

Note from the Attorney General's Office:

1927 Op. Att'y Gen. No. 27-1037 was overruled by
1980 Op. Att'y Gen. No. 80-040.

1037.

TOWNSHIP TRUSTEES—DUTY TO CUT NOXIOUS WEEDS ALONG ALL
ROADS WITHIN TOWNSHIP—PAYMENT FOR SAME

SYLLABUS:

1. *Under the provisions of Section 3374-2 of the General Code, it is the duty of either the township trustees or the township highway superintendent to cut noxious weeds growing along state and county roads as well as township roads situated within a township, and the payment of the labor necessary to cut such weeds should be made from the township road fund. If a township highway superintendent has not been appointed, the duty of cutting such weeds is placed solely upon the township trustees. (Opinion of the Attorney General for 1920, Vol. 1, page 795, approved and followed.)*

2. *If the financial condition of the township will permit, the township trustees should appropriate from the township road fund sufficient funds to pay the expense of the necessary labor to cut said weeds and the township clerk should draw his warrant upon the township treasurer for such payment.*

COLUMBUS, OHIO, September 22, 1927.

HON. L. E. HARVEY, *Prosecuting Attorney, Troy, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“A notice has been served on the trustees of one of the townships of Miami County demanding that they proceed under Section 3374-2 of the General Code to cut all weeds along all public roads in the township.

In 1920 in an opinion rendered by Hon. John G. Price and reported in 1920 Opinions of the Attorney General, Volume 1, Page 795, the ruling was made that the township trustees must cut all weeds along all roads including the county and state highways.

A change has been made since that date in the manner of levying and raising funds for the roads and the township does not share in the gasoline tax funds and the township in question itself has made no levy whatever for the purpose of caring for any work on or along county or state highways. The clerk and treasurer refuse to pay for any work done along county and state roads as there is no fund for any such work, the only levy being made for township roads alone.

In your opinion is the rule laid down in the opinion of Mr. Price, above mentioned, still controlling? If so, from what fund is the payment to be made for work in cutting weeds along county and state highways?

The notice in this case demands that the work be done within ten days and I would like your opinion as soon as possible.”

You inquire whether it is still the duty of township trustees to cut noxious weeds growing along all public highways located within a township, and if so out of what fund may the expense incident to cutting such weeds be paid.

In an opinion of this department reported in Opinions, Attorney General, 1920, Vol. 1, page 795, and to which reference is made in your letter it was held:

"Section 7146, General Code, (108 O. L. 232) does not repeal Section 3374-2, General Code, (107 O. L. 94) by implication; and notwithstanding the enactment of the former section, township trustees remain under the duty of cutting brush, weeds, etc., along state and county highways, as well as along township highways."

Section 7146 provides:

"Township trustees or street commissioners having control of and being charged with the duty of repairing macadamized, graveled or improved roads and turnpikes, and road superintendents of county and township roads and the street commissioners of each city or village, between the first and twentieth days of August, and, if necessary, between the first and twentieth days of September of each year, shall destroy or cause it to be done, all brush, briars, burrs, vines, Russian and Canadian or common thistles, or other noxious weeds, growing or being within the limits of a county or township road, turnpike, improved, graveled or macadamized road, street, or alley within their jurisdiction."

It is quite clear that Section 7146, General Code, *supra*, does not place a duty upon a board of township trustees to cut weeds along a state highway since the words "county or township roads" are therein used.

This is not true with reference to Section 3374-2, General Code, which provides:

"All brush, briars, burrs, vines, Russian or Canadian, or common thistles or other noxious weeds growing along *the public highway* shall be cut between the first and twentieth days of June and the first and twentieth days of August of each year, and if necessary between the first and twentieth days of September of each year. This work shall be done by the township trustees in their respective townships, or by the township highway superintendent, if one be appointed, who may employ the necessary labor to carry out the provisions of this section. All expenses incurred shall, when approved by the township trustees, be paid from the township road fund by the township treasurer upon the warrant of the township clerk."

It will be observed that the above quoted section says that "weeds growing along the *public highway* shall be cut," thus including state highways as well as county and township roads.

Section 3374-2, *supra*, has neither been repealed nor amended since the rendition of the opinion in 1920, the syllabus of which has hereinbefore been quoted in this opinion; and since said section is still in force and effect, and since the conclusions and reasoning of my predecessor in the above cited opinion are, in my judgment, sound and good law, I agree with such conclusions.

By the provisions of Section 3374-2, *supra*, all expenses incurred in the cutting of brush, briars, vines, Russian or Canadian, or common thistles, or other noxious weeds growing along the public highway by either the township trustees or by the township highway superintendent shall, upon the approval of the township trustees, be paid from the *township road fund*.

Under the provisions of Section 3298-15d the township trustees are authorized to levy an annual tax for road purposes.

The legislature has seen fit, by the enactment of Section 3374-2, specifically to provide that the expense of cutting weeds along all public highways shall be paid out

of the township road fund which is created by the levy of taxes as provided in Section 3298-15d of the General Code.

Apparently by the use of the words "the public highway" as pointed out in the opinion of my predecessor, hereinbefore referred to, it was intended that the duty of cutting the weeds along all public highways was to devolve upon the trustees of the township or the township highway superintendent, and all state, county and township roads situated within such township are included.

As was pointed out in the opinion referred to, Section 3374-2 was not repealed by implication by the subsequent enactment of Section 7146 of the General Code.

In addition to the reasons set forth in the opinion of my predecessor, above referred to, notwithstanding the fact that Section 3374-2 is contained in Ch. VII, Div. II, Title XI, Part First, of the General Code, entitled "Road Superintendent," it seems apparent that this section has not so much to do with the maintenance of the roads, as the prevention of the growth and spread of weeds injurious to agricultural lands and to the inhabitants of the township. It will be noted that the statute uses the words "other *noxious* weeds," the word "noxious" being defined by Webster's New International Dictionary as "hurtful; harmful; baneful; pernicious; injurious; destructive. * * * "

With reference to this term, Rockel, in his Complete Guide for Ohio Township Officers, says as follows:

"Noxious is generally defined to be hurtful, harmful, baneful, pernicious, destructive. By weeds we generally mean unsightly, useless or injurious plants. Any plant that has been, to use the term, penalized by statute would undoubtedly be a noxious weed. In this class might be mentioned Canada or Russian thistles, white or yellow daisy, teasel or wild carrot, wild lettuce, wild parsnips, yarrow or wild tansy, the various kinds of dock, wild mustard, sorrel, pliantain, rag weed, milk weed, and iron weed. Sweet clover would hardly come in this class."

Obviously noxious weeds along a state highway or a county road would be as harmful and destructive to agricultural lands and growing crops as weeds along a township road, and when this fact is considered, the legislative intent to place the duty of destroying such weeds upon the township for the benefit of all the people of the township is better understood.

Answering your question specifically, it is my opinion that:

1. Under the provisions of Section 3374-2 of the General Code, it is the duty of either the township trustees or the township highway superintendent to cut noxious weeds growing along state and county roads situated within a township, as well as township roads, and the payment of the cost of the labor necessary to cut such weeds should be made from the township road fund. If a township highway superintendent has not been appointed, the duty of cutting such weeds is placed solely upon the township trustees. (Opinion of the Attorney General for 1920, Vol. I, page 795, approved and followed.)

2. If the financial condition of the township will permit, the township trustees should appropriate from the township road fund sufficient funds to pay the expense of the cost of the necessary labor to cut said weeds and the township clerk should draw his warrant upon the township treasurer for such payment.

Respectfully,
EDWARD C. TURNER,
Attorney General.