

An examination of the corrected abstract of title submitted shows that said Alvin F. Cyfers has a good and merchantable title in said land subject only to the lien for taxes for the last half of the year 1927 and for the years 1928 and 1929. The amount of these taxes is not stated in the abstract but I assume that it is small.

As suggested in the former opinion of this department referred to above, said Alvin F. Cyfers has obtained a quit-claim deed from the heirs of William H. Scoles who owned this property at the time the same was sold at forfeited land sale to Cyfers. It appears that one of the signatures to the quit-claim deed is that of D. W. Bixler, as guardian of Merle Scoles, a minor, who is apparently the grandson of Wm. H. Scoles, deceased. The abstract does not show any court order authorizing said D. W. Bixler to sign or otherwise execute this quit-claim deed. However, as I see it, the moral risk involved by reason of this defect is, under the circumstances, very slight and remote, and I can approve the title so far as this objection is concerned. Some adjustment, however, should be made with respect to the taxes on this property before the transaction relating to the purchase of the same is closed.

An examination of the former opinion of this department above referred to, shows that the warranty deed of Alvin F. Cyfers and Minnie Cyfers, his wife, was therein approved as to execution and form.

In said former opinion the encumbrance estimate was disapproved for the reason that the same was not properly executed. I note that this objection has been corrected and the same is herewith approved.

The Controlling Board certificate was referred to and approved in the former opinion and requires no further notice herein.

I am herewith enclosing said corrected abstract of title, warranty deed and encumbrance estimate.

Respectfully,
GILBERT BETTMAN,
Attorney General.

285.

DEDICATION OF LAND—SIGNATURES OF A PART OF SEVERAL OWNERS DEDICATING LAND ON A PLAT—DEDICATION BINDING ON THOSE SIGNING, IF ACCEPTED BY COUNTY COMMISSIONERS IN STATUTORY MANNER—EXCEPTION.

SYLLABUS:

Where a number of persons owning separate parcels of land dedicate the same for the purpose of a public road by signing a plat which designates and describes said several parcels of land as well as other parcels of land owned by persons who do not sign said plat, such dedication when the same is accepted by the county commissioners and recorded in the manner provided by Section 6886, General Code, is effective as to the property of the persons signing said plat, notwithstanding the fact that the owners of other parcels of land designated and described in said plat did not sign the same; at least, this is the rule in the absence of facts showing that those who signed said plat did so on the condition precedent that their several acts in signing said plat should not be effective as a dedication unless all of the owners of the parcels of land designated and described in said plat sign the same.

COLUMBUS, OHIO, April 10, 1929.

HON. RAY T. MILLER, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR:—This is to acknowledge the receipt of your communication of recent date in which, after quoting the provisions of Section 6886, General Code, you say:

“It is proposed that the county commissioners construct a road improvement necessitating the accumulation of considerable land for road purposes, the title to said land being in a number of persons.

A dedication plat is prepared under the provisions of the above section upon which plat all the said land to be acquired is shown by being colored in red. Said plat is presented separately to the land owners and they are requested to sign an agreement typed upon the plat to the effect that we the undersigned agreed to dedicate for road purposes the land shown on the within plat above colored in red. Nothing appears upon the plat as to whether the dedication is or is not in consideration of all the land shown in red being dedicated. A large majority of the land owners signed the dedication plat but a few refuse and fail to sign.

The approval and acceptance of the commissioners is then endorsed upon the plat, the same is placed upon the road records of the county and all other provisions of the G. C. 6886 are complied with.

The question is as follows: Is the dedication aforesaid, valid as to those who actually signed the plat or is it invalid because one hundred per cent of the owners did not sign?

An opinion at your early convenience in this connection will be appreciated.”

Section 6886, General Code, referred to by you, reads as follows:

“Any person or persons may, with the approval of the county commissioners, dedicate lands for road purposes. A definite description of the lands to be dedicated with a plat of the same thereto attached and signed by the party dedicating the same, with the approval and acceptance of the commissioners endorsed thereon, shall be placed upon the proper road records of the county in which such road is situated. Provided, however, that if the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the commissioners by proper resolution approve and accept the lands for such purpose, as are provided for in cases where the commissioners by unanimous vote declare their intention to locate, establish, widen, straighten, vacate or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate land for road purposes together with the acceptance of the grant by the commissioners shall constitute the lands so dedicated a public road without any further proceedings thereon.”

Addressing myself to the question presented in your communication, I am of the opinion that if the dedication here in question is effective for any purpose and as against any of the property owners who signed the plat referred to in your communication, it is good as against all of said property owners notwithstanding the fact that other property owners who are expected to sign said plat failed to do so, unless possibly, the property owners signing said plat did so on a condition precedent that their respective dedications were to be considered null and void unless the owners of all the lands represented on said plat signed the same. As to this, however, it is to be noted that although a person dedicating land for the purposes of a public

road may impose such reasonable conditions to his act of dedication as he may see fit, he may not impose conditions inconsistent with the legal character of the dedication and which will wholly defeat its operation. 18 Corpus Juris, pages 69 and 71. I am, therefore, inclined to the view on the facts stated in your communication that the fact that this plat was not signed by all of the property owners who were expected to sign said plat does not affect any question here presented with respect to the effectiveness of the dedication of the property of those who did sign said plat.

Upon the facts stated by you, the question does arise as to whether or not the dedication here in question is an effective dedication against the persons who signed said plat, wholly aside from the question presented in your communication. You do not state sufficient facts to enable me to express any opinion upon the question I have in mind, and I can do no more than to present the question and discuss some of the legal rules, statutory and otherwise, applicable to various phases of the question.

If in the dedication in this case there was a substantial compliance with the provisions of Section 6886, General Code, and the same is good as a statutory dedication, no further question arises. As to this it will be noted, however, that said section of the General Code requires that the written instrument signed by the property owners shall contain not only a plat of the lands dedicated but also a definite description of such lands. It does not clearly appear from your communication that the instrument signed by the property owners in this case was anything more than a plat of the lands owned by the several persons who signed said plat, and it does not appear that said instrument contained any description of said several parcels of land such as is required by said section of the General Code. Upon this point, it is noted "that in order to constitute a valid statutory dedication, the provisions of the statute must be substantially complied with, and such acts as it requires must be performed substantially in the manner prescribed by the Legislature." Elliott on Roads and Streets, Volume 1, Sec. 123; *Oberhelman vs. Allen*, 7 O. A. 251, 255; *Village of Lockland vs. Smiley*, 26 O. S., 94.

Your communication is not sufficiently definite in its statement of facts to enable me to make a categorical answer to the question as to whether or not the dedication here attempted was effective as a statutory dedication under the provisions of Section 6886, General Code. Even though the dedication here in question were not effective as a statutory dedication by reason of a failure on the part of the property owners signing to substantially comply with all of the requirements of said section of the General Code, said attempted dedication would be effective as a common law dedication of said several parcels of land if the same is accepted by the proper legal authorities. In this connection, it has been held "to show a common law dedication it must appear not only that the owner intended to give and did give the property to the public, but also that the gift was accepted by the authorities whose duty it would be to care for the road or street if it should be established." *Oberhelman vs. Allen*, *supra*; *Railroad Co. vs. Roseville*, 76 O. S. 108, 115, 117; *Pennsylvania Railroad Co. vs. Donovan*, 111 O. S. 341, 347.

Viewing the dedication here in question as a common law dedication, the question presented is whether the same has been accepted by the proper public authorities, if the parcels of land sought to be acquired by this dedication were dedicated for the purpose of altering, widening, straightening or changing the direction of a county road already established, under the provisions of Section 6862, General Code, 112 O. L. 208, 484, or in connection with the construction of a county road, under the provisions of Sections 6906 et seq., the county commissioners were the proper public authorities to accept such dedication; and in such case the dedication would be effective as a common law dedication even though under the facts it may not be good as a statutory dedication. If, however, on the other hand, the lands here in question were dedicated for the purpose of laying out and establishing a new public road in said county, it may be doubted whether the county commissioners were the proper authority to accept

said dedication, assuming, of course, that the same could be effective only as a common law dedication. The answer to this question under the authorities above noted depends upon whether the county commissioners would under the law be charged with the duty of maintaining, repairing and otherwise caring for such new public road so laid out and established. Touching this question, Section 7464, General Code, as amended, 112 O. L. 496, provides as follows :

“The public highways of the state shall be divided into three classes, namely : state roads, county roads and township roads.

(a) State roads shall include the roads and highways on the state highway system.

(b) County roads shall include all roads which have been or may be established as a part of the county system of roads as provided for under Sections 6965, 6966, 6967 and 6968 of the General Code, which shall be known as the county highway system, and all such roads shall be maintained by the county commissioners.

(c) Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships ; and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act.”

Under the provisions of Section 7464, General Code, above quoted, county roads are all roads within the county which have been designated by the county commissioners as a part of the county system of roads in the manner provided by the Green Law, so-called, Sections 6955, et seq., General Code. The proposed road here in question, if the same is to be a new public road, would not on its establishment be a county road until designated by the county commissioners as a part of the Cuyahoga County system of roads in the manner provided by the sections of the General Code above referred to. On the contrary, inasmuch as under the provisions of Section 7464, all public highways of the state other than state or county roads are township roads, it would follow that the public road to be established by the county commissioners in and upon land dedicated for the purpose would on its establishment be a township road until otherwise designated ; and the duty of improving, maintaining and repairing such public road would be imposed upon the township trustees. On this point, Section 7467, General Code, provides that the state, county and township shall each maintain their respective roads as designated in the classification set forth in Section 7464, General Code ; and although said Section 7467, General Code, further provides that the county may by agreement with the township trustees, contribute to the repair and maintenance of township roads, the duty of maintaining and repairing such roads is upon township trustees. See also Section 3298-1, General Code, and Opinions of Attorney General, 1927, Volume I, pages 301, 303, 304. In such case the dedication here in question, assuming it to be effective only as a common law dedication, should under the decisions above noted be accepted by the township trustees, who under the law would be charged with the duty of maintaining and repairing the new public road so established.

As before noted, the facts stated in your communication do not justify me in expressing any definite opinion with respect to the questions here suggested and discussed ; and I can only hope that the discussion herein contained may be of some

assistance to you in determining the proper answer to these questions after the facts have been determined.

Respectfully,
GILBERT BETTMAN,
Attorney General.

286.

CORPORATION—CO-OPERATIVELY PURCHASING AND DISTRIBUTING
OILS AND GREASES FOR MEMBERS AND OTHER PURPOSES—
ARTICLES MAY BE FILED UNDER SECTION 10185, GENERAL CODE.

SYLLABUS:

Articles of incorporation stating that the purpose for which the corporation is formed shall be "co-operatively purchasing and distributing oils and greases for members and other purposes," do not set forth a purpose such as to permit the incorporation of a co-operative agricultural association under the provisions of Section 10186-1 to 10186-30, inclusive, General Code. Such articles may be filed under Section 10185, General Code, providing for co-operative trade associations.

COLUMBUS, OHIO, April 10, 1929.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your letter of recent date, which is as follows:

"Your attention is directed to Section 10185, et seq. of the General Code, having to do with co-operative corporations, and in particular to Section 10186-1, et seq.

There has been submitted to this department for filing articles of an association to be known as The Hume Coop. Oil Company. The only purpose stated is that the association is formed for the purpose of co-operatively purchasing and distributing oils and greases for members and other persons.

The certificate also recites that all of the incorporators are engaged in the purchasing of gasoline, oils and greases and desiring to form a co-operative association for the purchasing of oils and greases to be used by the farmers of this state, with capital stock under the provisions of G. C. 10186-1 to 10186-30.

Your opinion is requested as to whether or not articles of incorporation may be filed as a co-operative agricultural association which articles set forth a purpose as herein stated."

There is attached to your letter articles of incorporation of this company on your usual form provided for corporations not for profit under Section 8623-97 of the General Corporation Act. A corporation not for profit organized for the purposes therein set forth may clearly not be organized under the General Corporation Act, for the reason that Section 8623-97 expressly provides:

"A corporation not for profit may be formed hereunder for any purpose or purposes not involving pecuniary gain or profit for which natural