915.)

(Hearing on Turnpike Improvement.)

Adjourned meeting of the Board of Chosen Freeholders of the County of Hudson, held in the Court House, Jersey City, N. J., Thursday, July 15, 1915, at 3 o'clock, p. m.

10

Present at roll call—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhrmann, Untereiner and Director Keilt, 9—all the members of the Board.

On motion of Freeholders Stuhrmann the regular order of business was suspended for the purpose of giving a hearing on the proposed improvement of the Newark Turnpike, in accordance with the following advertisement:

20

A Public Hearing
on the Question of the
Newark Turnpike Improvement
will be held at the
Court House, Jersey City,
Thursday, July 15, 1915,
at 3 o'clock, p. m.

pursuant to the resolution adopted at the meeting of the Board of Freeholders held July 8, 1915, approving of the following report:

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To the Honorable, the Director and Members of the Board of Chosen Freeholders of the County of Hudson.

GENTLEMEN:

Your committee on County Roads would respectfully report on the subject of the proposed improvement of the Newark Turnpike, for which bids were received at the last meeting as follows:

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While we are entirely convinced that the proceedings in regard to this improvement have been conducted with the greatest care and with absolute publicity and perfect frankness and are in every respect above just criticism, yet we are aware that there has been, recently especially, a great deal of misrepresentation about the matter and that this

10 misrepresentation in some instances has gone so far as to attack the good faith and integrity of the Board in respect thereto; we, therefore, deem it advisable that before any contract shall be awarded there should be an opportunity afforded to those who oppose and to those who favor this improvement to give public expression to their arguments in support of their respective views.

We are, therefore, of the opinion that, in order to have the matter thoroughly discussed by all who

20 are interested for or against the improvement, a public meeting to which all our citizens shall be invited, should be held at the earliest convenient date consistent with adequate notice to all concerned. For this reason, namely, that the minds of the people may be entirely satisfied as to the wisdom of the course we have pursued, and not because we have any doubt as to the propriety of our conduct in the premises, we recommend that a public meeting be held in the largest available room in the

30 County Court House, at 3 p. m., on Thursday, July 15, at which time and place all persons who have anything to say for or against the said improvement may be fully heard in regard to it; and that said meeting be advertised in the Jersey Journal and the Hudson Observer.

We also recommend that, in addition to the general invitation to the public, a personal invitation be sent to the editors of the papers that have

40 adversely and openly criticised the action of the

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Board, and to Supervisor Magner, who is responsible for most of this criticism, so that they may have an opportunity to make good their assertions.

T. J. PRIOR,
HARRY HELLER,
D. H. STUHRMANN,
Of the Committee.
BERNARD J. KEILT,
Director.

10

History of the improvement of the Newark Turnpike from inception to date.

During the progress of the improvement of the Newark Plank Road, it had been the design of the Board, upon the completion of that work, to repair the Newark Turnpike. This latter highway is approximately three and one-half miles in length and approximately, for general traffic, twenty-two feet in width. The Public Service Company operated its street railway on either side of the road, and the main line of the Delaware, Lackawanna and Western Railroad crossed the road at grade, at which crossing the view was obstructed on each side by the over head structure of the Public Service and buildings on the southerly side of the Turnpike, making it one of the most dangerous grade crossings in the State. It was recognized that in order to make the improvement permanent and satisfactory, it would be necessary to widen the road, to put a satisfactory and permanent pavement on it; to eliminate the Lackawanna's rail crossing and to procure the removal of the Public Service Railway Company's tracks from the road altogether.

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With these objects in view, a conference was held on April 25, 1913, in the office of the County Supervisor. The conference was attended by State

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Road Commissioner Stevens, State Engineers Meeker & Vail, the Road Committee of the Board of Freeholders, County Supervisor O'Mealia, County Counsel Haight, County Engineer Wasser and the Clerk of the Board.

10 The improvement was discussed in a general way, and the determination between the counsel and the State Road Department to proceed under Laws of 1912 was reached. Several technical questions were discussed by the County Engineer and the State Road Department. The result of the conference was that the Board, through its officers, was to take the matter of the elimination of the grade crossing up with the Lackawanna officials and also to try and arrange satisfactory terms with the Public Service officials.

20 A few weeks after this conference, the officers of the Board held a conference in the Supervisor's office with Engineer Rea and Assistant Engineer Hand, of the Lackawanna, at which the grade crossing elimination was discussed. The County Engineer furnished the Lackawanna officials the drawings of the Turnpike and asked them to submit to their executive officers the proposition for the elimination of the grade crossing at the Lackawanna's expense.

30 After several conferences, the Lackawanna officials submitted a satisfactory plan but stipulated that the Public Service should not use this structure unless they contributed a percentage of the cost thereof. They also submitted an agreement which they would execute provided a right of way was given them by the removal of the Public Service structure to begin the work at a date early enough to complete same before frost of that year. In the event of our not being able to give them
40 this right-of-way at the date they required, then

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they stipulated that the agreement should go over another year.

The officers of the Board then conferred with the Public Service officials, and after several conferences, the Public Service Company, through its President, notified the Board that it would improve its own right-of-way, which adjoins the Turnpike, and remove its rail thereto. The Public Service Company did, in 1913, fill their private right-of way from Franks Creek to the Hackensack River, preparatory to the removing of their rails. 10

The Board expected that in 1914 the Public Service would proceed with the erection of their viaduct over the Lackawanna. They, however, took no steps to do this. Early in the present year, answering a query of the County Engineer, the Public Service Company notified the Board that they intended to remove their tracks on the Turnpike, from Franks Creek to the Belleville Turnpike, during the current year. Thereupon the plans and specifications were prepared by the County Engineer to proceed with the improvements, under the Act of 1912. 20

On May 13, 1915, the Board passed a resolution approving the plans and specifications, and asking that bids be advertised for. A question then arose with the Law Department as to the validity of the Board to make this improvement, under the act of 1912, and a conference with the State Road Department was determined upon. 30

On May 19, 1915, this conference was held at the office of the Board. Commissioner Stevens, Engineers Meeker and Vail, the Road Committee of the Board, the County Counsel, the County Engineer, the Clerk and representatives of the press attended. The County Supervisor was requested to attend this conference, but failed to do so. Commissioner 40

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Stevens stated at the conference that he was in position to allot \$105,000 to the motor vehicle funds, which, added to \$56,000 theretofore allotted, would make a total of \$161,000. He stated further that he had no legal right to anticipate future revenues, consequently he could not approve a contract which called for more money than there was in hand.

- 10 Section 27, of the Laws of 1912, authorized the County to issue bonds in a sum not greater than the amount contributed by the State. The Engineer's estimate of the cost of the improvement was approximately \$600,000; and under Section 27, of the Act of 1912, it was possible to raise, including the State's contribution, only \$322,000, which made it impossible for the Board to proceed under that act. The County Counsel suggested that the only law which this improvement could be made was an Act
- 20 of 1902, and the State Road Commissioner agreed that if the Board proceeded under the Act of 1902, instead of under the Act of 1912, he would allot \$161,000, under the motor vehicle act.

- The Road Committee then requested the County Supervisor to veto the resolution of May 13th, which provided for the repair of the road, under the Act of 1912, which he did, and said veto was sustained at a meeting of the Board on May 27th.
- 30 On May 27, the Board passed a resolution to proceed, under the Act of 1902, and the County Engineer was directed to prepare a specification agreeable to the Act of 1902, which specification was subsequently approved by the State Road Department and the Clerk was directed to advertise for bids, which were to be received on June 24th. All of the conferences above mentioned were fully reported in the public press as they occurred.

- The Board, on June 24th, received bids for the
- 40 improvement, which were as follows:

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Joseph Ledger	83.9%
Van Kuren & Sons	82.5%
William Baken, Incorporated	82.0%
Charles Kavanagh	84.9%
Joseph Waddington	85.0%
Nolan & Hornung	87.0%
William J. Coughlin	82.9%

A communication was handed to the Clerk, prior
to the receipt of bids, which professed to be from a
firm who had never bid on County work, and who
stated their desire to bid. The Board, following
the usual rule in this case, had caused copies of the
plans and specifications to be made, and a set of the
plans and specifications was delivered to everyone
who applied for such set, on the deposit of \$25. to
ensure the return of the same after the prospective
bidder had used it in the preparation of his bid. 10
The firm that presented the protest complained that 20
they had not time to prepare their bid so as to con-
form to the plans and specifications, but the fact is
that they had not taken the trouble to obtain a set
of plans and specifications, and had made no appli-
cation for such set, as is shown by the records in the
office of the Board. It is solely upon the complaint
of this firm that the allegation is made of undue
haste in the prosecution of the improvement. No
bidder or prospective bidder who had obtained a 30
copy of the plans and specifications complained of
the shortness of the time allowed for the framing
of his bid on such plans and specifications.

Up to the time of the receipt of bids, not one
word of criticism was heard from any source re-
garding the plans and specifications or anything
connected therewith. On the morning following
the receipt of bids, a local morning paper made the
charge that the County Board had thrown away
\$161,000 of State aid and rushed the job through in 40

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the face of a protest. On June 29th, County Counsel Murphy, County Engineer Wasser and the Clerk went to Trenton by appointment and conferred with the State Road Department in reference to this allotment of \$161,000. Commissioner Stevens, together with the aboved named, called at the Attorney-General's office and had a discussion

10 with First Assistant Attorney-General Boggs in the absence of the Attorney-General. As a result of the discussion, the State Road Commissioner forthwith made out an allotment of \$146,000 and handed same to the Clerk of the Board, together with a letter which stated that an additional \$15,000 would be contributed from early motor vehicle funds within the current year, and suggested that the allotment of motor vehicle moneys for next year be also applied to this improvement.

20 On the seventh instant, Colonel Stevens wrote a letter to County Counsel Murphy, which informed him that there was some doubt in the Attorney General's mind as to the legality of the allotment which had been made by Colonel Stevens and that the matter would be taken under further advisement by himself and assistants.

This involves purely a question as to the construction of a statute, but some gentlemen, for their own purposes, have seen fit to make it a question of politics. If their zeal for what they conceive to be their political advantage should result in the loss to the County of the State's contribution, they will have to bear the consequences of their course and answer for it to the people, while the County will be deprived of this money until the next session of the Legislature, when the defects of the present law, if it be defective, may readily be corrected by legislation.

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40 Filed.

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Director Keilt made the following statement:

Now, gentlemen, the purpose of this meeting is to offer an opportunity to our citizens who are interested in the Turnpike Improvement to fully and freely express their views on the subject.

We have no fixed opinion on this matter, but we do claim that in the course which we have pursued we have been actuated by no other motive than to promote the best interests of all the people of our county. 10

We are their servants and we fully recognize our responsibility to them. If in connection with this improvement we have made any mistake in the plans or specifications, or in any of the details, we shall be thankful to have them pointed out to us so that they can be promptly corrected. It has been charged by the County Supervisor and by some of our newspapers that there are mistakes and something worse than mere mistakes in the plans and specifications. So far as these charges have been made specific, we are quite satisfied that they are unfounded, but many of them are vague and general. In order, therefore, that the whole matter may be thoroughly thrashed out so that there can no longer be any misapprehension in the public mind, this meeting has been called. We, of the Freeholders, do not seek any victory over those who have been attacking us. What we are striving to get at and make plain to all is the truth of the matter in controversy. In order that this be done we shall first call on our critics and opponents to say what they have to say on the subject, and then we shall present our views. 20 30

While every speaker will be allowed all the time he desires within reason, we shall expect that those who take the floor on either side, will be good enough to submit to interruption and questions in 40

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the course of their remarks so that each point may be thoroughly disposed of as it is made. This method will, we think, be helpful to the speakers in making their points, and to the audience in understanding them.

- Each gentleman as he arises to speak will please give his name and address, and his business and
10 place of business. If he speaks as a representative of any organization, he will give the name of the organization and the locality in which it exists.

Now, we will hear from anyone that has any objection to or criticism of the plans and specifications adopted by the Board in reference to any feature of the proposed improvement. We shall first hear from the County Supervisor, Mr. Magner.

Filed.

- 20** The following persons addressed the Board protesting against wood block pavement on the Improvement, viz.:

Mr. Milton, of Jersey City, representing the County Supervisor, also presenting petitions, protesting against wood block pavement.

Colonel J. W. Howard, consulting engineer, of 1 Broadway, New York, also represented the County Supervisor.

- 30** Mr. McDermott, of Jersey City, representing himself.

Mr. Hanna, Secretary of the Pavers' Society.

Mr. Thomas J. Stewart, of Jersey City.

Mr. Kennedy, of Jersey City.

Also a communication from the Team Owners' Association of Hudson County.

- The following persons addressed the Board in favor of wood block pavement on the improvement,
40 viz.,

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Mr. Thomas Wasser, County Engineer, read the following communication.

NEWARK TURNPIKE IMPROVEMENT.

In view of the vast amount of newspaper criticism heaped upon the Board of Chosen Freeholders of Hudson County, of which I am the Engineer and in direct charge of the Newark Turnpike Improvement. I feel greatly pleased to have this opportunity to present to the public the actual facts in connection with the proposed improvement. 10

Some criticisms were made which obliges me to make comparison with some paving work in Jersey City regarding cost per square yard and wearing qualities, also a comparison with Lincoln Highway formerly known as the Newark Plankroad.

Beginning with Bergen avenue, from Fairmount to Sip avenues, in Jersey City, wood block on six-inch concrete, cost 83 9-10 per cent. of \$3.15, or \$2.64 per square yard, allowing sixty cents for the concrete, leaves \$2.04 against the price of \$2.05 bid on the Newark Turnpike. There were no protests on wood block and all kinds of traffic used the thoroughfare. 20

Montgomery street, from Hudson to Henderson streets, granite block including sand cushion cost 96.5 per cent. of \$2.80, or \$2.70 per square yard, which exceeds the price on wood block for the Newark Turnpike 65 cents per square yard and would add an additional cost of \$43,650.75 to the cost of the work. Should granite block be substituted for wood block on the Newark Turnpike, taking the lowest figure received, would add an additional cost of \$22,161.15, so the statement that granite block cost only slightly more than wood block is erroneous. 30

I use Montgomery street as a comparison for the 40

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reason it is subject to heavy traffic, has been laid about two years and has already been subjected to extensive repairs.

10 Newark Plank Road or Lincoln Highway, located on the meadows between Jersey City and Newark, having two roadways one of granite, the other of wood block, was completed in sections, the work
10 extending from the fall of 1912 to the spring of 1913, was built under my supervision in conjunction with the Engineer of Essex County.

20 To criticize any part of this work one should be familiar with the conditions under which the road was built. Prior to the commencement of the work the Plank Road as it existed was a total width of 45 feet and a traveled width of 19 feet, which was widened to 100 feet. On the portion of the road from Jersey City to the Passaic River granite
20 block was laid on that portion of the road over the old Plank Road and the wood block was laid over the portion of the new fill on the meadows. West of the Passaic River the conditions were reversed, wood block being laid over the old road and granite on the new fill over the meadows. This was done in order to straighten out the road and at the same time make two continuous roads of each kind of
30 pavement, with the result that to-day the wood block pavement west of the Passaic River is in perfect condition and from Jersey City to the Passaic River the wood block is in good condition although laid on the new fill and is far better than the granite which recently had to be repaired at different places along the entire length of the road. The wood block pavement is still under guarantee and the few depressions will shortly be repaired by the contractor who laid the work. The only conclusion that can be arrived at is

40 FIRST—That wearing surface of wood block is

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more elastic than granite and makes it a more durable wearing surface.

SECOND—The weight per square yard of pavement; wood block is only one-fifth as heavy as granite, which makes this point a factor of considerable importance.

THIRD—As to the durability of wood block pavement, I have only to show you a block removed yesterday from the heavily trafficed portion of the roadway of the Hackensack River Bridge over the line of the Lincoln Highway, which said bridge carries the entire traffic of both the wood and granite roadways of the above mentioned road. This wood block has been under traffic for ten years, and shows a wear of three-eighths of an inch. 10

The traffic census taken on this road shows that about 4,000 vehicles passed over the road daily and at present is the heaviest traveled road leading out of Hudson County. 20

When the type of pavement to be laid on the Lincoln Highway was taken up, it was necessary to hold an open hearing before Commissioner Stevens, who after considerable investigation decided on wood and granite, as the road is now built.

Shortly after the road was opened to traffic in January of 1913, the City Planning Commission of Newark, made a traffic census of the Newark Plank Road, which was published in full in the Newark Evening News of January 23, 1913, a summary of which showed that of the entire vehicular traffic over the road, seventy-one and three-tenths used the wood block, and twenty-eight and seven-tenths per cent. used the granite blocks. Of the horse-drawn iron-tired vehicles alone sixty-six and seven-tenths per cent. used the wood block and thirty-three and three tenths per cent. used the granite. 30 40

Minutes of Meeting, Board of Chosen Freeholders.

The report concludes as follows :

"Since there is a slight preference for wood block by iron-tired traffic, and since wood block is preferred almost universally by rubber-tired traffic, it is the opinion of the writer that wood block is superior to granite block pavement under conditions now extant upon the Plank Road."

10 The Newark Turnpike, in my opinion, is a motor road, for the reason that it is the longer of the two roads leading from the Jersey City ferries to Newark, and trucks will take the shorter route. The construction of the Newark Turnpike will be similar to the wood block section of the Lincoln Highway west of the Passaic River, where the work was constructed directly over the old road, and where the wood blocks is in excellent condition to-day.

20 As to the statement that the counties were obliged to police the Lincoln Highway and keep heavy traffic off the wood block, because it was too much for the wood block to stand, is not so; the reason why the counties were obliged to put traffic men on was because so many horse-drawn and motor trucks used the wood block roadway that it became congested and automobilists complained to the superintendent of the highway, who in turn reported to the joint committee, with the result that

30 traffic men were placed on the road.

The City of Newark has just completed, in June of this year, a comparative report of traffic for the years 1912 and 1915. Extracts from the report show that on Washington street and Mulberry street, which parallel Broad street, traffic has decreased thirty-two per cent. on these two streets since the wood block pavement was laid on Broad street, and traffic has increased nearly forty per cent. along the entire business section of Broad

40 street.

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A summary of the vehicular traffic shows that between the years 1912 and 1915:

	Per Cent.
Iron-tired vehicles decreased	12.97
Auto trucks increased	202.51
Automobiles increased	113.03
Rubber tired, horse-drawn vehicles decreased,	28.98

Since 1912, traffic has increased on Lincoln Highway 101.3 per cent., and decreased on the Bridge street bridge, leading to the Newark Turnpike, 33.7 per cent. This is undoubtedly due to the good condition of the Lincoln Highway, together with the increase of traffic and the poor condition of the Newark Turnpike. Traffic conditions on the Newark Turnpike the past few weeks shows four motor vehicles to one horse-drawn vehicle. 10

Taking up the question of the Newark Turnpike Improvement, from the first I felt satisfied that the wearing surface of the roadway should be either wood block or granite, for as far as I could ascertain they were the most desirable pavements on the market. From my observations of the effect of traffic on the Lincoln Highway, my preference was for wood block, which I recommended to the Road Committee of the Board of Chosen Freeholders as a suitable pavement for the improvement. My reasons for so advising the Committee are these: 20

As the Newark Turnpike would be improved across a meadow, the weight of wood block per square yard is about one-fifth the weight of granite. 30

2nd. The 1913 census of the Lincoln Highway shows that vehicular traffic prefers it.

3rd. There being no grades, slipperiness would be a small factor.

4th. Cheaper in cost. 40

Minutes of Meeting, Board of Chosen Freeholders.

5th. It would principally be a motor road.

6th. Its durability was equal to if not greater than granite, where traffic conditrons are the same.

10 Since this general discussion of the improvement has been agitated I have made inquiries regarding the merits of wood block as compared to granite, and in all but one case wood block was considered equal, if not superior, to granite, where grades are not to be considered. The one case opposed to wood block was the field secretary of the Eastern Granite Association, who informed me, in the presence of my office staff, that he would use all his influence to upset the contract calling for wood block on the Newark Turnpike. I am therefore fully convinced that my judgment in the matter of recommending wood blocks has been fully confirmed, but several
20 people have considered a new departure and feel they were justified in criticising same is the use of Telford as a base in place of concrete. In reply I will state that after a careful consideration of the proposed improvement I knew it would be impossible to shut off traffic for a period of time sufficient to complete the work. I knew I must devise some means for traffic during construction, and the cheapest and best was Telford road, which while under traffic would soon show if all settlement had
30 not taken place, and I further provided that the contractor should keep it in repair. This pavement, should any low spots develop, could be taken up and repaved, which could not be done with concrete. This is not the first time a Telford road has been used for a base for wood blocks. I quote you as follows from Spalding's Text Book on Roads and Pavements, page 173: "In Duluth a Telford foundation has been employed under wood, laid in the
40 same manner as for a broken stone road. A layer

Minutes of Meeting, Board of Chosen Freeholders.

of gravel was placed upon the Telford pavement and rolled to a smooth surface, after which the wood blocks were laid directly upon the gravel. The reason given for the application of this foundation, instead of concrete, in this instance, is that the road bed is of soft material, which in many places could not be compacted by the use of a heavy roller before the placing of the concrete, while the stones in the Telford foundation are forced to a firm bearing and give a uniform support.” 10

All the problems involved and methods of construction were carefully figured out and the plans and specifications carefully drawn, the work advertised, prospective bidders were furnished with sets of plans and specifications, with the result of close competitive bidding. Seven bids were received, the lowest 82 per cent., and the highest 87 per cent. of my standard of prices. 20

T. J. WASSER,
County Engineer.

Filed.

Mr. McCann, as a taxpayer of 395 Bergen avenue, Jersey City.

The following communication from Arthur H. Blanchard, Consulting Engineer, of New York, was read :

GENTLEMEN :

In accordance with the authorization, dated July 12, 1915, addressed to the undersigned by the Clerk of the Board of Freeholders, Mr. Walter O'Mara, the undersigned, has examined the plans and specifications for and has visited the site of the proposed improvement of the Newark Turnpike Road, lying between the westerly end of the bridge across the Hackensack River and Schuyler avenue, the dividing line between the towns of Kearny and Harrison, Hudson County, N. J. 30 40

Minutes of Meeting, Board of Chosen Freeholders.

As certain features of the design and specifications are in controversy between the Board and Mr. John Magner, County Supervisor, it is considered advisable to submit a statement relative to the points at issue.

WOOD BLOCK PAVEMENT.

- 10** The present status of wood block pavements has been referred to since bids for the improvement were submitted. This type of pavement is considered by the leading engineers of the United States and Europe to be a standard form of construction for streets in municipalities and to be durable under heavy traffic. As illustrations of its use on streets carrying a large amount of traffic may be cited, many roadways paved with wood blocks in New York, Chicago, Philadelphia, London and Paris.
- 20** The two national organizations of the United States which have adopted specifications for standard types of pavements for use in municipalities namely the American Society of Municipal Improvements and the Association for Standardizing Paving Specifications," have adopted standard specifications for wood block pavement. An examination of County Engineer Wasser's specifications for wood block pavement shows careful deliberation in their preparation.

30

SOUTHERN YELLOW PINE.

- A point has been raised relative to the kind of wood which should be allowed for wood block pavements. It has been stated that long leaf southern yellow pine should have been specified. This section is, without doubt, based upon the confusion resulting because different meanings are attached to the term "Longleaf Southern Yellow Pine," by botanists and by commercial users of timber.
- 40** Carefully drawn specifications now simply refer to this

Minutes of Meeting, Board of Chosen Freeholders.

type of wood as "Southern Yellow Pine" as was used by County Engineer Wasser, as contained in the standard specifications of the American Society of Municipal Improvements adopted at the 1914 convention.

TELFORD FOUNDATION.

It has been stated that only trap rock should be used for the Telford foundation. It should be noted in this connection that there are limestones, granites and other types of rocks which possess qualities of hardness, toughness and crushing strength which enables them to be satisfactorily used for foundation purposes on highways subjected to heavy traffic and that, by showing their use, competition of materials is increased and the cost of the work, therefore, reduced in many cases.

EMBANKMENT.

The criticism that County Engineer Wasser has not covered in his specifications the method of making the embankment does not appear to be germane as the first paragraph on page 9 of the contract treats of the method of construction of the embankment in detail.

MAINTENANCE BOND.

The amount of the bond covering the maintenance of the wood block pavement, namely, \$10,000, has been subject to criticism. It should be pointed out that the maintenance bond only covers that portion of the contract dealing with the maintenance of the wood block pavement for five years. It is evident, therefore, that the amount of the bond should only be considered with reference to the contract price of the wood block pavement. In this connection it is of interest to note that the standard specifications of the State of New York call for a

Minutes of Meeting, Board of Chosen Freeholders.

maintenance bond equivalent to "a sum equal to 5 per cent. of contract price for that part of the work for which guaranty is required."

- 10 Considering the local conditions which have been brought to the attention of the undersigned and the methods of construction which have had to be adopted due to the traffic conditions, the use of Telford for foundation purposes is approved. Furthermore, the selection of a wood block pavement for the light grades of the Turnpike would provide a much more satisfactory surface from the standpoint of use by the various classes of traffic than would have been the case if a granite block pavement had been selected. Observations of the preference of many types of traffic for the wood block pavement instead of the stone block pavement on the Lincoln Highway, between Newark and Jersey City, is evidence in support of the decisions of the Board.
- 20

With kindest regards and best wishes, I remain,
at your service,

Sincerely yours,
ARTHUR H. BLANCHARD,
Consulting Highway Engineer.

Filed.

- 30 Mr. E. T. Goodrich, Consulting Engineer, of New York.

Mr. Richard Lamb, Engineer, of New York.

Mr. Charles W. Tilson, Engineer, of New York.

Colonel Edw. Stevens, State Road Commissioner of New Jersey.

George E. Blakeslee, of Jersey City.

On motion of Freeholder Stuhmann the regular order of business was resumed.

Minutes of Meeting, Board of Chosen Freeholders.

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, July 22nd, 1915.)

No. 168.

Resolved by the Board of Chosen Freeholders of the County of Hudson, That the Director and Clerk of this Board shall execute an agreement in the following words and figures :

“Articles of Agreement between Public Service Railway Company, a corporation of the State of New Jersey, party of the first part, hereinafter called ‘Railway’ and the Board of Chosen Freeholders of the County of Hudson, State of New Jersey, party of the second part, hereinafter called ‘Freeholders.’ ”

10

WHEREAS, Railway is now maintaining and operating a double track street railway on Newark and Jersey City Turnpike, between Frank Creek and the Hackensack River, consisting of one track on each side of said Turnpike; and

20

WHEREAS, Said Turnpike is a road under the supervision and control of Freeholders; and

WHEREAS, Freeholders desire to improve the said Turnpike road by raising its grade, widening and paving the same and by separating the grade thereof from the grade of the Morris & Essex Railroad tracks at Sandford’s Crossing; and have made, or are about to make, an agreement with the Morris & Essex Railroad Company and the Delaware, Lackawanna & Western Railroad Company, its lessee, to elevate said Turnpike and carry the same across the tracks of the Morris & Essex branch of the Delaware, Lackawanna & Western Railroad at a point known as Sandford’s Crossing; and

30

WHEREAS, The Belleville Turnpike, also a road under the direction and control of Freeholders joins the said Newark and Jersey City Turnpike at the

40

Minutes of Meeting, Board of Chosen Freeholders.

point where it is proposed to elevate the Jersey City Turnpike, to carry the same across said Morris & Essex Railroad; and

WHEREAS, In the carrying out of said improvement it will be necessary to elevate the Belleville Turnpike at its junction with the said Newark and Jersey City Turnpike, so that the same may meet
 10 at a common grade; and

WHEREAS, Railway is the owner of a strip of land adjoining said Newark and Jersey City Turnpike, and Freeholders have requested Railroad to remove its tracks from said Turnpike, and reconstruct the same on said strip of land; and

WHEREAS, In the reconstruction of said tracks by Railway it is necessary to cross the Belleville Turnpike aforesaid and the proposed elevation of
 20 said Belleville Turnpike makes it feasible for Railway to cross the same beneath the proposed surface thereof;

Now, Therefore, This Agreement Witnesseth:
 That for and in consideration of the premises, said Freeholders of the County of Hudson hereby agree to and with Railway, that it, said Freeholders, will cause said Belleville Turnpike to be so elevated and constructed as to leave a passageway beneath the surface of the same for Railway, which passageway
 30 shall be twenty-six feet in the clear, measured at right angles, between perpendicular walls, and the center line between said walls parallel thereto and distant thirteen feet therefrom shall cross the center line of said Belleville Turnpike at the same angle which said center line makes with the center line of the Newark and Jersey City Turnpike east of the point where said center lines intersect, so that the minimum clearance between top of rail and bottom of bridge is not less than fourteen feet no inches
 40 (14.0) and the elevation of top of rail at any point under bridge is not more than ten and five-tenths

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feet (10.5) above the datum line taken as mean low water United States Government measurement. And Freeholders hereby further agree to maintain said opening, including the supports and walls thereof and the bridge carrying Belleville Turnpike across the same, and hereby further agree that Railway shall have the right to construct its double track street railway across and beneath the surface of said Turnpike, and perpetually maintain the same without any cost, charge, maintenance or expense to Railway, except the maintenance of its tracks and the foundations therefor. 10

The details of said crossing and method of the same are shown on plan hereto annexed and made a part hereof.

In Witness Whereof, Railway hath hereunto set its corporate seal and cause these presents to be signed by its Vice-President, attested by its Secretary; and Freeholders hath hereunto set its corporate seal and caused these presents to be signed by its Director, attested by its Clerk. Dated the day of , nineteen hundred and fifteen. 20

PUBLIC SERVICE RAILWAY COMPANY.
By

Vice-President.

Attest:

Board of Chosen Freeholders of the County of Hudson. 30

By

Director.

Attest:

Clerk."

And be it Further Resolved, That this resolution shall take effect immediately.

Adopted by the following vote:

Yeas—Freeholders Auf der Heide, Boylan, Heller, Lally, Meehan, Prior, Stuhmann, Unter-einer and Director Keilt—9. 40

Minutes of Meeting, Board of Chosen Freeholders.

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, July 29th, 1915.)

(Bond Advertisement.)

(Proposal for Bonds, Hudson County, N. J., Bonds.)

By virtue of three separate resolutions, adopted by the Board of Chosen Freeholders of the County of Hudson, at the meeting held June 10, 1915, public notice is hereby given that sealed bids or proposals will be received and opened at the meeting of said Board, to be held in the Court House, Jersey City, N. J., on Thursday, July 29, 1915, at 3 o'clock P. M., for the sale of bonds to provide funds for the following improvements, viz.:

(1). \$250,000 Newark Turnpike Improvement Bonds, issued under authority of Chapter 58 of the Laws of 1900, and Chapter 25, of the Laws of 1902, to run for a period of ten years.

(2). \$300,000 Hudson County Park Bonds issued under authority of Chapter 277 of the Laws of 1902, and Chapter 19, of the Laws of 1908, to run for a period of fifty years.

(3). \$500,000 New County Jail Bonds, issued under authority of Chapter 81, of the Laws of 1914, to run for a period of forty years.

All of the above issues of bonds to bear interest at four and one-half per centum ($4\frac{1}{2}\%$) per annum, payable semi-annually, and to bear date the first day of July, 1915. Said bonds to be Coupon Bonds with the privilege of registration, both as to principal and interest.

The validity of all the above issues will be passed upon by Messrs. Hawkins, Delafield & Longfellow, of New York City, and the bonds will be prepared under the supervision of the U. S. Mortgage & Trust Co., of New York City, who will certify to the genuineness of the signatures of the County officials, and the seal impressed thereon.

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Each bid must be accompanied by a bank of certified check, drawn upon some national bank or trust company, payable to the order of Frederic Rider, County Collector; or cash, to the amount of one per cent., (1%) of the bid, enclosed in the sealed envelope with said bid.

Bidders may bid for the whole of said bonds, or any part of each issue thereof. 10

The Board reserves the right to reject any or all bids if it be deemed for the best interests of the County so to do.

WALTER O'MARA,
Clerk Board of Freeholders.

Filed.

(Bond Bids.)

The Director appointed as tellers, Freeholders Prior and Boylan. 20

The following bids were received:

\$500,000, new County Jail, 40-year bonds.

\$300,000, Hudson County Park, 50-year bonds.

\$250,000, Newark Turnpike Improvement, 10-year bonds.

Sinking Fund Commission of Hudson County, \$1,050,000, total issue, par and accrued interest.

Commercial Trust Company of New Jersey and Outwater & Wells, \$1,050,000, total issue. Premium of \$1,840 and accrued interest. 30

Lincoln Trust Company of New Jersey. Premium of \$81.25 for issue, or \$25,000 Newark Turnpike Improvement bonds.

Referred to the Finance Committee, the County Collector and Counsel of the Board.

On motion of Freeholder Prior, a recess was taken, to meet at the call of the Chair.

After recess, present at roll call: 40

Minutes of Meeting, Board of Chosen Freeholders.

Freeholders Auf der Heide, Boylan, Heller, Lally,
Meehan, Prior, Stuhmann and Untereiner—8.
Absent—Director Keilt.

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, July 29, 1915.)

10 No. 173—By the Committee on Finance:
JERSEY CITY, JULY 29, 1915.

Hon. Director and Members of the Board of Chosen Freeholders, of the County of Hudson, N. J.:

GENTLEMEN:

Your Committee on Finance, to whom were referred the several bids received at this meeting for the three issues of bonds dated July 1, 1915, would respectfully report having examined the same and find the joint bid of the Commercial Trust Company, of New Jersey, and Outwater and Wells, to be the highest bid received.

Your Committee would therefore recommend the adoption of the following resolution:

Resolved, That the following issues of Hudson County $4\frac{1}{2}\%$ bonds, dated July 1, 1915, to wit:

\$500,000.00, New County Jail, 40-year bonds.

\$300,000.00, Hudson County Park, 50-year bonds.

30 \$250,000.00, Newark Turnpike Improvement, 10-year bonds

be, and the same are hereby awarded and sold to the Commercial Trust Company of New Jersey and Outwater and Wells, at the price named in their joint bid, to wit, the sum of one million, fifty-one thousand, eight hundred and forty dollars (\$1,051,840.00) and accrued interest, which was the highest bid received; and be it further

40 *Resolved*, That the certified checks accompanying

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the unsuccessful bids be returned forthwith.

Respectfully,

O. L. AUF DER HEIDE,

D. H. STUHRMANN,

Of the Committee.

Adopted by the following vote:

Yeas—Freeholder Auf der Heide, Boylan, Heller,
Lally, Meehan, Prior, Stuhmann and Untereiner 10
—8.

Absent—Director Keilt.

(Adjourned Meeting, Board of Chosen Freeholders, Thursday, July 29th, 1915.)

(Veto Bond Award.)

From the County Supervisor, returning and vetoing the resolution awarding the issue and sale 20
of \$1,050,000 bonds, adopted at the meeting of the Board, July 29, 1915, as follows;

By the Committee on Finance:

JERSEY CITY, JULY 29, 1915.

Hon. Director and Members of the Board of Chosen Freeholders of the County of Hudson, N. J.;

GENTLEMEN:

Your Committee on Finance, to whom were referred the several bids received at this meeting 30
for the three issues of bonds dated July 1, 1915, would respectfully report having examined the same and find the joint bid of the Commercial Trust Company of New Jersey and Outwater and Wells, to be the highest bid received.

Your committee would therefore recommend the adoption of the following resolution:

Resolved, That the following issues of Hudson County 4½% bonds, dated July 1, 1915, to wit: 40

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\$500,000.00, New County Jail, 40-year bonds.

\$300,000.00, Hudson County Park, 50-year bonds.

\$250,000.00, Newark Turnpike Improvement,
10-year bonds.

be and the same are hereby awarded to The
Commercial Trust Company of New Jersey and
Outwater and Wells, at the price named in their
10 joint bid, to wit, the sum of one million, fifty-one
thousand, eight hundred and forty dollars
(\$1,051,840.00) and accrued interest, which was the
highest bid received; and be it further

Resolved, That the certified checks accompanying
the unsuccessful bids be returned forthwith.

Respectfully,

O. L. AUF DER HEIDE,

D. H. STUHRMANN,

Of the Committee.

20

Director Keilt stated that the original resolution
referred to in the veto of the County Supervisor,
just read, was not before the Board for considera-
tion and action. Thereupon Freeholder Stuhmann
moved that the resolution pass notwithstanding the
objections and veto of the County Supervisor.

A vote being taken on said motion as follows:

Yeas—Freeholders Auf der Heide, Boylan,
30 Heller, Lally, Meehan, Prior, Stuhmann and
Director Keilt—8.

Absent—Freeholder Untereiner.

(Tracks abandoned, Turnpike Road.)

*Minutes of Meeting, Board of Chosen Freeholders.***(Adjourned Meeting, Board of Chosen Freeholders, Monday, Dec. 20, 1915.)**

REPORTS FROM OFFICERS.

JERSEY CITY, N. J., NOVEMBER 18, 1915.

To the Honorable the Director and Members of the Board of Chosen Freeholders, Hudson County:

COURT HOUSE, JERSEY CITY. 10

GENTLEMEN:

On October 28, I sent you a communication, stating that the Public Service Railway Company had abandoned one track on the Newark Turnpike between Belleville Turnpike and Frank Creek. Since that time the Public Service Railway has abandoned both tracks on the Newark Turnpike between the above mentioned points, and it was their intention to immediately remove both tracks and ties from the Newark Turnpike. 20

The removal of tracks and ties will leave the Turnpike in a dangerous condition for traffic, and in case the contract for the improvement of the Turnpike is not awarded, steps should be taken to arrange for the delivery of material to repair the road.

Yours truly,

T. F. WASSER,

County Engineer. 30

Referred to Road Committee.

(Adjourned Meeting, Board of Chosen Freeholders, Monday, December 20th, 1915.)

(Turnpike Appropriation.)

No. 22—By Freeholder Prior:

RESOLVED, That the sum of two hundred and fifty thousand dollars (\$250,000) be and is hereby ap- 40

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propriated to be applied to the cost of the repairing, rebuilding and reconstruction of the Newark Turnpike Road.

Adopted by the following vote:

Yeas—Freeholders Boylan, Meehan, Prior, Stuhmann, Untereiner and Director Keilt—6.

10 Nays—Freeholders Auf der Heide, Heller and Lally—3.

(Adjourned Meeting, Board of Chosen Freeholders, Monday, December 20th, 1915.)

No. 25—

Jersey City, Nov. 18, 1915.

Hon. Director and Members of the Board of Chosen Freeholders of the County of Hudson:

20 GENTLEMEN:

Your Committee on Public and County Roads, to whom were referred the several bids received at the meeting of this Board held June 24, 1915, for the widening and improvement of the Newark Turnpike Road, would respectfully report having examined the same and find that the lowest bid received for the work, complete in accordance with the specifications, is that of William Baker, Incorporated.

30 Your Committee has given the matter of the improvement the most careful consideration. On July 15 ultimo, a public hearing was held in order to ascertain the opinion of competent experts as to the wisdom of proceeding with the work in accordance with the specifications, upon which bids were invited. The consensus of opinion, as expressed at that time, was that, considering the location of the road, the best interests of the traveling public and of the people of Hudson county would be conserved

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Minutes of Meeting, Board of Chosen Freeholders.

in proceeding with the construction of the road in accordance with the specifications.

In spite of these expert opinions, your Committee has been inclined to move cautiously in recommending the award of a contract, but in view of the County Engineer, as outlined in his communication under date of October 28th ultimo, wherein he directs attention to the present rough and dangerous condition of the road and his recommendation that the contract be awarded, your Committee is of opinion that it would be unwise to further delay awarding the contract for this work. 10

Your Committee would therefore recommend the adoption of the following resolution.

RESOLVED, That the contract for the widening and improvement of the Newark Turnpike Road, lying between the westerly end of the bridge across the Hackensack River and Schuyler Avenue, the dividing line between the towns of Kearny and Harrison, be and the same is hereby awarded to William Baker, Incorporated, at the price named in its bid, to wit, the sum of eighty-two per cent. (82%) of the County Engineer's estimate of the following quantities, to wit: 20

3,018 cu. yds. crushed stone in place, at \$2.25 per cu. yd.

273,156 cu. yds. embankment in place, at 90c. per cu. yd. 30

1,300 lin. ft. 12-inch cast iron pipe, in place, at \$1.50 per lin. ft.

69,094 sq. yds. 10-inch Telford pavement, in place, \$1 per sq. yd.

4,575 lin. ft. 12-inch vitrified pipe, in place, at 90c. per lin. ft.

4,665 sq. yds. 15-inch vitrified pipe, in place, at \$1 per lin. ft. 40

Minutes of Meeting, Board of Chosen Freeholders.

2,530 lin. ft. 18-inch vitrified pipe, in place, at \$1.25 per lin. ft.

346 lin. ft. 24-inch vitrified pipe, in place, at \$1.50 per lin. ft.

70 lin. ft. 30-inch vitrified pipe, in place, at \$1.75 per lin. ft.

10 76 brick manholes, complete, at \$40 each.
54 brick receiving basins, complete, at \$75 each.

67,155 sq. yds. creosoted wood block pavement, at \$2.50 per sq. yd.

9,106 sq. yds. granite block pavement, at \$2.90 per sq. yd.

32,301 lin. ft. bluestone curb, set in concrete, at 90c. per lin. ft.

4,500 lin. ft. bluestone curb, redressed and set in concrete, at 45c. per lin. ft.

20 1,789 cu. yds. roadway concrete, at \$4.50 per cu. yd.

100 cu. yds. form concrete, at \$8 per cu. yd.

9,795 pounds reinforcing steel, in place, at 6c. per lb.

1,512 pounds of structural steel beams, in place, at 6c. per lb.

12,750 lin. ft. pile, driven in places and cut off, at 25c. per lin. ft.

30 54 lin. ft. pipe railing, in place, at \$2 per lin. ft.

230,000 ft. B. M. yellow pine lumber, in place, at \$50 per M. B. M.

228 cu. yds. dry wall masonry, at \$2 per cu. yd. which bid was the lowest bid received for the work complete in accordance with the plans and specifications therefore; and be it further

RESOLVED, That the County Counsel or Attorney prepare the necessary contract and bond to effectuate this resolution, and when the same have been
40

Minutes of Meeting, Board of Chosen Freeholders.

properly executed, have the same filed in the office of this Board; and be it further

RESOLVED, That the certified checks of the unsuccessful bidders be returned to them forthwith.

Adopted by the following vote:

Yeas—Freeholders Boylan, Meehan, Prior, Stuhmann, Untereiner and Director Keilt—6.

Nays—Freeholders Auf der Heide, Heller and Lally—3. 10

(Adjourned Meeting, Board of Freeholders,
Friday, December 31, 1915.)

Jersey City, December 31st, 1915.

*Hon. Director and Members of the Board of Chosen
Freeholders of the County of Hudson,
Jersey City, N. J.:*

20

GENTLEMEN:

On December 21st, last, I received from you a certain paper writing which reads as follows:

Jersey City, November 18, 1915.

*Hon. Director and Members of the Board of Chosen
Freeholders of the County of Hudson:*

GENTLEMEN:

Your Committee on Public and County Roads, to whom were referred the several bids, received at the meeting of this Board held June 24, 1915, for the widening and improving of the Newark Turnpike Road, would respectfully report having examined the same and find that the lowest bid received for the work, complete in accordance with the specifications, is that of William Baker, Incorporated. 30

Your Committee has given the matter of this improvement the most careful consideration. On July 15 ultimo, a public hearing was held in 40

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order to ascertain the opinion of competent experts as to the wisdom of proceeding with the work in accordance with the specifications, upon which bids were invited. The consensus of opinion, as expressed at that time, was that, considering the location of the road the best interests of the traveling public and of the people of Hudson County would
 10 be conserved in proceeding with the construction of the road, in accordance with the specifications.

In spite of these expert opinions, your Committee has been inclined to move cautiously in recommending the award of a contract, but in view of the opinion of the County Engineer, as outlined in his communication, under date of October 28th ultimo, wherein he directs attention to the present rough and dangerous condition of the road and his recommendation that the contract be
 20 awarded, your Committee is of opinion that it would be unwise to further delay awarding the contract for this work.

Your Committee would therefore recommend the adoption of the following resolution:

RESOLVED, That the contract for the widening and the improvement of the Newark Turnpike Road, lying between the westerly end of the bridge across the Hackensack River and Schuyler Avenue, the
 30 dividing line between the Towns of Kearny and Harrison, be and the same is hereby awarded to William Baker, Incorporated, at the price named in its bid, to wit, the sum of eighty-two per cent. (82%) of the County Engineer's estimate of the following quantities, to wit:

3,018 cu. yds. crushed stone in place, \$2.25 per cu. yd.

273,156 cu. yds. embankment in place, 90c. per cu. yd.

Minutes of Meeting, Board of Chosen Freeholders.

1,300 lin. ft. 12 inch cast iron pipe, in place,
\$1.50 per lin. ft.

69,094 sq. yds. 10 inch Telford pavement, in
place, \$1.00 per sq. yd.

4,575 lin. ft. 12 inch vitrified pipe, in place, 90c.
per lin. ft.

4,665 lin. ft. 15 inch vitrified pipe, in place, 10
\$1.00 per lin. ft.

2,530 lin. ft. 18 inch vitrified pipe, in place,
\$1.25 per lin. ft.

346 lin. ft. 24 inch vitrified pipe, in place, \$1.50
per lin. ft.

70 lin. ft. 30 inch vitrified pipe, in place, \$1.75
per lin. ft.

76 brick manholes complete, \$40.00 each.

54 receiving basins, complete, \$75.00 each.

67,155 sq. yds. creosoted wood block pavement, 20
\$2.50 per sq. yd.

9,106 sq. yds. granite block pavement, \$2.90 per
sq. yd.

32,301 lin. ft. blue stone curb, redressed and set
in concrete, 45c. per lin. ft.

4,500 lin. ft. blue stone curb, redressed and set
in concrete, 45c. per lin. ft.

1,789 cu. yds. roadway concrete, \$4.50 per cu.
yd. 30

9,100 cu. yds. form concrete, \$8.00 per cu. yd.

9,795 pounds reinforcing steel in place, 6c. per
lb.

1,512 pounds structural steel beams in place, 6c.
per lb.

12,750 lin. ft. pile driven in place and cut off,
25c. per lin. ft.

54 lin. ft. pipe railing in place, \$2.00 per lin. ft.

230,000 ft. B. M. yellow pine lumber in place, 40
\$50.00 per M. B. M.

Minutes of Meeting, Board of Chosen Freeholders.

228 cu. yds. dry wall masonry, \$2.00 per cu. yd. which bid was the lowest bid received for the work complete in accordance with the plans and specifications therefor; and be it further

10 RESOLVED, That the County Counsel or Attorney prepare the necessary contract and bond to effectuate this resolution, and when the same have been properly executed have the same filed in the office of this Board; and be it further

RESOLVED, That the certified checks of the unsuccessful bidders be returned to them forthwith.

Respectfully,

OF THE COMMITTEE.

Attached to this paper writing was some further writing, which read as follows:

20 "IN THE BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON.

"It is hereby certified that at a regular meeting of the Board of Chosen Freeholders of the County of Hudson, held on the 20th day of December, A. D. 1915, the foregoing resolution was duly adopted, six members voting in the affirmative and three in the negative.

B. J. KEILT,
Director.

30 WALTER O'MARA,
Clerk."

40 A merely cursory examination of the foregoing documents will show that it is a report of your Committee on Public and County Roads, addressed to your honorable body, recommending the adoption of the certain resolution, or set of resolutions, and that said Committee report is not signed by the members of your Committee on Public and County Roads.

Minutes of Meeting, Board of Chosen Freeholders.

If, by this communication you intend to advise me that you had taken action on this report by resolution, I must advise you that I am unable to find what that action was; in other words, I am unable to tell, from the paper which you have submitted to me, whether or not you have adopted a resolution adopting the report in whole or in part, or whether you have adopted a resolution rejecting the report of your Committee. 10

I presume that you have submitted the papers in question for the purpose of having me act thereon, pursuant to the provisions of Section 4 of Chapter 89 of the Laws of 1900 (P. L. 1900, p. 168; 1 C. S. 530, Sec. 192); if so, I cannot recognize these papers as a resolution passed by the Board of Chosen Freeholders, since they do not constitute anything more than a committee report, and do not constitute a resolution. As you have undoubtedly acted upon the Committee report which you have certified to me, if you will certify to the resolution or resolutions which you have adopted, I in turn, will pass upon it, or them, as required by law, and will return the same to you either signed or without my approval. 20

If I am right in assuming that you have adopted such resolutions, or resolution, kindly certify them to me for my action. 30

In order that there may be no dispute between us as to just what you have certified to me, I will, for the present at least, hold in my possession the Committee report and the certificate thereto attached which you sent me on December 20th, last. 30

Very truly yours,

JOHN MAGNER,
County Supervisor.

In the connection with the foregoing communi- 40

Minutes of Meeting, Board of Chosen Freeholders.

cation of the County Supervisor, Freeholder Stuhrmann inquired whether the resolution awarding the contract referred to in said communication had been certified to the County Supervisor.

Whereupon Assistant Clerk John P. Noonan stated that the resolution had been certified to the County Supervisor on the morning of December
 10 21, instant.

Freeholder Stuhrmann then asked the County Counsel whether the resolution was then in effect.

The County Counsel replied that the resolution was in effect.

Thereupon Freeholder Stuhrmann moved that the County Counsel be directed to prepare the necessary contract and bond for the improvement of Newark Turnpike in accordance with said resolution awarding the contract for same.
 20

The motion was adopted by the following vote:

Yeas—Freeholders Boylan, Meehan, Prior, Stuhrmann, Untereiner and Keilt—6.

Nays—Freeholders Heller and Lally—2.

Absent—Freeholder Auf der Heide—1.

(Adjourned Meeting, Board of Freeholders,
 Friday, December 31, 1915.)

30 From the County Supervisor vetoing the following resolution:

RESOLVED, That the sum of two hundred and fifty thousand (\$250,000) dollars be and is hereby appropriated to be applied to the cost of repairing, rebuilding and reconstruction of the Newark Turnpike Road.

Director Keilt stated that the original resolution referred to in the veto of the County Supervisor just read, was now before the Board for consideration and action.
 40

Minutes of Meeting, Board of Chosen Freeholders.

Thereupon Freeholder Stuhrmann moved that the resolution pass notwithstanding the objections and veto of the County Supervisor.

A vote taken on said motion as follows:

Yeas—Freeholders Boylan, Meehan, Prior, Stuhrmann, Untereiner and Director Keilt—6.

Nays—Freeholders Heller and Lally—2.

Absent—Freeholder Auf der Heide—1.

10

D. L. & W. R. R. Co.,

Attorney's Office Lackawanna Terminal,

Hoboken, N. J., Jan. 8, 1916.

MR. WALTER O'MARA,

Board of Chosen Freeholders,

Court House, Jersey City, N. J.

DEAR SIR:

Please advise me if you are ready to take up the Sandford's Crossing matter. If this work is likely to be started at all this spring, our engineers would like to make their plans accordingly.

20

Please let me hear from you.

Yours truly,

(Signed) M. M. STALLMAN.

Filed.

Received and filed at meeting of the Board of Chosen Freeholders, January 13, 1916.

WALTER O'MARA,

30

Clerk.

Rule for Affidavits.
NEW JERSEY SUPREME COURT.

10	JOHN F. KENNEDY, <i>Prosecutors,</i> <i>v.</i> THE BOARD OF CHOSEN FREEHOLD- ERS OF THE COUNTY OF HUDSON AND WILLIAM BAKER, INC.	On Cer- tiorari. Rule for Affidavits.
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On application in behalf of the prosecutors, it is ordered that all parties have leave to take affidavits to be read on the hearing of the writ in above stated cause.

January 22, 1916.

F. J. SWAYZE,
 J. S. C.

20

Rule for Affidavits.
NEW JERSEY SUPREME COURT.

30	EMORY R. RUBY, et al., <i>Prosecutors,</i> <i>v.</i> THE BOARD OF CHOSEN FREEHOLD- ERS OF THE COUNTY OF HUDSON AND WILLIAM BAKER, INC.	On Cer- tiorari. Rule for Affidavits.
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On application in behalf of the prosecutor, it is ordered that all parties have leave to take affidavits to be read on the hearing of the writ in above stated cause.

January 22, 1916.

F. J. SWAYZE,
 J. S. C.

40

Order.

(Filed, Jan. 31, 1916.)

NEW JERSEY SUPREME COURT.

EMORY R. RUBY, et al., <i>Prosecutors,</i> <i>v.</i> THE BOARD OF CHOSEN FREEHOLD- ERS OF THE COUNTY OF HUDSON AND WILLIAM BAKER, INC.	On Cer- tiorari. 10 Order.
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On application in behalf of the prosecutors, it is ordered that the prosecutors have until February 9, 1916, in which to file their reasons in the above entitled cause.

Dated January 29, 1916.

F. J. SWAYZE, **20**
J. S. C.

30

40

Depositions.
NEW JERSEY SUPREME COURT.

10	EMORY R. RUBY AND FRANK T. BLAIR,	}	On Cer- tiorari. Depositions.
	<i>Prosecutors,</i>		
	<i>v.</i>		
	THE BOARD OF CHOSEN FREEHOLD- ERS OF THE COUNTY OF HUDSON AND WILLIAM BAKER, INC.	}	
	<i>Defendants.</i>		

MESSRS. COLLINS & CORBIN (MR. MARKLEY), At-
 torneys for Prosecutors.

JAMES J. MURPHY, ESQ., Attorney for Board of
 Chosen Freeholders of the County of Hudson.

MARSHALL VAN WINKLE, ESQ., and WARREN
 DIXON, ESQ., Attorneys for William Baker,
 Inc.

Depositions in the above entitled matters, taken
 before me, David A. Newton, a Supreme Court
 Examiner, at my office, 243 Washington Street,
 Jersey City, New Jersey, this fifth day of Febru-
 ary, 1916, at ten o'clock in the forenoon, pursuant
 to notice annexed hereto, and in the presence of
 counsel for the respective parties.

Testimony.**NEW JERSEY SUPREME COURT.**

JOHN F. KENNEDY,

Prosecutor,

vs.

BOARD OF CHOSEN FREEHOLDERS OF
THE COUNTY OF HUDSON, WALTER
O'MARA, Clerk of said Board,
and WILLIAM BAKER, INC.,

Defendants.

On Cer-
tiorari.

10

JOHN MILTON, ESQ., and J. EMIL WALSCHEID,
ESQ., Attorneys for Prosecutors.

JAMES J. MURPHY, ESQ., Attorney for Board of
Chosen Freeholders of the County of Hudson
and Walter O'Mara, Clerk of said Board.

20

MARSHALL VAN WINKLE, ESQ., and WARREN
DIXON, ESQ., Attorneys for William Baker,
Inc.

It is stipulated that the depositions may be taken
stenographically and the signatures of witnesses
waived.

It is further stipulated that the depositions now
to be taken may be used in both the above-entitled
causes.

30

40

Walter O'Mara—Direct.

WALTER O'MARA, sworn.

DIRECT EXAMINATION BY MR. MARKLEY:

Q. Mr. O'Mara, you are the Clerk of the Board of Chosen Freeholders of the County of Hudson?

A. I am.

10 Q. And were, during the year 1915? A. Yes, sir.

Q. And for how long before that? A. Oh, eight or nine years.

Q. And you are now? A. Yes, sir.

Q. When does the fiscal year of the Board of Chosen Freeholders of the County of Hudson begin? A. On December 1st.

Q. Of each year? A. Yes.

Q. And when does it end? A. November 30th.

20 Q. Did the Board of Chosen Freeholders of the County of Hudson make up a budget for the year beginning December 1st, 1915? A. Yes, sir.

Q. What was the amount of that budget? A. \$2,878,545.08.

Q. How much of that was allowed for improvement of county roads? A. \$45,000; that is, outside of the boulevard.

30 Q. Outside of the boulevard? A. Yes; the appropriation is "for maintenance and repairs of public highways other than new public boulevard, \$45,000."

Q. You say the boulevard is not included in that? A. Not included.

Q. Is the Turnpike Road included in that? A. That is for all the county roads, exclusive of the boulevard.

Q. And that budget is made up from December 1st, 1915? A. It is made up to be effective December 1st, 1915.

40 Q. And it is for the following year? A. For that year.

Walter O'Mara—Direct.

Q. To November 30th, 1916? A. That is the idea.

Q. Can you say or tell how much of that—of the appropriation for county roads—was appropriated for the Newark Turnpike Road? A. No, sir.

Q. How is that ascertained? A. How is it ascertained?

Q. Yes. A. The fund is set apart for the repairs and improvement of roads, and whichever roads may require it it is expended that way. 10

Q. And they appropriate it as they go along, is that the idea? A. No, no; they appropriate it annually for repairs to roads.

Q. And if they made an appropriation, on December 20th, 1915, of \$250,000 for the Newark Turnpike Road, would that come out of the amount allowed for county roads? A. Would that \$250,000 come out of the \$450,000? 20

Q. Yes. A. No, sir.

Q. What would it come out of, Mr. O'Mara? A. What would it come out of?

Q. Yes. A. Well, I presume it would not come out of any fund.

MR. VAN WINKLE: What would that come out of?

THE WITNESS: You mean the \$250,000?

MR. MARKLEY: Yes. 30

THE WITNESS: Do you want me to guess?

Q. Do you know? A. I don't know.

Q. Is there any fund out of which it could come? A. There is no fund, unless it could be raised by the sale of bonds or moneys coming into our hands from the state.

Q. The state, in this case, did not give any money? A. The state had made an allotment of \$161,000. 40

Q. That was withdrawn, I understand. A. Do

Walter O'Mara—Direct.

you understand it? I don't It is in our hands to-day.

Q. At any rate, the \$250,000 is not included in the budget for 1915? A. No, sir; it was not.

BY MR. WALSCHEID:

Q. Do you mean the \$161,000 is in your hands to-day, which was represented by a state appropriation? A. I mean that an allotment for \$146,000 is in our hands to-day.

Q. You mean a paper writing? A. Exactly; an allotment by the State Road Commissioner.

Q. No other paper writings, from the State Road Commissioner, granting you any moneys, is in your hands? A. No, sir.

Q. Isn't it a fact that after that allotment was made action was taken by the State Road Commissioner notifying you that you could not have that money? A. No, sir; not officially. I understand the State Road Commissioner did communicate with the County Counsel that there was a question—that the Attorney General raised a question on it, but nothing ever came to the Board about it.

Q. But that communication to your County Counsel has been submitted to you—I mean, has been submitted to the Board of Chosen Freeholders? A. No, sir; it was a personal letter to the County Counsel; it did not come to the Board at all.

Q. Mr. O'Mara, have you a compilation of the bids received for this job? A. They appear on the return.

Q. You mean the bids appear in the return? A. Yes.

Q. But those bids were at certain percentages of standard prices? A. Exactly.

Q. Did the County Engineer furnish you with the compilations of those bids, showing the total

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sums carried out in dollars and cents, what the total prices would be on each bid? You had a report from the County Engineer, didn't you, as to who was low? A. That is all set out in the specifications; all of that is in the return.

Q. You just say 82 per cent. of the standard prices? A. Yes.

Q. Has the calculation been made of what that amounts to on these various bids? A. (Referring to return) Here the items are set out, 3,018 yards crushed stone at \$2.25 per yard—all following the same way there. 10

Q. What is the amount of the successful bidder's bid? A. It is 82 per cent. of \$593,522.62.

Q. What does that amount to? A. \$486,688.55.

Q. That is the cost of the improvement? A. Yes; that is based on his estimated quantities, which are more or less. 20

Q. Based on his bid? A. That is the cost, based on the engineer's estimated quantities, which is not a hard and fast sum, because it provides for more or less; all of those things are more or less, you know.

BY MR. DIXON:

Q. You pay on the actual measurements? A. Yes, when the work is done.

BY MR. WALSCHEID:

Q. This \$45,000, which was appropriated for the County Roads, that was appropriated in the summer of the year 1914? A. No, no; it was appropriated in July of 1915. 30

Q. In July of 1915? A. To become effective December 1st, 1915, for the current fiscal year.

Q. For the year from December, 1915, to December, 1916? A. That is the idea.

Q. And that is to take care of ordinary repairs of County Roads, is it not? A. It is appropriated to repair and maintain roads, that is all. 40

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Q. To repair and maintain roads? A. Yes.

Q. Meaning County Roads? A. Meaning County Roads, of course, with the exception of the boulevard.

Q. With the exception of the Hudson Boulevard, which is under the control of the Boulevard Commission? A. Yes.

10 Q. And such an appropriation is annually made, isn't it? A. Yes, sir.

Q. How does the sum of \$45,000, appropriated for the fiscal year 1915-16 compare with the appropriation for like purposes for the years 1914-15? A. About the same.

Q. About the same? A. Yes.

Q. Was it fully expended during the fiscal year 1914-15? A. I believe it was.

20 Q. In the ordinary repair and maintenance of County Roads? A. I believe it was; I couldn't answer as to where it was used; the engineer could tell.

Q. But, of course, your county vouchers would show? A. Yes.

Q. How many County Roads are there under the control of the Board of Chosen Freeholders? A. Do you want me to enumerate them, or give you the number?

Q. The number, first? A. Five, I think.

30 Q. Will you enumerate them, please? A. Paterson Plank Road; Newark Turnpike; Passaic Avenue; and the County Road, you know, the old County Road.

Q. Where does that lead to and from? A. From Tonnele Avenue to the institutions at Secaucus.

Q. Do you know what the ordinary maintenance and repairs to those roads cost during the last fiscal year? A. No.

40 Q. Did it cost \$45,000? A. I think you had

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better ask the engineer, for he is more familiar with it.

Q. I mean from your records in paying bills.

A. You see I have three or four hundred bills a month and I don't go into them deeply. I don't think I had better answer that question. I think you had better put the question to the engineer.

Q. Have you a Committee on County Roads? 10

A. Yes, sir.

Q. And does that Committee make reports of its expenditures to the Board at the end of the fiscal year? A. No, only in the shape of periodical bills.

Q. Are there any reports extant showing what the maintenance and repairs of these County Roads was? A. I don't think there are any compiled reports.

Q. I didn't ask for compiled reports; are there 20 any on your files? A. That is another question you had better ask the engineer. Those reports would come from him or go to him.

Q. Have you a copy of the specifications for this work? A. No; I haven't, with me.

MR. WALSCHEID: I offer in evidence the specifications on this work, and also the plans.

MR. DIXON: We object to the specifications and plans being admitted in evidence.

30

The specifications were thereupon marked Exhibit P-1, and the plans were marked Exhibit P-2 on the part of the prosecutors.

Q. Have any repairs been ordered on any of these other county roads during this year? A. Why, yes.

Q. Any contracts let? A. Yes; on the Paterson Plank Road, and on Passaic Avenue.

Q. To come out of this \$45,000? A. No, sir.

40

Walter O'Mara—Direct.

Q. Have any repairs been ordered, to come out of this sum of \$45,000? A. I don't know.

Q. How are expenditures made out of this sum of \$45,000?

MR. VAN WINKLE: I object to that. You mean out of the appropriation—not out of this particular sum?

10 MR. WALSCHEID: Out of the sum now appropriated.

Q. Will you say that nothing was paid out? A. I say I don't know.

Q. Can you ascertain? A. I should think that the engineer would be the proper person to answer that question, because the orders don't come to me, or through me; they would naturally come through the County Engineer.

20 Q. Then is this sum of money, or this appropriation, placed at the disposal of the County Engineer?

A. No, sir; it is placed at the disposal of the Board.

Q. And the Board, through its formal action—
A. Through its Road Committee.

Q. —through its Road Committee, orders this work done, which is chargeable to this fund; is that right? A. Yes.

Q. And doesn't the Board act upon the committee's work? A. By the payment of claims, for
30 small amounts.

Q. Only by the payment of claims? A. Yes, sir.

Q. In other words, this fund is subject to the requisition system in vogue in Hudson? A. I don't understand your question.

Q. You know what a requisition is, what your Freeholders issue? A. I doubt if any requisition is ever issued for any purpose of that sort.

Q. That is what I am trying to find out? A. I don't know if any requisitions are issued for road
40 work.

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Q. Should your Minutes show each and every action taken towards the expenditure of moneys out of this fund before the actual disbursement of moneys out of it? A. They show on the payment of claims for the work only.

Q. And that is all? A. That is all.

Q. So that expenditures may be ordered out of this appropriation, or out of this fund, and the work may be even completed, and no record of it will appear on your Minutes until a bill for the work performed comes before this Board; is that right? A. Unless the amount of the work will be in excess of \$500; that is right. 10

Q. And usually the expenditures out of this fund are in less than \$500 sums? A. Usually.

Q. Have you any bills drawn against this appropriation during this fiscal year? A. I couldn't answer that question; I don't know. 20

Q. Couldn't you state from an examination of your Minutes? A. No; the Minutes are not printed; they are in the printer's hands now, because the only meeting was the January meeting. I presume the Minutes are printed now.

Q. Mr. O'Mara, the proceedings looking towards the making of this improvement were originally initiated by a resolution adopted on May 13th? A. You mean the one that was rescinded?

Q. Yes. A. May 13th, yes. 30

Q. And that is not in your return? A. No.

Q. And that resolution was subsequently rescinded? A. It was vetoed on our request and veto sustained.

Q. When was that? A. On May 27th, 1915.

Q. And then the resolution was adopted under which the proceedings were then completed to the point of awarding the contract? A. Yes, sir; the same day.

Q. Now, at the time when that resolution was 40

Walter O'Mara—Direct.

adopted, I understand you to say, you had an estimate of the cost of this work in hand from the Engineer? A. Yes.

Q. Where is that estimate? A. Why, the Engineer's estimate is shown in his specifications; the rough draft that he had, he informed us that his estimate was approximately \$600,000.

10 Q. For the doing of the work? A. Yes.

Q. As shown by these plans and specifications under which the work was then pursued? A. Yes.

Q. And at that time, when this resolution was adopted, on May 27th, 1915, do you know of any moneys that were then in hand, or under appropriation, for the making of this improvement? A. Only an allotment of \$56,000 from the State Road Commissioner.

20 Q. And that is the only money that was then available for that purpose? A. Yes.

Q. And that \$56,000 allotment was afterwards merged in the other allotment? A. Exactly.

Q. Of \$146,000? A. It was part of the \$146,000.

Q. The resolution of May 27th, authorized the repairing, rebuilding and improvement of the Newark Turnpike Road, and approved of the plans and specifications therefor; is that right? A. Yes.

30 Q. That resolution was then certified to the County Supervisor by you? A. Yes, on my certification.

Q. And what did you send to him? A. On May 27th, I sent him this original resolution as appears in the Minutes.

Q. Is that all you did send him? A. Yes, sir.

Q. You didn't send him any plans? A. No, for the same reason I didn't bring them here.

Q. And you didn't send him any specifications? A. I could not have; the specifications that were adopted were rough drafts and had to be printed.

40 Q. The specifications were then not yet in the

Walter O'Mara—Direct.

shape in which they were submitted to the bidders for the purpose of formulating their proposals? A. Oh, yes; they were; that is to say—

Q. I mean they were not in physical shape? A. I mean they were not in printed shape, you understand they had to be printed.

Q. What do you mean by printed shape? A. The Board approved the rough draft of specifications that the Engineer submitted. 10

Q. When the Board approved the set of plans and specifications were they not filed with your Board? A. Certainly.

Q. Where is the filed set? A. There it is there (producing and handing bundle of papers to examining counsel); it would not be a very handsome thing for anybody to make a bid on.

Q. This bundle of papers which you just handed me when you said "There it is there," you just received from the County Engineer? A. Yes, sir. 20

Q. They have been in the possession of the County Engineer? A. Yes, sir.

Q. Since when? A. He had better answer that question.

Q. They have not been in your possession as Clerk of this Board? A. No, sir; those papers have not been.

Q. And those papers are the papers which you say were approved? A. Yes, sir. 30

Q. Those identical papers? A. Wait a minute; Mr. Wasser had better answer that question.

Q. No, I am asking you, as Clerk of the Board. Can you now, at this time, identify this bundle of papers the set of specifications which was approved by the Board on May 27th, 1915? A. I cannot.

Q. Nor does it bear any filing marks? A. It does not seem to, no.

Q. Is there, on the files of your office, a set of specifications which were submitted to your Board 40

Walter O'Mara—Direct.

on the 27th day of May, 1915, and which was then approved by the Board? A. The only way I can answer is that this is the only thing that the Engineer says we submitted and I believe him to be correct.

Q. Now will you kindly answer the question? (Last question repeated.) A. I cannot answer that
 10 question in any other manner than from the County Engineer's information.

Q. You attended that meeting personally? A. Yes, sir.

Q. And took part in it, as Clerk? A. Yes, sir.

Q. Did you, at that meeting, receive into your possession and control a set of plans and specifications for this then proposed work? A. I presume I did, but I have no—

Q. Did you file it? A. Did I file it?

20 Q. Yes. A. It is customary to file those, but in this case this matter had to be printed.

Q. Then you did not file it, did you? A. Well, I don't know whether I did or not.

Q. Well, I asked you before and you said you did.

MR. VAN WINKLE: Will counsel define what filing is?

A. That is just what I was trying to get at; the
 30 printed result of this copy was certainly filed with the Board.

Q. Now that Mr. Van Winkle has suggested something to you, do you mean to say that you don't know when a paper was on file?

MR. VAN WINKLE: I object to that question.

Q. You have not, in your office or in your custody, as Clerk of this Board, these papers, have
 40 you? A. Why, certainly.

Walter O'Mara—Direct.

MR. VAN WINKLE: I object to that unless counsel defines what is meant by filing.

THE WITNESS: The County Engineer's custom is part of the Board; it has been in his custody.

Q. When, to your certain knowledge, have you seen this bundle of papers last, prior to to-day? A. I presume—

Q. No, not presume. A. All right; well, wait a minute; those papers and the plans— 10

Q. No, these are not plans here. A. I said these papers, and the plans, were presented to the meeting of May 27.

Q. How do you know that those are the identical papers that were then presented? A. I take the County Engineer's word for it.

Q. And then immediately after they had been thus before the Board they went back into the possession of the County Engineer? A. For the purpose of being printed. 20

Q. The papers that were then presented then went back to the possession of the County Engineer? A. Yes.

Q. And have never been since that time in your possession? A. The printed copy has been in my possession.

Q. I am talking about this set. A. They have remained in the possession of the County Engineer. 30

MR. WALSCHEID: Now, I ask that these papers be marked in evidence.

The bundle of papers produced by the witness as the Engineer's estimate and specifications was then admitted and marked Exhibit P-3 on the part of the Prosecutor.

Q. There seems to be some doubt as to whether you have an allotment for \$161,000 or an allot- 40

Walter O'Mara—Cross.

ment for \$146,000; for what have you an allotment? A. \$146,000.

Q. And these papers, now marked Exhibit P-3, were not sent to the County Supervisor when you certified to him the resolution of May 27? A. I don't believe they were.

Q. You did not send them, did you? A. No, I
10 did not send them.

Q. Nor did you send the plans which were then before the Board? A. No, the plans were in the adjoining office.

BY MR. DIXON:

Q. What adjoining office? A. The office adjoining mine and the Supervisor's.

CROSS-EXAMINATION BY MR. DIXON:

Q. Explain, if you will, a little more particularly
20 about the way that allotment of \$146,000 was made; what it was and when it was made. I mean when the actual allotment or paper was signed?
A. An allotment of \$56,000 had been made by the—

Q. I don't care about the \$56,000. A. Wait a minute, now; that is part of the \$146,000—had been made by the State Commissioner from the Motor Vehicle Funds; after the receipt of bids for the improvement, the State Commissioner, in a
30 communication to the County Engineer, expressed some doubt as to whether—

Q. I don't ask about that, Mr. O'Mara; just tell us about this allotment. A. I am trying to tell what happened.

Q. Let it go at that. A. In response to that letter the County Counsel, the County Engineer and myself, went to Trenton and saw the State Road Commissioner in reference to this allotment.

Q. Who is he—Mr. Stevens? A. Commissioner
40 Stevens. The State Road Commissioner went to

Walter O'Mara—Cross.

the Attorney-General's office, in company with the County Counsel, Engineer and myself, and in the Attorney-General's absence, he took up the question with Assistant Attorney-General Boggs. The result of their conference satisfied the State Road Commissioner that he should make the allotment, and he thereupon drew a requisition on the State Comptroller for \$90,000, saying that when the State Comptroller approved it he would forward us an allotment for \$146,000—that is to say, the \$90,000, plus the \$56,000 that had already been allotted—in one allotment. I asked the State Road Commissioner when the approval would be apt to be had; he said in three or four days. I said, "Very well, give it to me," and I took it down— 10

Q. What did he give you? A. The requisition.

Q. What did you do with it? A. I took the requisition down to the State Comptroller. 20

Q. And what did he do with it? A. I requested him to approve it forthwith, which he did, and I returned the requisition, approved, to the State Road Commissioner, who thereupon drew an allotment for \$146,000, based on that \$90,000 and the \$56,000 formerly allotted; he thereupon drew an allotment and gave it to me, and I took it.

Q. And you have it now? A. I have it in my office.

MR. DIXON: We offer that allotment in evidence. 30

Without objection, the allotment was thereupon admitted and marked Exhibit D-1, on the part of the defendants.

Q. Did you receive from the State Commissioner of Roads, together with the allotment, any other document? A. A communication setting forth that he had made the allotment.

Q. And is that communication in the return? 40
A. It is in the return.

Walter O'Mara—Cross.

Q. Have you that on file? A. Certainly.

Q. And that accompanied the allotment? A. Yes, sir; the communication precedes the allotment in the return.

Q. Does that contain the \$15,000 promised? A. Yes; and other things.

10 MR. DIXON: We offer that communication in evidence.

Without objection, the communication was thereupon marked Exhibit D-2, on the part of the defendants.

Q. The County offices are all in the Court House, that is, the Supervisor's and the Freeholders'? A. Occasionally.

Q. Where is the Supervisor's official office? A. In the Court House.

20 Q. On what floor? A. Adjoining the Clerk's office and the County Engineer's office.

Q. And the County Engineer also has an office there? A. Yes.

Q. Adjoining the County Supervisor? A. Yes.

Q. All in one suite of rooms? A. All in one suite of rooms, yes.

Q. Is this the only improvement that has been undertaken under the Act of 1900, as amended?

A. No, sir; the Paterson Plank Road was im-
30 proved under that act.

Q. It was improved? A. Yes, sir.

Q. And was that completed? A. Yes, sir.

Q. Bonds issued for that improvement, and sold? A. Yes, sir.

MR. WALSCHEID: I object to that.

Q. And delivered? A. Delivered; yes, sir.

Q. Now, when that improvement was undertaken did that receive the three-fourths affirma-
40 tive vote when it was initiated?

Walter O'Mara—Cross.

MR. WALSCHEID: I object to that as immaterial.

A. Yes, sir.

Q. And when the bonds were issued, were they issued under a resolution approved of by a three-fourths vote? A. No, sir.

Q. How many votes? A. Well, at no time was there a three-fourths vote after the first resolution. 10

Q. After the first resolution? A. No, sir.

Q. Was the contract which was awarded passed or adopted by a three-fourths vote? A. No, sir.

MR. WALSCHEID: You are talking now of some other improvement?

MR. DIXON: Yes.

Q. These bonds that were issued, were they passed upon by counsel for the bondholders? 20

MR. WALSCHEID: I object to that as immaterial and irrelevant.

A. Yes, sir.

Q. By whom? A. By Delafield and Longfellow.

Q. Well, what are the sources of revenue of the County?

MR. MARKLEY: I object to that as immaterial and irrelevant, calling for a legal opinion from the Clerk. 30

Q. All the sources of revenue of the county that you know of? A. You mean in connection with road improvement?

Q. I mean in connection with anything. A. They are very general.

Q. Where do they get their moneys from—county moneys? A. Well, first, from the annual budgets, that is money raised by taxation, then, in 40

Walter O'Mara—Cross.

connection with roads, moneys derived from the State, by either the State Road Act or Motor Vehicle Act. Of course, there is a lot of revenues through courts and stuff of that sort.

Q. In what way does that come in? A. Through collection of costs and fines from the Sheriff's office; then there is money in the sale of bonds for
 10 various improvements. There isn't any other source of revenue.

Q. At what stage of these proceedings was this allotment made by the Commissioner? A. Well, the allotment was made—the actual allotment we have—was made over a period of over two years.

BY MR. WALSCHEID:

Q. Doesn't your allotment bear a date? A. No, it does not.

20 Q. I mean the last allotment? A. The last allotment bears date, but there was \$55,000 formerly allotted by a previous allotment, I should say some two years before. I think, some time in 1913; I am not sure when.

BY MR. DIXON:

Q. I understood you to say—(I may be mistaken about this)—I understood you to say when he made this allotment, which you brought home—
 A. Yes.

30 Q. And filed in your office? A. Which was \$146,000. That included—

Q. That included the other allotment, didn't it?

A. Oh, yes; you mean the date of that allotment?

Q. That is the allotment? A. I think that was June 27th.

Q. What year? A. 1915.

Q. That allotment was made after the initial proceedings in this matter were taken—not the
 40 resolution that was vetoed? A. Yes, sir.

Walter O'Mara—Cross.

Q. I want to get this correct: Was that allotment made after the resolution under which this work is sought to be done was passed? A. Yes, sir.

Q. Now, at some stage of the proceedings you sold \$250,000 worth of county bonds, didn't you? A. Yes.

Q. What is the interest on them? A. Four and a half per cent. 10

Q. Those \$250,000 worth of bonds were sold for this improvement? A. Yes, sir.

Q. And were the bonds delivered? A. Yes.

Q. And is the money in hand? A. Yes.

Q. How much is in hand on that? A. The entire \$250,000.

Q. Is the county paying interest on it? A. Four and a half per cent., yes.

Q. And are there sinking fund charges on that? 20
A. I would like to look at the budget and see. (After examining the minutes.) Yes, sir; \$15,000 sinking fund.

Q. On these bonds? A. Yes; item No. 50 is payment of principal on Newark Turnpike Improvement Bonds, \$15,000. The interest appropriation is bulked under interest, \$11,250.

Q. Are you familiar with this road, Mr. O'Mara? A. Well, only in a general way.

Q. In your return there appears to be some communications and prospective contracts with some of the crossing railroads; have you these communications? A. Why, there isn't any communication, only one, in the return, from the Lackawanna, asking us to give them a definite idea when this work will proceed. There is, however, existent a tentative agreement that the Lackawanna has sent to us for execution, based on our agreement to execute at a date early enough in the year to allow 30

Walter O'Mara—Cross.

them to proceed with the elimination of the grade crossing at their own expense.

Q. Where is that grade crossing? A. At Sanfords Crossing. It is called the Lackawanna grade crossing on this particular road. They make one portion of the agreement that if we will agree at any time early enough in the year to allow them to finish before frost they will execute the agreement forthwith, but if the time is delayed pretty late in the year then they insist that the agreement go over another year. In other words, they want to start and finish in the same year for the elimination of the grade crossing which they in that agreement propose to do at their own expense.

Q. Is that grade crossing there now? A. Oh, yes.

Q. How is it proposed to eliminate the grade crossing? A. By carrying a viaduct over the rails of the Lackawanna Railroad, carrying the road over the railroad.

Q. Carrying the county road over the railroad? A. Carrying the county road over the railroad; yes.

Q. Now, the Public Service Railway has tracks on this road, has it not? A. Well, it did have, and has now in part.

Q. And they have agreed to move those tracks off? A. They have agreed to improve their own right of way; move their tracks off the road altogether.

Q. Well, is there any proposed agreement with them in respect to the part of the highway where the Belleville Turnpike enters? A. Our agreement with them takes care of, I believe, the Belleville Turnpike; we are going to cross over them; we will have to go up to the viaduct and to an elevation there of 19 feet, and consequently the Public Ser-

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vice will run under the Belleville Turnpike approach.

Q. You said something about the trolley company going to take these tracks off altogether; you don't mean that? A. What?

Q. They are not going to take their trolley tracks away from there? A. They are going to take them off the Turnpike from Frank's Creek to the Hackensack River. 10

Q. And they will come back again? A. They will come back again to cross the bridge; oh, yes.

RE-DIRECT EXAMINATION BY MR. MARKLEY:

Q. Have you made an agreement with the Public Service people in regard to their tracks? A. We have given them the right.

Q. Is there an agreement? A. Oh, yes; it is returned there. 20

Q. Has the other agreement been returned? A. The other agreement has not been executed; it is only a tentative agreement, that is all.

MR. DIXON: We will offer the agreements in evidence.

The agreement with the Lackawanna Railroad was thereupon marked Exhibit D-3, and the agreement with the Public Service Railway Company was marked Exhibit D-4. 30

BY MR. WALSCHEID:

Q. When you spoke about an agreement with the Public Service, you meant thereby a resolution which has been adopted by the Board giving to the Public Service Railway Company certain rights? A. The right to depart from the road and the right to come back on the road at the bridge.

Q. That is what you mean? A. Yes, sir.

Q. And that has been returned to the Court as part of your return to these writs? A. Yes, sir. 40

Walter O'Mara—Re-Direct.

Q. And there are no other agreements between the Public Service and the Board? A. No other written agreements.

BY MR. VAN WINKLE:

Q. But that resolution was accepted by the Public Service? A. Yes, sir.

10 BY MR. WALSCHEID:

Q. Is there any written acceptance on file? A. I doubt it.

Q. How do you know it has been accepted? A. Simply because they have acted on it and taken their tracks off the road.

Q. And the so-called Lackawanna agreement is merely a proposed agreement which the Lackawanna Railroad has submitted to the Board in written form, which has not yet been acted upon by the Board; am I right on that? A. Yes, sir.

Q. Mr. O'Mara, going into the meeting of the Board held on December 20th, 1915, was there a report presented to the Board at that meeting by the Committee on Public and County Roads? A. Yes, sir.

Q. Have you that report? A. No, the Supervisor has it; it is returned there.

Q. Have you the original report? A. The Supervisor has it; he hasn't returned it to me.

30 Q. He has the original report? A. The report and resolution combined.

Q. He has certain papers that you sent me? A. Yes, sir.

Q. And you say that the paper which you thereafter sent to the Supervisor was the original report of your County Roads Committee? A. I say it was a resolution recommended by the Roads Committee.

40 Q. Recommended in writing? A. Exactly, yes.

Walter O'Mara—Re-Direct.

Q. That written recommendation, was it signed by the County Roads Committee? A. I don't know whether it was or not. I don't think it was, really.

Q. Was it presented to the Board? A. Yes.

Q. Who presented it? A. The Road Committee handed it in.

Q. The Road Committee consists of many people? A. I don't recall which individual handed it in. 10

Q. One of the individuals presented it in open meeting? A. Not in open meeting.

Q. When was it presented? A. It was presented before we went into meeting with all the other resolutions; the custom is not to present it in open meeting.

Q. I don't care about your custom. I am trying to find out about this specific instance. This paper which was presented by the Road Committee, I say, was not presented in the open Board meeting? A. No, I don't say that; I don't know when it was presented. 20

Q. Did you have it in your possession in the open Board meeting? A. Yes, sir.

Q. What did you do with it in the open Board meeting? A. I read it.

Q. And having read it, what happened next? A. After the reading the director said, "The question is on the adoption of the resolution. As many as are in favor thereof vote in the affirmative; those contrary in the negative." And the Clerk called the roll. 30

Q. That is what was said? A. That is what was stated; that is what he always does state.

Q. Did anybody make a motion in that meeting? A. Not that I recall; I don't know whether they did or not; I don't know whether they did or not. 40

Walter O'Mara—Re-Direct.

Q. You don't know whether there was a motion made? A. I really don't know; all I know is the Director stated what was said before the Board.

Q. So that you read this paper, and the next thing which happened was that the Director said, "The question is on the adoption of the resolution," and what happened next? A. The clerk
10 called the roll.

Q. What do you mean by "All in favor"? A. I said that in—

MR. VAN WINKLE: He is asking you, were those the exact words.

A. Do you want me to repeat them all?

Q. Yes. A. "The question is on the adoption of the resolution. All in favor of adoption will vote aye; and those opposed, no, as their names are
20 called." The clerk called the roll.

Q. So that at that meeting there was then presented this paper, beginning, "Your Committee on Public Grounds and Buildings", which purports to be a report? A. Yes, sir.

Q. Then, after that, there was a vote taken upon a resolution? A. Yes, sir; the paper included the resolution; the resolution was included in that paper.

Q. The resolution was included in that paper?
30 A. Yes, sir.

Q. And, so far as you can recollect, no one member of the Board moved either the adoption or rejection of this committee report? A. As far as I can recollect, no.

Q. And, so far as you can recollect, no one member of the Board moved either the adoption or rejection of any specific resolution? A. As far as I can recollect, I don't think—I don't know whether they did or not.

Walter O'Mara—Re-Direct.

Q. Your minutes don't show any such action?

A. No; never do; never do when a committee submits a resolution; when an individual submits a resolution it does show, the minutes show, "offered by Freeholder Brown or Jones."

Q. Well, did the committee submit this resolution? A. I didn't take it out of my imagination.

Q. Did the committee submit the resolution to the Board in meeting assembled? A. They submitted a resolution, I don't know whether— **10**

Q. Answer my question. Did they, or did they not, submit the resolution in meeting assembled?

A. Yes, sir; they did.

Q. How? A. By handing it to me.

Q. In the open meeting? A. I won't say in the open meeting; I don't remember just when.

Q. Isn't it a fact, Mr. O'Mara, that you testified before that you received this so-called resolution— **20**

MR. VAN WINKLE: I object to that; if he did so testify it is in the record.

Q. —prior to the open meeting, and that you read it in the Board meeting? A. I said I may have; I don't recall just what occurred that particular day.

Q. You don't recall just what happened? A. No, I do not; but I do know in the open meeting the resolution was in my hands, or otherwise I could not have read it. **30**

Q. And you read it? A. Yes.

Q. And then you read the resolution to the Board? A. Yes, sir.

Q. And thereupon the Director said, "The question is now upon this resolution?" A. The adoption of the resolution.

Walter O'Mara—Re-Cross—Re-Direct.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. After the resolution was passed, what did you do with it?

MR. MARKLEY: I object to that as calling for a legal conclusion.

MR. DIXON: What he did with it.

10 MR. MARKLEY: That the resolution was passed.

Q. After the resolution was adopted?

MR. MARKLEY: I make the same objection.

A. I attached a certification, which was signed by the director and myself, and certified it to the County Supervisor.

BY MR. WALSCHEID:

20 Q. That is, you attached your certification to the paper which had come into your possession from the Committee? A. To the resolution.

Q. You call it a resolution? A. Exactly.

BY MR. DIXON:

Q. The resolution you sent to the Supervisor?
A. Exactly.

Q. When did he return it? A. He hasn't returned it up to to-day.

30

RE-DIRECT EXAMINATION BY MR. WALSCHEID:

Q. So that, as a matter of fact, if you did certify to the Supervisor the resolution of the 20th of December, that paper, or that resolution, was not before the Board on December 31st, 1915, was it? A. No, it was not there; Mr. Walscheid advised him not to send it, of course.

Q. It wasn't there, was it? A. No.

40 Q. Mr. O'Mara, you call the paper which came to

Walter O'Mara—Re-Cross.
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you from the Committee, a resolution, do you not?

A. Yes, sir.

Q. And that paper, which thus came to you from the Committee, is the paper which you sent to the Supervisor, with a certificate thereto attached? A. Yes, sir.

Q. And, of course, that paper—whether it be a resolution or not—was not before the Board on December 31st when next the Board met? A. It was not. 10

RE-CROSS EXAMINATION BY MR. DIXON:

Q. And the certificate that you sent was not, and the copy of it is annexed to the return? A. Yes, sir; a copy is annexed to the return.

THOMAS J. WASSER, sworn. 20

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. What was your estimate, as County Engineer, of the cost of the improvement of the Newark Turnpike Road? A. \$593,522.52.

Q. And the successful bidder—what percentage of that did he bid? A. William Baker, Inc., bid 82 per cent. of the above figures, which amounted to \$486,688.55. 30

CROSS-EXAMINATION BY MR. VAN WINKLE:

Q. What is the approximate length of the Newark Turnpike? A. Three and a half miles.

Q. What is the present physical condition of the Newark Turnpike? A. The Newark Turnpike is in deplorable condition for traffic.

Q. To what extent? A. It is, to the extent that it is causing broken springs and other damage to vehicles using the Turnpike. 40

Thomas J. Wasser—Direct—Cross.

Q. Would you say it is in very bad condition?

A. In very bad condition.

Q. Is travel, that ordinarily would use the Newark Turnpike, being diverted to other roads? A. Why, yes, because it brings forth complaints from people that desire to use it.

10 Q. Having in mind, Mr. Wasser, the provisions in the proposed contract between the Freeholders and William Baker, Inc., and knowing the Newark Turnpike in its condition, about how long would you say it would take for the contract to be fully performed? A. Well, it depends on the time of the year the contract is let; we require two working seasons at it; it might stretch through a period from a year and a half to two years.

Q. So your judgment is that the performance of the contract in full would take probably two years?

20 A. Two years; yes, sir.

Q. Referring to the contract, so as to display the matter on the record, what is the method of paying the contractor under the proposed contract—what quantities or what portion of the contract price, and at what stages of the work? A. On this job he would, after a period of a month, request me to measure up the amount of work completed, upon which I would have the work counted up in keeping with the contract and
30 would pay him eighty per cent. of the work completed, in monthly instalments.

Q. Dividing the period you have estimated as the probable period for the performance of the contract, what portion of the contract price would be paid during the first year of the performance of the contract? A. Well, in this particular job, in the first year, practically one-half the work would be paid for.

40 Q. What is the retained percentage provision in this proposed contract? A. Upon the completion

Thomas J. Wasser—Cross.

of the work the retained percentage which amounted to twenty per cent., three-fourths of that, of fifteen per cent. of the whole work, would be paid, and five per cent. to be held for a period of time as stated in the contract—I think, six months.

Q. And that money would be retained by the Freeholders during that period? A. Yes, sir.

Q. Explain, if you will, and a little better than you have, what you mean by the eighty per cent. payment? A. The estimate is made up on the figure furnished by the Engineer of the actual work done monthly; those figures are then converted into the contract price, and eighty per cent. of the contract price is submitted to the Board for payment. 10

Q. For the work done? A. For the work done; and that each month is a repetition, until the entire work is completed; of that, twenty per cent. that is retained upon the completion of the work, fifteen per cent. of the total amount of contract, or three-fourths of the retained percentage, is paid to the contractor, and the five per cent. of the entire amount is paid within the period of time called for in the contract. 20

Q. Now, with respect to the sum of approximately \$45,000—it may be \$45,000—but which appears in the budget as available on December 1st, 1915; for the repair and maintenance of county roads, isn't it a fact, Mr. Wasser, that that sum is drawable upon for the repair of maintenance or both of county roads most needing repairs or maintenance, or both? A. Yes, sir. 30

Q. Now, with respect to the trolley tracks; Mr. O'Mara gave some testimony about that; are the trolley tracks of the Public Service Company to be removed entirely from the Turnpike, or will they be there on a part of the Turnpike? A. At the Hackensack Bridge end of the road the trolley 40

Thomas J. Wasser—Cross.

tracks will extend for a distance of probably 150 feet, then turn off onto their own right of way; they return to the road at a point some four or five hundred feet this side, or east, of Franks Creek, and extend upon the balance of the road a distance of a little over half a mile.

- Q. Now, with respect to the viaduct: what is the general scheme as to that, and the cost? A. The scheme of the viaduct is to erect a concrete structure consisting of columns, floor slabs and retaining walls, from a point about six hundred feet east of Sanford's crossing to a point about six hundred feet west of Sanford's crossing, to carry the roadway over the tracks of the D. L. & W.

Q. And the cost of that construction, in round figures, is what? A. \$200,000.

- Q. Would that work eliminate the grade crossing on the Turnpike? A. It would.

Q. How many grade crossings are there at present on the Turnpike? A. There is the Sanford crossing, consisting of three tracks; and there is a freight track crossing at Swift's abbatoir.

Q. And these are main line tracks of railroads? A. Only at Sanford's crossing there is a main line.

Q. What railroads are there? A. The Delaware, Lackawanna & Western, and subsidiary companies, whatever it is.

- Q. You are familiar with the road, of course, and the crossings? A. Yes, sir.

Q. Are those crossings not dangerous crossings?

MR. WALSCHEID: I object to that.

A. I so testified.

Q. Hasn't there been much talk recently in the press and elsewhere with respect to the dangerous nature of these grade crossings? A. All grade crossings are dangerous, and this one especially so.

- Q. You have produced here, in response to a

Thomas J. Wasser—Re-Direct.

question by Mr. Walscheid, a bunch of papers marked Exhibit P-3? A. Yes, sir.

Q. Mr. O'Mara testified with respect to these papers being in his possession at one time, and I think, as I remember his testimony, he said he gave them to you for the purpose of having them printed, or something of that sort; you produced those papers here this morning, did you not, Mr. Wasser? A. I did, sir. 10

Q. Do you remember getting those papers from Mr. O'Mara? A. Indirectly through Mr. O'Mara; I produced those papers, together with tracings for this work, and submitted them to Mr. John Noonan, Assistant Clerk, who took them to the meeting, he asked for them, and as soon as they had taken action on them they were returned to me, to be sent to the printers.

Q. You then took them, did you, from the Clerk, or Assistant Clerk, after they, or either of them, had received the papers and the Board had acted upon them? A. Yes, sir. 20

Q. You took them for what purpose? A. To have them reproduced by the printer.

Q. And do you hand them back again this morning to the Clerk of the Board? A. I do, yes.

Q. Do you hand back the same papers, in the same condition that you received them? A. I should say yes; they may be disarranged a little, but I don't know; I haven't examined them. 30

Q. Your office, Mr. Wasser, is, and has continuously been, in the same suite in the Court House with the Freeholders and the Clerk of the Board of Freeholders? A. Yes, sir.

Q. And the Supervisor? A. Yes, sir.

RE-DIRECT EXAMINATION BY MR. WALSCHEID:

Q. You made an estimate, you say, of what you 40

Thomas J. Wasser—Re-Direct.

thought the cost of this improvement would be?

A. Yes, sir.

Q. And that, of course, was an honest estimate, based upon an examination of the ground, surveys and such other data which you gathered? A. Yes, sir.

10 Q. And is your honest estimate of what that work ought to cost? A. Yes, sir.

Q. And the bidder then bid 82 per cent. of that estimate, of the sum of about \$486,000? A. Yes, sir.

Q. Do you know the amount of money which is now available for the purpose of performing this work? A. Why, no.

Q. You know that there is the sum of \$250,000 available, the result of a bond issue? A. Yes, I know that.

20 Q. You know that, don't you? A. I have heard of it, yes.

Q. In addition to that you have heard, or rather you know, that there has been a State allotment of \$146,000? A. Yes, sir.

Q. Are there any other funds, to your knowledge, available for the purpose of making this improvement? A. No, sir.

Q. None other? A. No, sir.

30 Q. You don't consider the \$45,000 the annual road appropriation, available for that purpose, do you? A. I do not.

Q. Why not? A. Why in the maintenance of all roads, whether in this county or otherwise, it is necessary to provide a fund for the maintenance and upkeep of roads after they are built, and I know that the budget calls for \$45,000 for Public Roads in Hudson County.

Q. I suppose you had something to do with the making up of that figure, as County Engineer? A.

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No, I did not; that sum was fixed, and it is necessary to keep within the limits of it for the repairs.

Q. And that sum will be necessary, within the fiscal year 1915-16, for the ordinary repairs and maintenance of the County Roads, exclusive of the making of this improvement? A. Yes, sir.

Q. Then, again, you also know, do you not, that that money cannot be expended without the specific vote of the Board of Chosen Freeholders? A. You are speaking of the \$45,000? 10

Q. Yes. A. Why, I know that the Road Committee will instruct me to repair certain parts of the road, and I order the work done and approve the bill when it is completed.

Q. If it is less than \$500? A. Yes, sir.

Q. If it is more than \$500, it is to be advertised for? A. Yes, sir.

Q. You, proceeding as you do, you, of course, depend upon the future action of the Board in approving of the action of the Road Committee in ordering you to proceed with such work, do you not? A. I do. 20

Q. And you realize that if the Board should not approve of its Road Committee's action, this bill could not be paid? A. Exactly.

Q. Well, the sum of \$250,000 plus the sum of \$146,000 which you now deem available for the making of this improvement, is not sufficient to make the improvement, is it? A. No, sir. 30

Q. Not under any circumstances? A. No, sir.

Q. No matter what shortage there might be in actual figures; I mean in actual measurements, upon the performance of this contract work? A. Now, as I understand the question, if the job—

Q. Allow me to repeat it. Your estimate, of course, is not a fixed quantity? A. No, sir.

Q. It is impossible for it to be a fixed quantity? A. Yes, sir. 40

Thomas J. Wasser—Re-Cross.

Q. Now, in the actual doing of this work, the actual quantities may run under the quantities which you have estimated; isn't that so? A. Yes, sir.

Q. But they cannot possibly run under so much as to make the total of these two sums \$250,000, plus \$146,000, enough to cover the cost of this improvement, can they? A. No, sir.

Q. You also realize, do you not, that to obtain any further moneys for the completion of this improvement, it will require the affirmative action by vote of the Board of Chosen Freeholders, isn't that so?

MR. DIXON: I object to that as calling for a legal conclusion, of which he has no knowledge to testify.

A. I don't know.

RE-CROSS EXAMINATION BY MR. DIXON:

Q. Mr. Wasser, there is an appropriation of \$250,000, and with this \$45,000 that you speak of, and that \$45,000 is expended by the Board as and when it chooses? A. Yes, sir.

Q. And, so far as what they will do with it is concerned, you have no knowledge? A. No, sir.

Q. No particular knowledge? A. No, sir.

Q. They may, if they choose, use all of it for the improvement of this road, if they deem it the first and most necessary use to put it to, may they not? A. I don't know.

Edward A. Markley—Direct.

EDWARD A. MARKLEY, ESQ., SWORN.

DIRECT EXAMINATION BY MR. WALSCHEID:

Q. Where do you reside? A. Jersey City.

Q. What is your profession? A. Attorney-at-Law, in the employ of Collins & Corbin.

Q. Have you recently made any examination of the records in the office of the Secretary of State in relation to corporations? A. I did, on February 4th, 1916. 10

Q. For what purpose did you then make the examination? A. To ascertain whether William Baker, Inc., to whom the contract for this improvement was awarded, was a corporation of this State or a foreign corporation, authorized to do business in this State.

Q. What examination did you make, in order to ascertain whether William Baker, Inc., is a domestic corporation? A. Accompanied by one of the clerks, I went to the records— 20

Q. One of what clerks? A. Of the offices of the Secretary of State; I went to the records of domestic corporation, and, in his presence, I made an examination of those records, and he in my presence made an examination of these records, and we found that there was no—

MR. VAN WINKLE: I object to the answer as incompetent, as the witness is incompetent to testify to the non-existence of a record in a public office, under the decisions. 30

A. (Resuming.) I found that there was no record in the Secretary of State's office of William Baker, Inc., being a corporation of this State. Also—

MR. DIXON: I also object to it on the ground that it is immaterial and irrelevant. 40

Edward A. Markley—Direct.

A. (Resuming.) Accompanied by the clerk from the Secretary of State's office at Trenton, I examined the records of foreign corporations authorized to do business in this State—

10 MR. VAN WINKLE: I make the same objection here to the witness being incompetent to testify to the non-existence of a record, and to the materiality and relevancy of the answer.

A. (Resuming.) And I, in the presence of the clerk, and the clerk, in my presence, examined the records in the Secretary of State's office, and found that there was no corporation by the name of William Baker, Inc., admitted as a foreign corporation to do business in this State—that is, in the State of New Jersey.

20 NO CROSS EXAMINATION.

30

40

Stipulation.

The testimony was thereupon declared closed unless counsel for one of the parties notifies counsel for the other parties that they have further testimony to offer.

Continuation of the taking of depositions, before me, David A. Newton, a Supreme Court examiner, at my office, 243 Washington Street, Jersey City, New Jersey, this eleventh day of February, 1916, at ten o'clock in the forenoon; in the presence of counsel for the respective parties. 10

It is hereby stipulated and agreed that William Baker, Incorporated, to whom the alleged contract for the improvement of the Newark Turnpike Road was awarded by the alleged resolution of the Board of Chosen Freeholders of the County of Hudson, dated December 20, 1915, is and was at all times a foreign corporation, that is, a corporation of the State of New York, and that it did not obtain authority to transact business in this State (State of New Jersey) under Section 97 of the General Corporation Act (Pamp. L. 1896, p. 277; 2 Comp. Stat. 1657 pl. 97) until February 8, 1916, when it filed a certificate as provided for in said statute, and thereafter a certificate was issued by the Secretary of State, authorizing it to transact business in this State. 20

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William Baker—Direct.

WILLIAM BAKER, SWORN.

DIRECT EXAMINATION BY MR. MARKLEY:

Q. Mr. Baker, you are president of William Baker, Inc.? A. Yes, sir.

Q. And have been for how long? A. About two years; a little over two years—a month or two
10 over.

Q. Where is your place of business in this State?

A. Why, at No. 1 Exchange Place.

Q. Where is your place of business in this State?

A. Place of business?

Q. Where do you do business, I mean.

MR. VAN WINKLE: I object to that question on the ground that it assumes that he does business in this State.

20 Q. Have you any place of business in this State?

A. No, sir.

Q. Have you a place on South street, Jersey City? A. I have a place on South street.

Q. What kind of a place is that? A. Why, that is my own personal office.

Q. Haven't you a big shop up there where you keep automobiles and trucks? A. Why, I got a place; I have been in there thirty years; yes.

30 Q. You keep automobile trucks there? A. Just now we have been storing some automobiles there.

Q. What do you keep there? A. Horses.

Q. What else? A. That is all.

Q. And supplies? A. No.

Q. Building supplies? A. No.

Q. Or street paving supplies? A. No.

Q. How large a place is it? A. 25 by 100.

Q. How long have you been president of this corporation? A. Why, two years and a month or
40 two; something around that.

William Baker—Direct.

Q. Of what State is it a corporation? A. New York.

Q. What contracts have you had in this State? What contracts has the corporation had in this State? A. The corporation done one little private job in this State.

Q. Where? A. On a private right of way of the Public Service between Newark and Jersey City. 10

Q. When? A. Oh, possibly a year or more ago.

Q. Has the corporation any contracts for the doing of any work in this State? A. No.

Q. None at all? A. None but the one I just mentioned.

Q. Hasn't it the contract for the Turnpike job?

MR. VAN WINKLE: You mean this job in question?

MR. MARKLEY: Yes. 20

MR. VAN WINKLE: How can he have the contract when it has not been signed. Is that the one you mean?

Q. Have any other contracts been awarded to you for work in this State? A. No; this was the only contract.

MR. VAN WINKLE: You mean any other contract than this Turnpike contract which has not been awarded? May I ask what you mean by "any other contracts?" 30

Q. Any other contract or contracts besides the one mentioned, on the Public Service right of way. A. No.

Q. Don't you know, as president of William Baker, Inc., that the present improvement, which is now being certioraried, has been awarded to William Baker? A. I have never been notified of such. 40

William Baker—Direct.

Q. You don't know that the bid of William Baker, Inc., has been accepted and the contract awarded? A. No; I have never been notified of anything of that kind.

Q. I am not asking whether you have been notified; I am asking if you know? A. No, I don't.

10 Q. Then, you don't know whether the contract for the Newark Turnpike Road Improvement was awarded by the Board of Chosen Freeholders of the County of Hudson on December 20th, 1915, to William Baker, Inc.?

MR. VAN WINKLE: Do you want an admission that the contract has been awarded?

MR. MARKLEY: No, that is in the record. I am trying to find out what his knowledge is.

20 MR. VAN WINKLE: I object to that as incompetent, irrelevant and immaterial.

A. Only by what I read in the newspaper, and that is all I know about it.

Q. Did you personally have charge of the making up of the bid of William Baker, Inc., for that work?

MR. VAN WINKLE: I object to that as incompetent, irrelevant and immaterial.

A. No, not personally, I didn't.

30 Q. Did you not sign the bid that was submitted?

A. Yes, I think I did; I am not positive of that even; but I think I did.

Q. Well, who prepared the bid?

MR. VAN WINKLE: I object to that as incompetent, irrelevant and immaterial.

A. Why, I would imagine that the Secretary of William Baker, Inc.

40 Q. Were you present when bids were opened by

William Baker—Direct.

the Board of Chosen Freeholders of the County of Hudson?

MR. VAN WINKLE: I object to that as incompetent, irrelevant and immaterial.

A. No, sir.

Q. You say the first time that you knew about this contract being awarded to your company was when you read it in the newspapers? 10

MR. VAN WINKLE: I object to that as irrelevant, incompetent and immaterial.

A. Yes.

Q. Outside of the Turnpike job and the job that the company did on the Public Service right of way, what other contracts has the company negotiated in this State?

MR. VAN WINKLE: I object to that as incompetent, irrelevant and immaterial. 20

A. Not any.

Q. Outside of those two that I have mentioned, the Turnpike job and the Public Service right of way, what other contracts has your company made in this State? A. Not any.

Q. Are you speaking now with full knowledge? A. Yes.

Q. You know that to be the fact? A. Yes. 30

Q. How long has this company existed, this New York corporation of William Baker, Inc.? A. About two years and two or three months; something around that.

Q. You did the Plankroad job? A. I personally done that.

Q. You did that personally? A. Yes, sir.

Q. Took the contract in your own name? A. I have been in the contracting business thirty years. 40

William Baker—Cross.

Q. You did that personally, in your own name?
A. Yes, sir.

Q. When was that work done under that contract? A. I just cannot recall dates; I think it is finished well onto three years; I guess it is completed practically three years.

10 CROSS EXAMINATION BY MR. VAN WINKLE:

Q. Where is the main office of William Baker, Inc.? A. 26 Cortland street, New York.

Q. How many years have you, yourself (I am speaking of the company now, William Baker, Inc.) been in the contracting business? A. About 28 to 30 years.

Q. At the time the William Baker, Inc., company was formed did you have a plant, wagons and horses, in your contracting business? A. In my personal contracting business?

Q. Yes. A. Yes, sure.

Q. Where did you keep those horses, wagons and other appurtenances of your contracting business? A. Of my personal contracting business, at 137 South street.

Q. Jersey City? A. Jersey City, yes, sir.

Q. Has the company, William Baker, Inc., done any business of any kind in New Jersey, by contract or otherwise, except this one job that you have referred to—I think you call it the Stillman job? A. I done it for Stillman, Delahanty & Ferris.

Q. This job, on or near the Newark Turnpike, what was the nature of that work? A. Just putting in about, I think, five or six thousand dollars' worth of fill there for their right of way, where the trolleys are running now.

Q. Was that work done by any contract between your company, William Baker, Inc., and the Still-

William Baker—Re-Direct.

man company? A. It was all done through the mails, between the Stillman company in Jersey City, and William Baker, Inc., at 26 Cortland street.

Q. You mean by letters received by William Baker, Inc., at 26 Cortland street, New York? A. Yes, sir.

Q. Do you recall whether there was any formal 10
written contract between William Baker, Inc., and the Stillman Company, or was it done by letters; do you remember? A. By letters.

Q. All those letters were received at 26 Cortland street, New York? A. Yes, sir.

Q. That is the only job done in New Jersey by William Baker, Inc.? A. Yes.

Q. How long ago was that? A. Why, I think that is along about a year and a half ago, or something of that kind. 20

Q. For how long a time have the horses and wagons, or the automobile trucks, or any of that property of William Baker, Inc., been stored at 137 South street, Jersey City? A. Since about June last.

Q. Since that time has the William Baker, Inc. Company done any business of any kind in New Jersey, by contract or otherwise? A. No.

RE-DIRECT EXAMINATION BY MR. MARKLEY: 30

Q. This office, Mr. Baker, at 26 Cortland street, New York, is that the principal office of the company in New York? A. Yes.

Q. Whose office is it? A. William Baker, Inc.

Q. Is that a lawyer's office over there that you have as the principal office of the company? A. Oh, no.

Q. What office force have you over there? A. Why, at present, there is two bookkeepers. 40

William Baker—Re-Direct.

Q. Is that all? A. Yes.

Q. How many rooms have you over there?

10 MR. VAN WINKLE: I object to that as incompetent, irrelevant and immaterial. Suppose they had ten rooms; what difference would it make, or one room, or half a room? Suppose they had their offices in a lawyer's office; what difference could it possibly make? I object to that as incompetent, irrelevant and immaterial.

A. Two rooms.

Q. Where do you reside, Mr. Baker? A. Jersey City.

Q. Where, in Jersey City? A. 101 South street.

Q. Your plant is at 137 South street? A. Yes, sir.

20

MR. VAN WINKLE: Whose plant are you asking about now, the plant of William Baker, Inc.?

Q. Your plant is at 137 South street? A. There is one automobile truck.

Q. Did the corporation of William Baker, Inc., when it was made a company two years or so ago, take over your personal contracting business? A. No.

30

Q. Did the company use your horses, wagons, automobiles and equipment in its business? A. No.

Q. You mean to tell us then, that you kept the two separate and distinct, and there was no connection whatsoever between them? A. No connection whatsoever, no.

Q. Who did you say you did this one contract for, Stillman, Delahanty & Ferris? A. Stillman, Delahanty & Ferris.

40

William Baker—Re-Direct.

Q. They are a Jersey City concern? A. Yes.

Q. You say the contract was for something like five or six thousand dollars worth of fill? A. Yes.

Q. You say the contract was for something like five or six thousand dollars worth of fill? A. Yes.

Q. To be put in up here near the Turnpike? A. Yes, to be put in across the Hackensack River there on a private right of way. 10

Q. What else was to be done, if anything? A. That is all we done on it.

Q. That was the contract of William Baker, Inc? A. Yes.

Q. You were paid for that work? A. Yes.

Q. Do you mean to tell us, Mr. Baker, that all the correspondence between this Jersey City concern and your company, William Baker, Inc., took place in New York? A. Yes, through the mails.

Q. How did you come to get that contract? A. That I don't remember. 20

Q. Did you bid for it? A. I couldn't answer that, because I don't do all the bidding, what little bidding there was done.

Q. Who negotiated the contract with the Stillman people? A. I think a Mr. Hartigan.

Q. Of your company? A. Yes.

Q. Did you, yourself, have anything to do with the negotiating of that contract? A. No. 30

Q. Did you have anything to do, yourself, with the performance of the work under the contract? A. No.

Q. You did not, yourself, personally superintend any of the work under that contract? A. No.

Q. You did not, personally, have anything to do with the contract, the performance or with the execution of the contract? A. Not any, no.

Q. So you don't know how the contract was executed? A. I know that it was done through the mails, as I say. 40

William Baker—Re-Cross.

Q. How do you know that? A. Because I saw some of the letters.

Q. You saw some of the letters? A. Yes.

Q. Were any of the letters directed to you, personally? A. No.

Q. Where did you see the letters, Mr. Baker?
A. 26 Cortland street.

10 Q. You were President of the company at that time? A. Yes.

Q. Where else, besides at 137 South street, Jersey City, does William Baker, Inc., store its horses, wagons and automobiles? A. I have none.

Q. You have no other place? A. I have no horses and wagons; I sold them all in Brooklyn when we finished the piece for the I. R. T.

Q. You haven't any others? A. No.

20 Q. For how long? A. Haven't had no horses for a year.

Q. Have they got any automobiles? A. Yes, they got three automobiles.

Q. Where have they kept them? A. One of them is stored here and two of them up in Poughkeepsie.

Q. Has the corporation a place at Poughkeepsie?
A. No, we have been working up there.

RE-CROSS EXAMINATION BY MR. VAN WINKLE:

30 Q. How much of the plant, or the property of William Baker, Inc., is stored, as you have expressed it, at 137 South street, Jersey City? A. One automobile truck.

Q. That is all? A. Yes.

Q. Has the truck been in use at all since it was stored here by the company? A. No, it has been overhauled and painted.

William Baker—Re-Direct.

RE-DIRECT EXAMINATION. BY MR. MARKLEY:

Q. What other property has the company besides these three automobile trucks, if any? A. They have a few concrete mixers.

Q. Where are they? A. Down Long Island, toward Coney Island.

Q. What else have they besides the concrete mixers and the automobile trucks? A. That is all the plant we have. **10**

Q. What other property has it, if anything? A. Nothing.

20**30****40**

Reasons.

(Filed Feb. 4, 1916.)

NEW JERSEY SUPREME COURT.

10	EMORY R. RUBY, et al., <i>Prosecutors,</i> <i>vs.</i> BOARD OF CHOSEN FREEHOLDERS OF THE COUNTY OF HUDSON & WIL- LIAM BAKER, INC., <i>Defendants.</i>	}	On Certiorari.
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The prosecutors write down the following reasons on which they will rely to set aside the proceedings brought up for review in the above stated cause:

- 20** 1. The statute under which said proceedings were taken, to wit, an act entitled "An Act concerning county roads," approved March 20, 1900 (P. L. 1900, p. 91), as amended by Chapter 25 of the Laws of 1902, p. 47, is unconstitutional because:

(a) It is a special law regulating the internal affairs of counties.

(b) It unlawfully delegates legislative powers.

- 30** 2. The alleged resolution of the said Board of Chosen Freeholders of the County of Hudson, dated May 27, 1915, purporting to authorize the repairing, rebuilding and improving of the Newark Turnpike Road and improving plans and specifications prepared therefor by the County Engineer, is void because:

(a) The said plans and specifications were not submitted and certified to the Supervisor of the County of Hudson for his approval or disapproval.

Reasons.

(b) The said Board of Chosen Freeholders of the County of Hudson did not have any funds on hand or any proceeds resulting from the sale of bonds, nor had any steps been taken to provide for the same before the passage of said alleged resolution.

3. The proceedings brought up for review were not authorized by an affirmative vote of three-fourths of the said Board of Chosen Freeholders of the County of Hudson. **10**

4. There was not an affirmative vote of three-fourths of the said Board of Chosen Freeholders of the County of Hudson for the following alleged resolutions:

(a) The alleged resolution, dated December 20, 1915, purporting to appropriate \$250,000 towards the improvement of said Newark Turnpike Road. **20**

(b) The alleged resolution, dated December 20, 1915, purporting to award the contract for the improvement of said Newark Turnpike Road to William Baker, Incorporated.

(c) The alleged resolution, dated December 31, 1915, purporting to direct the County Counsel to prepare the necessary contract and bond for the improvement of said Newark Turnpike Road.

5. The alleged resolution dated December 20, 1915, purporting to appropriate \$250,000 towards the improvement of said Newark Turnpike Road is void because: **30**

(a) It was not adopted by an affirmative vote of three-fourths of the said Board of Chosen Freeholders of the County of Hudson.

(b) It was in excess of the limit of expenditure provided by law for the fiscal year in which it was passed.

6. No resolution awarding a contract for the im- **40**

Reasons.

provement of said Newark Turnpike Road was ever lawfully passed and adopted by said Board of Chosen Freeholders of the County of Hudson because:

(a) No such resolution was ever legally passed and adopted.

10 (b) Said alleged resolution of the said Board of Chosen Freeholders of the County of Hudson dated December 20, 1915, purporting to award a contract for the improvement of the Newark Turnpike Road to William Baker, Incorporated, was not adopted by the affirmative vote of three-fourths of said Board of Chosen Freeholders.

20 (c) Said alleged resolution dated December 20, 1915, purporting to award a contract for the improvement of said Newark Turnpike Road to William Baker, Incorporated, was prematurely adopted.

(d) Said alleged resolution dated December 20, 1915, purporting to award a contract for the improvement of said Newark Turnpike Road to William Baker, Incorporated, was never presented to the County Supervisor of said County of Hudson by the Clerk of the said Board of Chosen Freeholders duly certified by the Director and Clerk of said Board as required by law.

30 (e) The resolution that was in fact passed by the Board of Chosen Freeholders of the County of Hudson was never presented and certified to the Supervisor of the County of Hudson as required by law.

40 (f) Said alleged resolution dated December 20, 1915, purporting to award a contract for the improvement of said Newark Turnpike Road to William Baker, Incorporated, was adopted and passed before the said Board of Chosen Freeholders

Reasons.

of the County of Hudson had funds available for the improvement of said Newark Turnpike Road.

7. By the alleged award of said alleged contract for the improvement of said Newark Turnpike Road to William Baker, Incorporated, on December 20, 1915, the said Board of Chosen Freeholders of the County of Hudson incurred an obligation in excess of existing lawful appropriations. 10

8. There has not been an affirmative vote of at least three-fourths of all the members of the Board of Chosen Freeholders of the County of Hudson to build and improve the Newark Turnpike Road from the westerly end of the bridge across the Hackensack river to Schuyler avenue, the dividing line between the towns of Kearny and Harrison.

9. William Baker, Incorporated, to whom the said alleged contract for the improvement of said Newark Turnpike Road was awarded by the alleged resolution of the Board of Chosen Freeholders of the County of Hudson, dated December 20, 1915, is not a corporation of the State of New Jersey or a foreign corporation authorized to do business in this State. 20

10. The alleged resolution of the said Board of Chosen Freeholders of the County of Hudson, dated July 29, 1915, purporting to award the following issues of Hudson County 4½% bonds, dated July 1, 1915, to-wit: 30

\$500,000.00 new County Jail 40-year bonds;

\$300,000.00 Hudson County Park, 50-year bonds;

\$250,000.00 Newark Turnpike Improvement, 10-year bonds, to the Commercial Turst Company of New Jersey and Outwater & Wells, is illegal because it is impossible to ascertain how much money was thereby realized and available for the improvement of the said Newark Turnpike Road. 40

COLLINS & CORBIN,
Attorneys of Prosecutors.

Reasons.

(Filed Jan. 27, 1916.)

NEW JERSEY SUPREME COURT.

JOHN F. KENNEDY,

*Prosecutor,**vs.*

10

THE BOARD OF CHOSEN FREEHOLD-
ERS OF THE COUNTY OF HUDSON
et al.,*Defendants.*

On

Certiorari.

20 The prosecutor in this cause states the following reasons for setting aside the proceedings of the Board of Chosen Freeholders of the County of Hudson brought under review by the writ of certiorari allowed in this cause:

1. Because the resolution of the Board of Chosen Freeholders awarding the contract for the repairing, rebuilding and improving of the Newark Turnpike Road was prematurely adopted.

30 2. Because the making of said improvement is authorized to be paid for from the proceeds of bonds, and there is no other source from which funds for that purpose can be had. The contract for the improvement of said road was awarded before the bonds from the proceeds of which said improvement is to be paid had been negotiated and the amount available for that purpose of such improvement had been ascertained.

40 3. Because the money to be expended by the County of Hudson under the resolution awarding the contract for the improvement of said Newark Turnpike Road is in excess of the amount of money appropriated by and available to the Board of

Reasons.

Chosen Freeholders of the County of Hudson for said purpose.

4. Because the money to be expended by the Board of Chosen Freeholders of the County of Hudson, under the resolution awarding the contract for the improvement of said Newark Turnpike Road, is in excess of the amount of money provided for the making of said improvement, under the bonds issued by the Board of Chosen Freeholders of the County of Hudson, for said purpose. 10

5. Because the Board of Chosen Freeholders of the County of Hudson attempted by resolution, adopted at a meeting of said Board, held on the 20th day of December, A. D. 1915, to raise and appropriate the sum of two hundred and fifty thousand (\$250,000) dollars, to be applied to the cost of the repairing, rebuilding and reconstruction of the Newark Turnpike Road. 20

6. Because the Board of Chosen Freeholders of the County of Hudson, at the time of the adoption of the resolution, providing for the repairing, rebuilding and reconstruction of the Newark Turnpike Road, did not have in hand sufficient funds available for such purpose.

7. Because the resolution awarding the contract for the improvement of said Newark Turnpike Road was not adopted by the Board of Chosen Freeholders upon the affirmative vote of at least three-fourths of all its members. 30

8. Because the specifications adopted by the Board of Chosen Freeholders of the County of Hudson for the repairing, rebuilding and reconstruction of said Newark Turnpike Road do not provide a standard for the comparison of bids for the performance of said work. 40

Reasons.

9. Because the specifications adopted by the Board of Chosen Freeholders of the County of Hudson for the repairing, rebuilding and reconstruction of said Newark Turnpike Road do not provide a uniform or common standard for the comparison of bids received for the performance of said work.

10 10. Because the resolution adopted by the Board of Chosen Freeholders of the County of Hudson at its meeting held December 20th, 1915, providing for the award of a contract for the improvement of said Newark Turnpike Road was never presented to the County Supervisor of the County of Hudson by the Clerk of the Board of Chosen Freeholders thereof duly certified by the Director and Clerk of said Board.

20 11. Because the resolution supposed to have been adopted by the Board of Chosen Freeholders of the County of Hudson at its meeting held December 20th, 1915, providing for the award of a contract for the improvement of said Newark Turnpike Road was in fact never passed or adopted by the Board of Chosen Freeholders of the County of Hudson.

30 12. Because the Board of Chosen Freeholders of the County of Hudson and the Clerk of said Board in certifying to the County Supervisor of the County of Hudson the resolution of said Board adopted on the 20th day of December, 1915, providing for the award of a contract for the improvement of said Newark Turnpike Road, did not certify and send to said County Supervisor as part of said resolution or otherwise, the proposals received by said Board for the doing of the work provided for under said resolution.

40 13. Because the Board of Chosen Freeholders of

Reasons.

the County of Hudson and the clerk of said Board, in certifying to the County Supervisor of the County of Hudson the resolution adopted by said Board on the 27th day of May, A. D. 1915, approving of the plans and specifications for the repairing, rebuilding and improving of the Newark Turnpike Road and directing the Clerk of said Board to advertise for bids or proposals for the doing of said work, did not certify the plans or the specifications mentioned in said resolutions, either as part of said resolution or otherwise, to the said County Supervisor. 10

14. Because no resolution awarding a contract for the improvement of the said Newark Turnpike Road was ever lawfully passed and adopted by the Board of Chosen Freeholders of the County of Hudson.

J. EMIL WALSCHEID, 20
Attorney for Prosecutor.

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Opinion.**NEW JERSEY SUPREME COURT.**

FEBRUARY TERM, 1916.

EMORY RUBY, et al.,

*Prosecutors,**vs.*10 BOARD OF CHOSEN FREEHOLDERS OF
THE COUNTY OF HUDSON, et al.,*Defendants.*

Argued February 17, 1916. Decided April 21, 1916.

SYLLABUS.

In proceedings taken under Chapter 58, P. L. 1900, p. 91, as amended by Chapter 25, P. L. 1902, p. 47, a resolution awarding a contract for the building and improvement of a county road must be adopted by the affirmative vote of at least three-fourths of all the members of the Board of Chosen Freeholders, and in default whereof will be set aside, even though a prior resolution declaring that the improvement was desirable and approving the plans and specifications has received such affirmative three-fourths vote.

On Certiorari, etc.,

30 Before Justices Garrison, Trenchard and Black.
For the prosecutors, Collins & Corbin.

For the defendant William Baker, Incorporated,
Marshall Van Winkle and Warren Dixon.

For the defendant Board of Chosen Freeholders,
James J. Murphy.

The opinion of the Court was delivered by
Trenchard, J.

40 This writ was allowed the prosecutors, who are

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taxpayers of the County of Hudson, to review the proceedings of the Board of Chosen Freeholders of the County of Hudson for the improvement of the Newark Turnpike Road lying between the westerly end of the bridge across the Hackensack River and the dividing line between the towns of Kearney and Harrison in Hudson County.

The proceedings eventuated in a resolution purporting to award the contract for the improvement, to defendant William Baker, Incorporated, for the sum of \$486,688.55. 10

Among other reasons assigned why the proceedings should be set aside is this:

“There was not an affirmative vote of three-fourths of the said Board of Chosen Freeholders of the County of Hudson for the resolution purporting to award the contract for the improvement of said Newark Turnpike Road to William Baker, Incorporated.” 20

We are constrained to think the point is well taken.

The proceedings for the improvement of the road were taken under Chapter 58, P. L. 1900, p. 91; the first section of which is amended by Chapter 25, P. L. 1902, p. 47.

The section pertinent to the present inquiry is Section 1 (Chapter 25, P. L. 1902, p. 47): 30

“Whenever, in any county of this State, any county road is not built and improved to the authorized or full width thereof and in the judgment of the Board of Chosen Freeholders of such county it is desirable that such road should be so built and improved, for the accommodation of public travel, such board may, upon the affirmative vote of at least three-fourths of all its members, so build and improve the same; * * * .”

It is conceded that the resolution declaring that 40

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it was desirable that such road should be improved and adopting the plans and specifications, received the necessary three-fourths vote.

It is also conceded that the resolution purporting to award the contract *did not* receive the necessary three-fourths vote.

10 The question therefore presented is: Was a three-fourths vote for the award of the contract essential under the statute declaring that the "board may, upon the affirmative vote of at least three-fourths of all its members, so build and improve the same?"

We think that question must be answered in the affirmative.

20 Ordinarily to say that one may "build and improve" a road is equivalent to granting permission to do the physical act; to do the actual work of building. Whatever else this language may embrace, there seems to be no reason why it should embrace less. In the absence of legal limitations the board might do the work by contract, or by day work through county employees, or by their own physical exertions. It seems plain, however, that, since the proposed expenditure exceeded \$1,000, the board was limited to doing the work by contract to be awarded to the lowest responsible bidder. (P. L. 1900, p. 92 §2; P. L. 1912, 30 p. 593.) But whether so or not, they elected to do the work by contract. Since the words "build" and "improve" in their plain interpretation mean nothing less than the physical act of doing the work, and since the board elected to contract for the whole improvement to accomplish its purpose, it logically follows that the award of this contract must have the affirmative vote of at least three-fourths of all the members of the board no matter

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what other steps in the proceeding may also be deemed to be affected by that limitation.

The defendants insist that the adoption by a three-fourths vote of the resolution declaring the desirability of the improvement and approving the plans and specifications answers the requirement of the statute. We think not. When the Legislature enacted that the "board may, upon the affirmative vote of at least three-fourths of all its members, so build and improve" such a road, it announced a radical and significant departure from the ordinary rule in such matters. No doubt it had a good and sufficient reason for so doing. But with that we are not concerned. Our duty is to ascertain the intention of the Legislature and to give effect to that intent as expressed in the statute. It does not seem possible that the Legislature intended that only the original resolution declaring the improvement desirable and adopting plans and specifications should have a three-fourths vote. A member of the board might very well consider and vote that the improvement according to certain plans and specifications was desirable, yet when it was ascertained that the cost would be great and its financing, because of changing conditions, difficult and burdensome, he might change his mind and conclude that it was better for the county not to make the improvement until conditions were more favorable. It is reasonable to suppose that some such state of affairs exists in the case at bar, otherwise there would be the three-fourths vote for the award of the contract. A case might arise where the award of a contract to the lowest bidder would result in an expenditure in excess of the limit provided by law, although such a result was not contemplated when the call for bids was made. To adopt the view of the defend-

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ants, a member who for good reasons changes his mind when the bids come in would be unable to give effect to his change of mind because he voted for the original resolution. That cannot be. Merely to resolve that the improvement is desirable and to adopt plans and specifications does not "build and improve" the road. These steps are
10 preliminary and may be rescinded, but once a contract is awarded the parties thereto become bound, and then, and not until then, has the work of building and improving the road begun.

Our conclusion therefore is that under the statute it was essential that the resolution awarding the contract for the improvement of the road should have the affirmative vote of at least three-fourths of all the members of the board.

20 The result necessarily is that the proceedings under review will be set aside, with costs.

Judgment entered in both cases.

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