OPINION NO. 2001-003

Syllabus:

1. Pursuant to R.C. 5543.14, a county engineer or board of township trustees may "trim or remove any and all trees, shrubs, and other vegetation growing in or encroaching onto the right-of-way of" county or township roads, respectively, and "[t]he engineer or board is not required to compensate the abutting landowner for trimming or removing such trees, shrubs, and other vegetation as is necessary to facilitate these rights."

2. The removal of trees or other vegetation from a county or township road by a county engineer or board of township trustees in accordance with R.C. 5543.14 is part of the public's easement or right-of-way created when the county or township road was established, and, therefore, does not constitute a taking of any property rights remaining in the abutting landowners within the meaning of Ohio Const. art. I, § 19 or U.S. Const. amend. V. Accordingly, a county engineer or board of township trustees may take those actions authorized by R.C. 5543.14 without first obtaining the consent of, or compensating, the abutting landowners. (1946 Op. Att'y Gen. No. 942, p. 327, syllabus, paragraph two, overruled to the extent that it is inconsistent with this opinion.)

To: David L. Landefeld, Fairfield County Prosecuting Attorney, Lancaster, Ohio
By: Betty D. Montgomery, Attorney General, March 9, 2001

You have requested our opinion concerning the authority vested in county engineers and boards of township trustees by R.C. 5543.14 to remove trees and shrubs from the right-of-way of county and township roads. Your questions are as follows:

1. May a county engineer or a board of township trustees, without the consent of the abutting landowner, remove trees, shrubs, or other vegetation growing in or encroaching onto the right-of-way of a county or township road?

2. If so, under what circumstances may the trees, shrubs, and vegetation be removed without compensating the abutting landowner for their removal?

3. If a county engineer or a board of township trustees may remove such trees, shrubs, and other vegetation from the right-of-way of a county or township road without compensating the abutting landowner for their removal, how is such authority reconciled with section 19 of article I of the Ohio Constitution and the fifth amendment to the Constitution of the United States?

According to your letter, your concern is whether the removal of trees and vegetation from county and township roads under R.C. 5543.14,[1] conflicts with the holdings in *Ohio Bell Telephone Co. v. Watson Co.*, 112 Ohio St. 385, 147 N.E. 907 (1925), concerning the constitutionally guaranteed property rights of persons whose properties abut those roads.

As a preliminary matter, we must advise you that the Attorney General is without authority to determine the constitutionality of acts of the General Assembly. Any such determination is, instead, a function of the judiciary.[2] We must, therefore, assume that R.C.

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[1]R.C. 5543.14 was most recently amended in 1997-1998 Ohio Laws, Part III, 5333 (Sub. H.B. 653, eff. March 18, 1999), and currently reads, as follows:

> The county engineer may trim or remove any and all trees, shrubs, and other vegetation growing in or encroaching onto the right-of-way of the county roads of the engineer's county, and the board of township trustees may trim or remove any and all trees, shrubs, and other vegetation growing in or encroaching onto the right-of-way of the township roads of its township, as is *necessary* in the engineer's or board's judgment *to facilitate the right of the public to improvement and maintenance of, and uninterrupted travel on, county and township roads*. The engineer or board is *not required to compensate the abutting landowner* for trimming or removing such trees, shrubs, and other vegetation as is necessary to facilitate these rights. The department of agriculture or other proper department may, with the consent of the proper authorities, take charge of the care of such trees to facilitate these rights. Such department may, with the consent of the proper authorities of the township, county, or state, plant trees along the public highway and may use any funds available for the development of forestry in the state to pay the expense of the planting and care of such trees. The ownership of all trees, so planted, shall remain in the public. (Emphasis added.)

[2]As summarized in 1988 Op. Att'y Gen. No. 88-030 at 2-124 through 2-125:

5543.14 does not violate either constitutional provision about which you ask, Ohio Const. art. I, § 19 or the fifth amendment to the United States Constitution, absent a decision by a court making such a determination. R.C. 1.47(A); *State ex rel. Herman v. Klopfleisch*, 72 Ohio St. 3d 581, 587, 651 N.E.2d 995, 999 (1995). As we will explain, however, we do not believe that R.C. 5543.14 is inconsistent with the holdings of the court in *Ohio Bell Telephone Co. v. Watson Co.* concerning these constitutionally guaranteed rights in private property.

Your first question asks whether a county engineer or a board of township trustees, without the consent of the abutting landowner, may remove trees, shrubs, or other vegetation growing in or encroaching onto the right-of-way of a county or township road. Your second question asks, in the event that a county engineer or board of township trustees may so act, under what circumstances may they undertake such removal. Because both questions concern the nature of the authority granted by R.C. 5543.14 to county engineers and boards of township trustees with respect to the removal of trees and other vegetation from county and township roads, we will address them together.

We begin by noting that, pursuant to R.C. 5535.01, the state's public highways are divided into three classes—state roads, county roads, and township roads. With regard to county and township roads, "[e]ach county and township bears the responsibility for the maintenance and repair of its respective road or highway system, although the various political subdivisions may cooperate in the maintenance and repair of the others' roads." 1981 Op. Att'y Gen. No. 81-039 (syllabus, paragraph one).

The General Assembly has enacted many statutes that assign to particular governmental officers or entities various aspects of road repair and maintenance.[3] The focus of your first two questions is the aspect of county and township road maintenance and repair assigned to county engineers and township trustees by R.C. 5543.14. *See generally* note one, *supra*.

As part of the executive branch of government, the Attorney General is not empowered to determine the constitutionality of state statutes. Rather, that is the function exclusively of the judiciary. *Maloney v. Rhodes*, 45 Ohio St. 2d 319, 324, 345 N.E.2d 407, 411 (1976) ("an attack upon the constitutional validity of a law must be made in a proper court. The judicial power to declare a law unconstitutional is exclusively within the judicial branch of government"); *State ex rel. Davis v. Hildebrant*, 94 Ohio St. 154, 169, 114 N.E. 55, 59 (1916), *aff'd*, 241 U.S. 565 (1916) ("the power of determining whether a law or constitutional provision is valid or otherwise is lodged solely in the judicial department"); 1986 Op. Att'y Gen. No. 86-010.

[3]*See, e.g.*, R.C. 5535.08 (stating, in pertinent part, "[t]he state, county, and township shall each maintain its roads, as designated in [R.C. 5535.01]; however, the county or township may, by agreement between the board of county commissioners and the board of township trustees, contribute to the repair and maintenance of the roads under the control of the other"); R.C. 5543.10(B) (authorizing county engineer and township trustees to remove trees and vegetation from sidewalks on roads that each maintains); R.C. 5571.02 (stating in part, "[t]he board of township trustees shall have control of the township roads of its township and shall keep them in good repair"); R.C. 5579.04 (duty of counties, townships, and municipalities regarding destruction of brush, briers, weeds, and thistles along highways); R.C. 5579.08 (requiring townships to destroy "[a]ll brush, briers, burrs, vines, and noxious weeds growing along the public highway" at certain times each year).

R.C. 5543.14 expressly authorizes a county engineer to remove any trees or vegetation located in or upon the right-of-way of county roads as the engineer determines to be necessary "to facilitate the right of the public to improvement and maintenance of, and uninterrupted travel on, county ... roads." R.C. 5543.14 confers the same authority upon boards of township trustees with respect to maintaining township roads. In addition, R.C. 5543.14 specifies that a county engineer or board of township trustees, when removing trees and other vegetation as is necessary to facilitate the public's right to use such roads for uninterrupted travel, need not compensate abutting landowners from whose property the trees and vegetation are removed.

The circumstances in which a county engineer or board of township trustees may exercise its authority under R.C. 5543.14 are set forth therein. R.C. 5543.14 limits the trees, shrubs, and other vegetation that may be removed thereunder to those that are "growing in or encroaching onto the right-of-way of the county [or township] roads." R.C. 5543.14 also authorizes a county engineer or board of township trustees to remove only so many of the trees and such other vegetation as is "necessary in the engineer's or board's judgment to facilitate the right of the public to improvement and maintenance of, and uninterrupted travel on, county and township roads," R.C. 5543.14. Thus, in those instances in which a tree or other vegetation is growing in or encroaching onto the right-of-way of a county or township road, R.C. 5543.14 authorizes a county engineer or board of township trustees to remove the tree or vegetation as is necessary, in the judgment of the engineer or board, for the public to travel, unimpeded, on such road.

In response to your first two questions, therefore, it is our opinion that, pursuant to R.C. 5543.14, a county engineer or board of township trustees may "trim or remove any and all trees, shrubs, and other vegetation growing in or encroaching onto the right-of-way of" county or township roads, respectively, and "[t]he engineer or board is not required to compensate the abutting landowner for trimming or removing such trees, shrubs, and other vegetation as is necessary to facilitate these rights."

Having reviewed the nature and scope of authority conferred upon county engineers and boards of township trustees by R.C. 5543.14, we now turn to your final question, which asks, "[i]f a county engineer or a board of township trustees may remove such trees, shrubs, and other vegetation from the right-of-way of a county or township road without compensating the abutting landowner for their removal, how is such authority reconciled with section 19 of article I of the Ohio Constitution and the fifth amendment to the Constitution of the United States?" According to your letter, because R.C. 5543.14 does not require a county engineer or board of township trustees, when acting under that statute, to obtain the prior consent of, or to compensate, the abutting landowners, you question whether the actions authorized by R.C. 5543.14 violate the abutting landowners' rights under Ohio Const. art. I, § 19, as described in *Ohio Bell Telephone Co. v. Watson Co.*, and under the fifth amendment to the Constitution of the United States.

One provision about which you ask, Ohio Const. art. I, § 19, begins by stating that, "[p]rivate property shall ever be held inviolate, but subservient to the public welfare."[4] Ohio Const. art. I, § 19 further requires that when private property is taken for a public use,

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[4]*See State v. Anderson*, 57 Ohio St. 3d 168, 169-70, 566 N.E.2d 1224, 1225 (1991) ("[i]t is well-established that private property is held subject to the general police power of a state and may be regulated pursuant to that power.... Section 19, Article I of the Ohio Constitution specifically recognizes the subordination of private property to the general welfare" (various citations omitted)), *cert. denied*, 501 U.S. 1257 (1991).

compensation therefor must be made to the owner. As summarized by the court in *Smith v. Erie R.R. Co.*, 134 Ohio St. 135, 16 N.E.2d 310 (1938) (syllabus, paragraph one), "[u]nder Section 19, Article 1, of the Constitution, which requires compensation to be made for private property taken for public use, any taking, whether it be physical or merely deprives the owner of an intangible interest appurtenant to the premises, entitles the owner to compensation."[5]

Similar provision is contained in the fifth amendment to the United States Constitution, which provides, in pertinent part, that no person shall "be deprived of ... property, without due process of law; nor shall private property be taken for public use, without just compensation." *See Masheter v. Brewer*, 40 Ohio St. 2d 31, 33, 318 N.E.2d 849, 851 (1974) ("[s]ection 19, Article I of the Ohio Constitution, and the Fifth Amendment to the United States Constitution guarantee just compensation to one whose property is appropriated for public use").

In order to understand the manner in which the constitutional guarantees in private property may be implicated with respect to the removal of trees or vegetation by a county or township from its roads, we must first examine the nature of public roads.[6] It is well settled

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[5]*See Rothwell v. Linzell*, 163 Ohio St. 517, 127 N.E.2d 524 (1955) (syllabus, paragraph seven) ("[i]n effect, an owner of property holds title to that property subject to a perpetual optional right of his government to acquire that property for public use on the payment of full compensation in money therefor").

[6]The word "roads" is generally used to refer to improvements outside of municipalities, while the term "streets" refers to those inside municipalities. *See Sparrow v. City of Columbus*, 40 Ohio App. 2d 453, 459, 320 N.E.2d 297, 301 (Franklin County 1974) ("the word 'road,' as ordinarily used in Ohio statutes, relates to public ways and rural sections while the word 'street' is used as to roadways in a municipal corporation" (citations omitted)); 1988 Op. Att'y Gen. No. 88-036 (syllabus, paragraph two) ("[a] road that has been established as part of the township road system is considered a city street, rather than a township road, whenever it exists within a city. The city is responsible for the maintenance of the road and is authorized to make improvements upon the road"); 1919 Op. Att'y Gen. No. 397, vol. I, p. 661, 662 ("while the word 'road' as a generic term is no doubt broad enough to include 'street,' yet our legislature has for many years past made use of the word 'road' in dealing with improvements outside of municipalities and the word 'street' in dealing with improvements within municipalities. In fact, as a matter of common usage, the word 'street' is understood as referring particularly to public ways within municipalities and the word 'road' to like ways outside of municipalities"). Because your questions concern the rights of only those persons whose properties abut county and township roads, this opinion is so limited. *Cf. Ohio Bell Telephone Co. v. Watson Co.*, 112 Ohio St. 385, 389, 147 N.E. 907, 908 (1925) ("[t]he fee to streets within municipalities in Ohio rests in trust in the municipality for street purposes, subject to the abutting owner's rights to ingress and egress, light, and air").

that when a public road is established,[7] the public acquires an "easement or right of way[8] on the land over which it passes, with the powers and privileges incident to that right," *Phifer v. Cox*, 21 Ohio St. 248 (1871) (syllabus, paragraph one) (footnote added), while the fee to the land remains in the abutting owners. As explained more fully in *Lawrence Railroad Co. v. Williams*, 35 Ohio St. 168, 171 (1878):

> As between the public and the owner of land upon which a common highway is established, it is settled that the public has a right to improve and use the public highway *in the manner and for the purposes contemplated at the time it was established.* The right to improve includes the power to grade, bridge, gravel, or plank the road in such a manner as to make it most *convenient and safe for use by the public, for the purposes of travel and transportation in the customary manner....* These constitute the easement which the public acquires by appropriating land for the right of way for a highway, and these, in legal contemplation, are *what the owner is to receive compensation for when his land is appropriated for this purpose.* The fee of the land remains in the owner.... (Emphasis added.)

Although the abutting owners retain fee ownership of the land over which a public road passes, including the right to the trees and other vegetation growing therein, they are limited in their use of such trees and vegetation to those "purposes not incompatible with the right of way," *Phifer v. Cox* (syllabus, paragraph one).[9] *See Daily v. State*, 51 Ohio St. 348, 37

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[7]The various methods by which private property may be established as a public road are explained in 1987 Op. Att'y Gen. No. 87-046 at 2-304 to 2-306. For example, private property may become a public road through a statutory appropriation procedure. *See, e.g.*, R.C. 5553.03.-.16 (appropriation of land by county commissioners for road purposes). Another means by which private property may be established as a public road is through statutory or common law dedication—a gift of private property to the state or a political subdivision for road purposes. *See generally, e.g., In re Loose*, 107 Ohio App. 47, 153 N.E.2d 146 (Franklin County 1958) (syllabus, paragraphs one and two) (R.C. 5553.31, "providing the method for the dedication of land for county road purposes, requires no acknowledgment, but only that the plat be signed by the party dedicating such land, and that it be approved and accepted by the board of county commissioners and filed for record; and when such requirements have been complied with there is a valid statutory dedication of such land for public road purposes. An intention by the owner of land to dedicate such land for county road purposes and the acceptance thereof by the board of county commissioners on behalf of the public, where such approval and acceptance is signed by the county commissioners, are sufficient to establish a common-law dedication").

[8]*See generally* 1988 Op. Att'y Gen. No. 88-080 at 2-398 ("the term ["right-of-way"] is generally understood as referring to the easement acquired by the public in that portion of the land of the owner thereof over which a road or highway passes, with all the powers and privileges that are necessarily incident to such easement").

[9]The court in *Phifer v. Cox*, 21 Ohio St. 248 (1871), explained that, although the removal from the right-of-way of a public road of trees and vegetation that create a nuisance or hindrance to public travel is a right included within the public's easement, removal of such trees or vegetation for other purposes is not. Accordingly, the *Phifer* court further held in paragraphs two and three of the syllabus:

> 2. The mere fact that such trees, shrubs or herbage stand within the bounds of the road, does not justify any *individual, not acting under official authority,* in destroying them; *but if they are a hindrance or annoyance to*

N.E. 710 (1894) (syllabus, paragraph one) ("[a]n owner of land adjoining a public highway whose title extends to the center of the road, who has cultivated shade trees, planted partly on his own land and partly in the line of the highway within the bounds of his deed, has a property interest in such trees, and the right to their enjoyment *subject only to the convenience of public travel*" (emphasis added)). Thus, the rights retained by the abutting landowners in the trees and vegetation in the right-of-way of a road are not interfered with or additionally burdened when such trees and vegetation are "taken for the purpose of making or repairing the road, or lawfully abated as a hindrance or annoyance to travelers thereon," *Phifer v. Cox*, 21 Ohio St. at 255.

With these general principles in mind, let us now consider whether the actions authorized by R.C. 5543.14 are consistent with the holdings of the court in *Ohio Bell Telephone Co. v. Watson Co.* concerning the rights of owners whose properties abut public roads. The dispute in *Ohio Bell Telephone Co. v. Watson Co.* arose when a telephone company, acting under a statutory grant of authority, placed telephone poles and wires in the right-of-way of a road. In so doing, the telephone company also trimmed certain trees in the right-of-way in order to allow proper clearance for its wires.

The issue presented to the *Ohio Bell Telephone Co.* court was:

> whether or not the erection of poles and wires by a telephone company within the limits of a highway outside of a municipality, and without the consent of the landowner, whose farms abut upon said highway, and whether or not the trimming of trees growing within the limits of the highway in front of the property of the landowner, *where such trimming is necessary for the telephone line*, constitutes a taking of property without compensation, contrary to Section 19, Article I, of the Constitution of the state of Ohio, and the Fifth Amendment to the Constitution of the United States.

112 Ohio St. at 388-89, 147 N.E. at 908 (emphasis added).

The *Ohio Bell Telephone Co.* court began its analysis by reiterating the principle that the rights of the abutting owners in public roads are *"subject only to* such rights as are incident to and necessary for public passage, in other words, *the right of the public to improvement, maintenance and uninterrupted travel*; the abutting owner having all right to all uses of the land *not inconsistent with such right of improvement and travel.*" 112 Ohio St. at 389, 147 N.E. at 908 (emphasis added). Because the public already possessed an easement or right-of-way in such roads, the court considered whether a telephone company's placement of telephone poles and wires in the right-of-way, as well as the trimming of trees to

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> *travelers they are a public nuisance, and may be abated or removed* in a peaceable manner by any one lawfully using the road. Whether they are such nuisance is a question of fact for the jury; and such summary abatement cannot be justified unless the public travel is thereby impeded, hindered or annoyed.
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> 3. Where a growing hedge, standing within the bounds of a highway, but leaving ample room for the public travel, which was not thereby incommoded or annoyed, was cut down by an individual *not acting under official authority—held*, that the hedge was not such a nuisance as would justify any person in abating it, and that *the owner of the fee might maintain an action for his damages sustained thereby*. (Emphasis added.)

facilitate such placement, was a part of that easement or whether such actions imposed a separate, additional burden on the property rights of the abutting landowners.

The *Ohio Bell Telephone Co.* court considered the history of the development of public roads as well as the statutory scheme that enabled telephone companies to begin operation, and determined that the installation of telephone poles and wires in a right-of-way was not part of the public's easement or right-of-way, but was, instead, "a totally distinct and different kind of use from any heretofore known," 112 Ohio St. at 393, 147 N.E. at 910 (quoting *Eels v. American Telephone & Telegraph Co.*, 143 N.Y. 133, 138, 38 N.E. 202, 203 (1894)). Moreover, the court found that the statutory scheme governing the installation of telephone poles and wires in the right-of-way of a road established, "'*secondary and subordinate, rather than co-ordinate, rights, with travelers*, which fact is apparent in the provision that the lines are to be so constructed as not to interfere with the public use of the highways.'" 112 Ohio St. at 390, 147 N.E. at 909 (quoting *Daily v. State*, 51 Ohio St. at 358, 37 N.E. at 712) (emphasis added).

In its analysis, the *Ohio Bell Telephone Co.* court acknowledged that a telephone company's installation of its poles and wires in the right-of-way of the road served a public purpose, and was, therefore, a proper purpose for which private property could be taken. Because such installation imposed a separate burden on the property of the abutting landowners, in addition to the existing public easement for highway purposes, however, the court found that Ohio Const. art. I, § 19, prohibited the telephone company from taking such action, "unless by consent of such owner[s] or first making compensation according to law" 112 Ohio St. at 385, 147 N.E. at 907 (syllabus, paragraph two).

As explained in your opinion request, you find particularly troublesome paragraph two of the syllabus of *Ohio Bell Telephone Co. v. Watson Co.*, which states:

> An owner of land abutting upon a country highway, whose title extends to the center of the road along the side of which are located shade trees, has a property right in such trees, and the same may not be interfered with, unless by consent of such owner or first making compensation according to law. (*Daily v. State*, 51 Ohio St., 348, 37 N.E., 710, ... followed and approved.)

Your question appears to be whether this part of the holding in *Ohio Bell Telephone Co. v. Watson Co.* prohibits a county engineer or board of township trustees from removing trees or vegetation from the right-of-way of a county or township road, as authorized by R.C. 5543.14, without first obtaining the consent of the abutting landowners or compensating such landowners for such removal.[10]

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[10]The remaining paragraphs of the syllabus of *Ohio Bell Telephone Co. v. Watson Co.*, read as follows:

> 1. In this state the fee to the country highway is in the abutting owner, and the public has only the right of improvement thereof and uninterrupted travel thereover.
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> ....
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> 3. The erection and maintenance of telephone poles and wires within the limits of a country highway is an additional burden upon the easement

As provided for in Rule 1(B) of the Supreme Court Rules for the Reporting of Opinions, however: "The syllabus of a Supreme Court opinion states the controlling point or points of law decided in and necessarily arising from the facts of the specific case before the Court for adjudication." We must, therefore, read the *Ohio Bell Telephone* court's holding in paragraph two of the syllabus in light of the facts of that case.

The key fact that distinguishes the holding in the second paragraph of the syllabus of *Ohio Bell Telephone Co. v. Watson Co.* from the actions authorized by R.C. 5543.14 is that the placement of telephone poles and wires and the accompanying trimming of trees in the right-of-way at issue in that case were not done as part of the public's easement for a road purpose, *e.g.*, the maintenance or repair of the road or the abatement of a nuisance to the travelling public. Rather, in *Ohio Bell Telephone Co.*, the placement of the telephone poles and lines and the accompanying trimming of trees in the right-of-way were undertaken for a separate and distinct purpose, *i.e.*, the facilitation of telephone communication. Accordingly, pursuant to Ohio Const. art. I, § 19 and U.S. Const. amend. V, in order to impose this new, additional burden on the property of the abutting landowners, the telephone company was first required to obtain the abutting landowners' consent or to compensate the abutting landowners for the taking.[11]

In contrast to the situation addressed in the *Ohio Bell Telephone Co.* case, R.C. 5543.14 authorizes the removal of trees and vegetation by a county engineer or board of township trustees as is necessary "to facilitate the right of the public to improvement and maintenance of, and uninterrupted travel on" county and township roads. Such activity is

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> and an invasion of the property rights of the abutting owner, for which he is entitled to compensation.
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> 4. Where along a rural highway a telephone company has erected poles, done necessary cutting and trimming of a shade tree to permit the placing of telephone cables on said poles, such construction, however, not interfering with the access, light and air of the adjoining owner, but being without the consent and against the protest of such owner, an injunction will be granted at his instance restraining the further construction of such telephone line and requiring the removal of the poles and cables already in place, unless compensation shall be made to such owner or his consent obtained.

[11]Concerning the need to obtain the consent of the abutting landowners prior to taking action under R.C. 5543.14, we note that former R.C. 5543.14 conditioned the authority of the county engineer or board of township trustees to exercise "control of" county and township roads upon their obtaining the consent of the abutting landowners. *See* 1953 Recodification of Revised Code, vol. 4, Title 55, p. 110 (Am. H.B. 1, eff. Oct. 1, 1953). The language in former R.C. 5543.14 requiring the consent of the abutting landowners was deleted, however, by Sub. H.B. 653. *See* note one, *supra*. Currently, nothing within R.C. 5543.14 requires the county engineer or a board of township trustees to obtain the consent of the abutting landowners prior to proceeding in accordance with R.C. 5543.14. The practice of removing trees and vegetation from the right-of-way without obtaining the prior consent of the abutting landowners, as authorized by R.C. 5543.14, is consistent with the nature of an easement for road purposes that reserves to the abutting landowners only those uses of the right-of-way that are not inconsistent with the use thereof for road purposes. *See Daily v. State*, 51 Ohio St. 348, 37 N.E. 710 (1894) (syllabus, paragraph one); *Phifer v. Cox* (syllabus, paragraph one).

part of the public's easement or right-of-way in a road, to which, as acknowledged by the *Ohio Bell Telephone Co.* court, the rights of the abutting landowners are subordinate. Because actions that are taken to maintain or repair a road or to abate nuisances to public travel thereon impose no new burden upon the property rights of the abutting landowners, such actions do not constitute a separate or additional "taking" of the abutting landowners' property within the meaning of Ohio Const. art. I, § 19 or U.S. Const. amend. V for which the abutting landowners are entitled to receive compensation. Accordingly, we are of the opinion that R.C. 5543.14 is not inconsistent with the holdings in *Ohio Bell Telephone Co. v. Watson Co.*[12]

Based upon the foregoing, it is my opinion, and you are hereby advised that:

1. Pursuant to R.C. 5543.14, a county engineer or board of township trustees may "trim or remove any and all trees, shrubs, and other vegetation growing in or encroaching onto the right-of-way of" county or township roads, respectively, and "[t]he engineer or board is not required to compensate the abutting landowner for trimming or removing such trees, shrubs, and other vegetation as is necessary to facilitate these rights."

2. The removal of trees or other vegetation from a county or township road by a county engineer or board of township trustees in accordance with R.C. 5543.14 is part of the public's easement or right-of-way created when the county or township road was established, and, therefore, does not constitute a taking of any property rights remaining in the abutting landowners within the meaning of Ohio Const. art. I, § 19 or U.S. Const. amend. V. Accordingly, a county engineer or board of township trustees may take those actions authorized by R.C. 5543.14 without first obtaining the consent of, or compensating, the abutting landowners. (1946 Op. Att'y Gen. No. 942, p. 327, syllabus, paragraph two, overruled to the extent that it is inconsistent with this opinion.)

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[12]The syllabus of 1946 Op. Att'y Gen. No. 942, p. 327, concludes:

> 1. Township trustees, in the performance of their duty to maintain and keep in good repair township roads, may remove trees standing within the limits of a township road if such trees impede the flow of traffic over the road.
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> 2. After the trees are removed from the road they are, as they were before, the property of the abutting landowner.

To the extent that paragraph two of the syllabus of 1946 Op. Att'y Gen. No. 942, p. 327, suggests that the township trustees must compensate the abutting landowners for the removal of trees that impede the public's right to travel, we hereby overrule that conclusion. *See Rueckel v. Texas Eastern Transmission Corp.*, 3 Ohio App. 3d 153, 444 N.E.2d 77 (Fairfield County 1981) (finding, in part, that property owners who granted easement for pipeline purposes were not entitled to receive compensation for easement holder's removal of property owners' trees that obstructed, unreasonably burdened, or interfered with easement holder's rights to maintain pipeline).