

962.

APPROVAL, BONDS OF VILLAGE OF OAKWOOD, MONTGOMERY COUNTY—\$9,149.54.

COLUMBUS, OHIO, October 2, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

963.

APPROVAL, BONDS OF VILLAGE OF AVON LAKE, LORAIN COUNTY—\$23,000.00.

COLUMBUS, OHIO, October 2, 1929.

Industrial Commission of Ohio, Columbus, Ohio.

964.

TOWNSHIP TRUSTEES—RESOLUTION TO IMPROVE ROAD BY UNANIMOUS VOTE—REJECTION OF IMPROVEMENT AFTER OBJECTIONS FILED—RIGHT TO GRANT REHEARING UPON MOTION OF TAXPAYERS.

SYLLABUS:

When a board of township trustees has, by majority vote, ordered that a road improvement should not be made, after hearing and determining claims for compensation and damages on account of property taken for such improvement, as provided in Section 3298-12, General Code, in the event the taxpayers interested in such improvement desire a rehearing upon the matter of the improvement, such board may, in the absence of a petition, by unanimous vote pass a resolution re-declaring the necessity of the improvement, and publish a notice of such rehearing as was done theretofore in accordance with the provisions of Section 3298-7, General Code.

COLUMBUS, OHIO, October 2, 1929.

HON. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“We should like to have an opinion upon the following proposition:

A board of township trustees, by unanimous vote, without a petition, passed a resolution to improve a certain township road under the provisions of Section 3298-5 of the General Code. At the time of the hearing of objections provided for by General Code, Sections 3298-7, et seq., the board met

with only two members present and the two members decided that the objections filed were well taken and the improvement should not be made. A motion was then filed by the parties, or taxpayers interested in the road improvement, asking the trustees for a rehearing on the matter of objections.

Under the circumstances, have the township trustees a right to grant a rehearing?"

Section 3298-5, General Code, to which you refer, provides that township trustees may, by unanimous vote, without presentation of petition, pass the resolution of necessity for improvement of a public road. Section 3298-6, General Code, provides that such resolution shall set forth the route and termini of such road, the kind and extent of the improvement and further that such resolution shall order the county surveyor to make such surveys, plans, profiles, cross sections, estimates and specifications as may be necessary. Section 3298-7, General Code, provides for the publication of a notice fixing the time and place for hearing objections to such improvement and for hearing claims for compensation for lands and property to be taken for the improvement or damages sustained on account thereof.

Section 3298-12, General Code, is as follows:

"If, after hearing and determining all claims for compensation and damages on account of land or property taken for said improvement, or after the determination of such claims in the probate court on appeal, said board of trustees is still satisfied that the public convenience and welfare require that such improvement be made, and that the costs and expense thereof will not be excessive in view of the public utility thereof, said trustees shall order by resolution that they proceed with such improvement, and shall adopt the surveys, plans, profiles, cross-sections, estimates and specifications, therefor, as reported by the surveyor, or with such modifications thereof as the trustees and surveyors may agree upon. If, in view of the amount of the compensation and damages allowed, said board is of the opinion that said improvement should not be made, the trustees shall so order."

It is noted that the provision that the trustees shall order by resolution that they proceed with such improvement is based upon the proviso that the trustees shall be still satisfied that the public convenience and welfare require such improvement and that the costs and expense thereof will not be excessive in view of the public utility thereof. It might be contended, from a reading of the last sentence of this section, that the trustees may only order that such road improvement should not be made, in the event claims for compensation and damages have been filed and allowed, to such an extent as to make the cost and expense excessive. However, in view of the fact that the trustees may only pass a resolution determining to proceed with the improvement after the hearing of objections and claims for compensation and damages upon condition that the trustees are still satisfied that the public convenience and welfare require such improvement, undoubtedly if no claims for compensation or damages were filed, but merely objections, as indicated in your letter, the trustees would be justified in resolving to abandon the project.

Coming now to the question of granting a rehearing, such as was held pursuant to the provisions of Section 3298-7, General Code, if such rehearing were granted without the repassage of the resolution of necessity and the republication of notice of such hearing, there would necessarily have to be a reconsideration of the action of the board of township trustees in ordering that the improvement should not be made. Your letter states that a motion was filed by the parties or taxpayers interested in the road improvement, asking the trustees for a rehearing on the matter of objections.

The only statutory authority for a hearing upon a road improvement by township trustees, such as was held, is contained in Section 3298-7, General Code. This hearing may be had by township trustees only after taking jurisdiction of a road improvement, which jurisdiction may be taken in one of two ways, either upon the filing of a petition as provided in Section 3298-2, General Code, or upon the unanimous vote of the trustees as provided in Section 3298-5, General Code. In the instant case no petition was filed and the trustees proceeded unanimously under Section 3298-5. There is clearly no statutory authority vested in a board of township trustees to grant a rehearing upon objections to a road improvement upon the filing of a motion by interested parties, nor is there, for that matter, any statutory authority whereby a board of township trustees is vested with authority to grant a hearing in such matters upon the filing of a motion by interested parties. As previously indicated, this hearing may be only granted pursuant to the unanimous vote of the township trustees or pursuant to the filing of a petition for the improvement.

There is no question but that a motion filed by the taxpayers interested, asking for such rehearing, while if no legal import and not binding upon the board, might cause the members of the board to desire to reconsider the entire matter. In such event the board should, in the absence of a petition, by unanimous vote pass a resolution redeclaring the necessity of the improvement and publish a notice of such rehearing as was done theretofore in accordance with the provisions of Section 3298-7, General Code.

In view of the foregoing, it is my opinion that when a board of township trustees has, by majority vote, ordered that a road improvement should not be made, after hearing and determining claims for compensation and damages on account of property taken for such improvement, as provided in Section 3298-12, General Code, in the event the taxpayers interested in such improvement desire a rehearing upon the matter of the improvement, such board may, in the absence of a petition, by unanimous vote pass a resolution redeclaring the necessity of the improvement, and publish a notice of such rehearing as was done theretofore in accordance with the provisions of Section 3298-7, General Code.

Respectfully,
GILBERT BETTMAN,
Attorney General.

965.

LEGAL COUNSEL—EMPLOYED BY VILLAGE—PROHIBITED FROM SELLING FIRE INSURANCE TO SUCH MUNICIPALITY.

SYLLABUS:

Legal counsel provided by a village council for the village, or any department, or official thereof may not lawfully, during the time of his employment, sell fire insurance to the village.

COLUMBUS, OHIO, October 2, 1929.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“Section 12910, G. C., reads: