

OPINION NO. 80-040**Syllabus:**

It is the responsibility of a board of county commissioners and the county engineer, pursuant to R.C. 5579.04, to destroy all brush, briars, burrs, vines, Russian, Canadian, or common thistles, or other noxious weeds, growing within the limits of a county road or highway located within a particular township. (1920 Op. Att'y Gen. No. 1454, vol. I, p. 795 and 1927 Op. Att'y Gen. No. 1037, vol. III, p. 1818 overruled.)

To: John S. Cheetwood, Wood County Pros. Atty., Bowling Green, Ohio
By: William J. Brown, Attorney General, August 7, 1980

I have before me your request which concerns the responsibility as between townships and counties for the destruction of weeds growing along county roads located within a township. You specifically ask:

Is it the responsibility of the board of county commissioners or the responsibility of a board of township trustees to supply the labor and equipment and/or actually pay the cost of removing brush, briars, burrs, vines, Russian, Canadian, or common thistles, or other noxious weeds, growing within the limits of a county road or highway located within a particular township?

Two statutes, R.C. 5579.04 and R.C. 5579.08, must be considered in reaching the answer to your question. The first statute, R.C. 5579.04, provides:

A board of county commissioners, board of township trustees, or street commissioners of a municipal corporation, having control of and being charged with the duty of repairing macadamized, graveled, or improved roads, and county engineers, township road superintendents, and the street commissioners of each municipal corporation, between the first and twentieth days of June, the first and twentieth days of August, and if necessary, between the first and twentieth days of September of each year, shall destroy all brush, briars, burrs, vines, Russian, Canadian, or common thistles, or other noxious weeds, growing within the limits of a county or township road, or improved, graveled, or macadamized road, street, or alley within their jurisdiction. (Emphasis added.)

The second statute, R.C. 5579.08, is set forth as follows:

All brush, briars, burrs, vines, and Russian, Canadian, or common thistles, or other noxious weeds growing along the public highway shall be cut between the first and twentieth days of June, the first and twentieth days of August, and, if necessary, between the first and

twentieth days of September of each year. This work shall be done by the board of township trustees in its respective township, or by the township highway superintendent, who may employ the necessary labor to carry out this section. All expenses incurred shall, when approved by the board, be paid from the township road fund by the township clerk, upon his warrant.

Considering R.C. 5579.04, it must be concluded the county is responsible for removing noxious weeds growing within the limits of a county road located within a township. The plain language of this statute states that the political subdivision which has control of, and is charged with, repairing roads is also responsible for destroying the weeds alongside those roads. Each county must repair and maintain its own county roads, pursuant to R.C. 5535.08 and R.C. 5535.01(B). See also 1963 Op. Att'y Gen. No. 3546, p. 49. Thus, each county must also destroy the weeds along its county roads.

Supporting this interpretation of R.C. 5579.04 is the fact that the term "maintenance" (of a highway) has been interpreted to include the destruction of weeds and brush along a highway. 1955 Op. Att'y Gen. No. 5839, p. 517; 1952 Op. Att'y Gen. No. 1485, p. 419. Disregarding the responsibility imposed by R.C. 5579.04, each county would be responsible for destroying the weeds along its county roads, pursuant to the duty of maintenance imposed by R.C. 5535.08 and R.C. 5535.01(B).

An analogy can be made to snow and ice removal, which is also considered to be highway maintenance. See 1961 Op. Att'y Gen. No. 2283, p. 316. Formerly, the law imposed a duty upon the township trustees to clear all state, county, and township roads within the township of snow. 1917 Ohio Laws 69, 94 (G.C. 3374-1). The law was changed so that now the township is responsible for clearing only township roads, and the state and counties are authorized to remove snow and ice from their own roads. R.C. 5501.41; R.C. 5571.08. The law seems to be moving in the direction of placing responsibility on each political subdivision for all aspects of its own highway repair and maintenance.

An examination of your question is not, however, complete, unless it also addresses R.C. 5579.08, which imposes upon the township the burden of destroying weeds "along the public highway." R.C. 5535.01 divides the "public highways of the state" into three classes: state roads, county roads, and township roads. The term "public highway" is generally used to encompass all of these roads. However, if "public highway" as used in R.C. 5579.08 were interpreted to include county roads, and R.C. 5579.08 were read to impose the duty of cutting weeds along county roads upon the townships, R.C. 5579.04 would be rendered meaningless, and county commissioners and county engineers would have to be read out of the statute. This could not have been the intent of the legislature. A basic rule of statutory construction is that it is presumed every part of a statute's language is to be given effect and meaning. No part should be disregarded. R.C. 1.47(B); Carter v. City of Youngstown, 146 Ohio St. 203, 65 N.E. 2d 63 (1946); State ex rel. Browneil v. Industrial Commission, 131 Ohio St. 124, 2 N.E. 2d 260 (1936); State ex rel. Myers v. Board of Education, 95 Ohio St. 367, 116 N.E. 516 (1917). R.C. 5579.04 and R.C. 5579.08 should be read in pari materia, and thus, should be construed together, and harmonized if possible. State ex rel. Pratt v. Wevgandt, 164 Ohio St. 463, 132 N.E. 2d 191 (1956); National Distillers Products Corp. v. Evatt, 143 Ohio St. 99, 54 N.E. 2d 146 (1944); State ex rel. Adsmond v. Board of Education, 135 Ohio St. 383, 21 N.E. 2d 94 (1939). The Ohio Supreme Court has adopted the position that, in construing a statute in connection with other sections in pari materia, one or more of the sections should be limited as necessary to give effect to all of the provisions. Southern Surety Co. v. Standard Slag Co., 117 Ohio St. 512, 159 N.E. 559 (1927); City of Cincinnati v. Connor, 55 Ohio St. 82, 44 N.E. 582 (1896). I conclude, therefore, that, R.C. 5535.01 notwithstanding, "public highway" in R.C. 5579.08 should be read as "public highway of the township" to best effectuate R.C. 5579.04 as well as R.C. 5579.08.

My conclusion that the board of county commissioners is responsible for destroying weeds along county roads running through townships is supported by R.C. 5571.02, which states in part: "The board of township trustees may, with the approval of the board of county commissioners. . .maintain or repair a county road. . .within the limits of its township." (Emphasis added.) This section demonstrates that a township and county may enter into a voluntary agreement whereby the township maintains a county road running through the township. The county, however, is the entity which is charged by law with the maintenance of its own roads, and the township may maintain or repair a county road only with the approval of the county commissioners. See also R.C. 5535.08 (providing that the county and township may agree to contribute to the repair and maintenance of the roads under the control of the other).

One of my predecessors, faced with the precise question which you now present, did interpret the forerunner of R.C. 5579.08, G.C. 3374-2 (see 1917 Ohio Laws 69, 94-95) to mean that townships did have the duty to destroy weeds along township roads, and also along county and state roads within the township. 1920 Op. Att'y Gen. No. 1454, vol. I, p. 795. This opinion was subsequently approved and followed by 1927 Op. Att'y Gen. No. 1037, vol. III, p. 1818. However, at the time these opinions were rendered, G.C. 7146, the predecessor to R.C. 5579.04 (see 1919 Ohio Laws 232) nowhere mentioned the board of county commissioners or other county officers. Subsequently, G.C. 7146 was amended to include specific reference to county commissioners and county surveyors and highway superintendents, reflecting a legislative intent that the responsibility for weed control along all county roads be transferred from the township to the county. See 1931 Ohio Laws 172 (amending G.C. 7146). This language, with minor changes, was carried over to R.C. 5579.04. Therefore, the conclusions reached in 1920 Op. No. 1454 and 1927 Op. No. 1037 are not valid under statutes currently in effect.

In 1927 Op. No. 1037, my predecessor supported his conclusion that a township must destroy weeds along county roads within the township upon the basis that G.C. 3374-2 [now R.C. 5579.08] specified a fund from which townships could obtain money for such activity, whereas G.C. 7146 [now R.C. 5579.04] did not specify such a fund for counties. This distinction remains in the existing statutes, but it is not determinative in interpreting these two sections. Counties, as well as townships, do have a road fund from which money for repair and maintenance expenses may be drawn. Pursuant to R.C. 5555.92, the "board of county commissioners shall provide annually by taxation an adequate fund for the maintenance and repair of improved county highways." Other statutes provide for disbursements to the county for maintenance and repair of county roads. See, e.g., R.C. 4501.03 and R.C.4501.04 (distribution of revenues from the registrar of motor vehicles); R.C. 5735.23(B), 5735.26(C), 5735.27(A)(3) and (4) (distribution of revenues from the gasoline excise tax fund); R.C. 5735.25 (distribution of revenue from levy of an additional motor vehicle fuel tax). Thus, a fund has been set up from which the county commissioners may legally draw money to pay the expenses entailed in destroying weeds along county roads. On this basis, as well, I reject the conclusion reached in 1927 Op. No. 1037.

Accordingly, it is my opinion, and you are advised, that it is the responsibility of a board of county commissioners and the county engineer, pursuant to R.C. 5579.04, to destroy all brush, briars, burrs, vines, Russian, Canadian, or common thistles, or other noxious weeds, growing within the limits of a county road or highway located within a particular township. (1920 Op. Att'y Gen. No. 1454, vol. I, p. 795 and 1927 Op. Att'y Gen. No. 1037, vol. III, p. 1818 overruled.)