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VACATING A STREET, ORDINANCE—COUNTY ENGINEER—SECTION 5551 G. C.—REQUIRED TO CHANGE TAX MAPS, BRING UP TO DATE, SHOW AREA VACATED, EFFECTIVE DATE—RECORD IN AUDITOR'S OFFICE—NO PROVISION IN LAW TO AUTHORIZE ENGINEER TO MAKE SUCH NOTATIONS ON COUNTY RECORDER'S PLATS—COUNTY RECORDER WITHOUT AUTHORITY TO RECORD SUCH ORDINANCE.

SYLLABUS:

1. *A county engineer, under the provisions of Section 5551, General Code, is required upon presentation to him of a certified copy of an ordinance vacating a street, to change and bring up to date the tax maps in the auditor's office by making thereon a notation setting forth the area vacated by such an ordinance and the effective date of the same. There is no provision of law, however, which authorizes the county engineer to make such notation on the county recorder's plats.*

2. *A county recorder is without authority of law to record an ordinance vacating a street.*

Columbus, Ohio, May 21, 1940.

Hon. Raymond O. Morgan, Prosecuting Attorney,
Wooster, Ohio.

Dear Sir:

I am in receipt of your request for my opinion which reads as follows:

"The County Engineer has requested that I obtain your opinion on the following question:

Section 3725, Ohio General Code, provides that a village may, by ordinance, vacate an alley or street but there seems to be no statutory provision for changing the records in the Engineer's Office, Auditor's Office or on the plat records in the Recorder's Office.

After reading the statutes, it is my opinion, on presentation of the copy of the ordinance to the Engineer's Office, he should make a notation by referring to the ordinance number and that the Auditor could change the tax duplicate by noting a reference to

the ordinance number and likewise a notation could be placed on the plat records in the Recorder's Office referring to the ordinance number.

However, I would appreciate your opinion as to what proceedings should be followed after passing the ordinance by a village and upon its presentation to the Engineer's Office and Auditor's Office. The engineer would especially like to know if he would have the authority to make the notations upon the plat records in the Recorder's Office and also whether or not the ordinance could be recorded and if so in what records."

Section 7181, General Code, reads in part as follows:

" * * * The county surveyor shall be the county tax map draftsman, but shall receive no additional compensation for performing the duties of such position. * * * "

Section 5551, General Code, reads as follows:

"The board of county commissioners may appoint the county surveyor, who shall employ such number of assistants as are necessary, not exceeding four, to provide for making, correcting, and keeping up to date a complete set of tax maps of the county. Such maps shall show all original lots and parcels of land, and all divisions, subdivisions and allotments thereof, with the name of the owner of each original lot or parcel and of each division, subdivision or lot, all new divisions, subdivisions or allotments made in the county, all transfers of property showing the lot or parcel of land transferred, the name of the grantee, and the date of the transfer, so that such maps shall furnish the auditor, for entering on the tax duplicate, a correct and proper description of each lot or parcel of land offered for transfer. Such maps shall be for the use of the board of equalization and the auditor, and be kept in the office of the county auditor."

The title "county surveyor" was, by the terms of Section 2782-1, General Code, changed to "county engineer." Said section reads as follows:

"The title of county surveyor shall be changed to that of county engineer. Wherever the words 'county surveyor' are found in any section of the General Code, not herein amended or repealed, they shall, after the taking effect of this act, be read 'county engineer.'"

Under the terms of the two sections first above quoted the duty to make, correct and keep up to date a complete set of tax maps of the county is expressly enjoined upon the county engineer. It is a well established rule of law that public officers have in addition to such powers as are expressly granted them by statute, such implied powers as may be necessary to carry out those expressly given. Obviously, therefore, when a certified copy of a

city ordinance vacating a street is presented to the county engineer he would, in order to carry out the duties expressly enjoined upon him, be required to correct and bring up to date the tax maps of the county by noting thereon the vacating of such street.

Section 5551, General Code, further points out that such tax maps shall be for the use of the board of equalization and the auditor, and be kept in the office of the county auditor. Nowhere do the statutes provide that the county engineer shall correct the plat records in the recorder's office. In addition such section provides that such tax maps shall furnish the auditor, for entering on the tax list, a correct and proper description of each lot or parcel of land offered for transfer. It is obvious, therefore, that when the county engineer has corrected and brought up to date the tax maps in the county, the county auditor would thereby be enabled to enter the correct and proper description of such land on the tax list.

I come now to the question of whether or not an ordinance vacating a street is such an instrument as would entitle it to record in the recorder's office. The recording of any instrument was unknown at common law, hence there must be statutory authority before an instrument is entitled to record. *See note in 26 A. L. R. 1546.* The duties of the county recorder with respect to recording instruments presented to him for record are set forth in Section 2757 and 2759, General Code. Said sections read as follows:

Sec. 2757. "The recorder shall keep four separate sets of records, namely: First, a record of deeds, in which shall be recorded all deeds, powers of attorney, and other instruments of writing for the absolute and unconditional sale or conveyance of lands, tenements and heraditaments; Second, a record of mortgages, in which shall be recorded all mortgages, powers of attorney, or other instruments of writing by which lands, tenements, or heraditaments are or may be mortgaged, or otherwise conditionally sold, conveyed, affected or incumbered in law; Third, a record of plats, in which shall be recorded all plats and maps of town lots, and of the subdivisions thereof, and of other divisions or surveys or lands; Fourth, a record of leases, in which shall be recorded all leases and powers of attorney for the execution of leases. All instruments entitled to record shall be recorded in the proper record in the order in which they are presented for record."

Sec. 2759. "The county recorder shall record in the proper record in fair and legible handwriting, typewriting, or printing, all deeds, mortgages, or other instruments of writing required by law to be recorded, presented to him for that purpose. They shall be recorded in regular succession according to the priority of presentation, entering the file number at the beginning of such record.

At the foot of the record of each instrument he shall record the date and precise time of day when it was presented for record.”

A reading of the above sections discloses at once that the language thereof does not specifically or in general terms provide for the recording of an ordinance. Consequently, no statutory provision existing therefor, it would follow that the recorder is without authority to accept and record an ordinance.

You also ask whether or not the engineer may make proper notations on the plat records of the recorder’s office.

In regard thereto, your attention is again invited to section 5551, supra. It will be noted that under the provisions of said section the engineer is required to correct and keep up to date the *tax maps* of the county. Nothing contained therein gives to him either express or implied authority to correct or alter the recorder’s plats, and being possessed of only such powers as are given him by statute, it would naturally follow that he is without authority to make the notations in question.

In conclusion, therefore, and in specific answer to your inquiry it is my opinion that:

1. A county engineer, under the provisions of Section 5551, General Code, is required upon presentation to him of a certified copy of an ordinance vacating a street, to change and bring up to date the tax maps in the auditor’s office by making thereon a notation setting forth the area vacated by such an ordinance and the effective date of the same. There is no provision of law, however, which authorizes the county engineer to make such notation on the county recorder’s plats.

2. A county recorder is without authority of law to record an ordinance vacating a street.

Respectfully,

THOMAS J. HERBERT,
Attorney General.