

681.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN ALLEN, CLARK, HIGHLAND, LAKE, MAHONING, MIAMI, PORTAGE AND SUMMIT COUNTIES.

COLUMBUS, OHIO, July 1, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways & Public Works, Columbus, Ohio.*

682.

APPROVAL, FINAL RESOLUTIONS ON ROAD IMPROVEMENTS IN MEDINA COUNTY, I. C. H. No. 97.

COLUMBUS, OHIO, July 1, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways & Public Works, Columbus, Ohio.*

683.

APPROVAL, NOTE OF MADISON RURAL SCHOOL DISTRICT, PERRY COUNTY, \$1,344.00.

COLUMBUS, OHIO, July 1, 1927.

Retirement Board, State Teachers' Retirement System, Columbus, Ohio.

684.

COUNTY COMMISSIONERS—AUTHORITY TO ASSIST MUNICIPALITY IN STREET IMPROVEMENT—WORD "ROAD" AS USED IN SECTION 6952, GENERAL CODE, DEFINED—ASSESSMENT UNDER SECTION 3812, GENERAL CODE, DISCUSSED.

SYLLABUS:

1. *By the provisions of Section 6949, General Code, a board of county commissioners is not authorized to assist a municipality in a street improvement, no part of which is a part of a state or county highway improvement project.*

2. *Where a street does not connect at either end with a state or county highway or is not in any sense a part of a state or county highway, such a street can not be included within the definition of the word "road" as provided in Section 6952, General Code, and the county commissioners are not authorized under the provisions of Section 6949 to improve such a street, even though the consent of the council of the municipality in which such street is located be obtained.*

3. *Where a county or county commissioners own property within the limits of a municipal corporation, such property may be assessed for street improvements under Section 8812, General Code.*

COLUMBUS, OHIO, July 2, 1927.

HON. ALBERT T. STROUP, *Prosecuting Attorney, Van Wert, Ohio.*

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

"Is it lawful for the county commissioners to assist financially and otherwise in the improvement of a street in a city where said street borders on a commons which has been dedicated to the public?"

This commons was dedicated to the public as such by three men at the time they made the original plat, and is shown on the original plat. The city council wishes to improve the street which borders upon this public commons but can not afford to pay for it all alone.

This commons is now known as a public park and is maintained and taken care of by the city. The county commissioners feel that this park and street are used by the entire county and they feel disposed to help pay for the street if the law will permit them to do so.

I might also say that said street is a dead end street at both ends and would not be considered, in my judgment, what is known in the Code as a public highway extending through a municipality, but does have considerable traffic upon it both from the city and from the county."

You inquire whether it is lawful for a board of county commissioners to assist a city in the improvement of a city street, no part of which is a part of a state or county highway extending into, within or through such city.

In the last paragraph of your letter you specifically state that the street proposed to be improved by the city in cooperation with the board of county commissioners can not be considered a part of a state or a county road extending into, through or within the city, since it is a "dead end street at both ends" and therefore not directly connected with a state or county highway.

An analogous question involving the improvement of a street on the part of a board of county commissioners in the city of Steubenville, no part of which street was a part of a state or county highway, was before this department in 1919. I refer to an opinion to be found in Opinions of the Attorney General for that year, Volume II, page 61, the syllabus of which is as follows:

"Section 6949, G. C., does not authorize county commissioners to undertake the improvement, or to join with a municipality in undertaking the improvement of a municipal street forming no part of a state or county highway."

At pages 662 and 663 of the opinion above referred to appears a discussion of

Sections 6949 and 6952 of the General Code in relation to the general law (Sections 6906, et seq., G. C.) relating to the improvement of roads by county commissioners.

Since it is my opinion that this discussion referred to is determinative of your question, I am quoting at length from pages 662 and 663 as follows:

"In considering the effect of this amendment, we must bear in mind that while the word 'road' as a generic term is no doubt broad enough to include 'street', yet our legislature has for many years past made use of the word 'road' in dealing with improvements outside of municipalities and the word 'street' in dealing with improvements within municipalities. In fact, as a matter of common usage, the word 'street' is understood as referring particularly to public ways within municipalities and the word 'road' to like ways outside of municipalities. Hence, we find in the series of statutes providing for improvements by county commissioners (Sections 6906 to 6953, G. C.) that the word 'road' is used to the exclusion of the word 'street' except in Section 6952, hereinafter referred to.

It is therefore quite evident that the legislative intent in amending Section 6949 was not to confer general power on the commissioners to improve any street within a municipality, but merely to give them power to enter a municipality with the consent of the council thereof for the purpose of such road improvement as might be necessary to connect or complete county or state road improvements. In Section 6949 the terms 'into, within or through' are used conjunctively, and in that sense are certainly plainly to the effect that the proposed road improvement must be such an improvement as the commissioners are authorized generally to construct, special power being conferred in certain necessary instances to conduct the improvement into, within or through the municipality. Further support for this construction, if any is needed, may be found in the last sentence of Section 6952, reading as follows:

'The word "road", as used in Sections 6906 to 6953 inclusive, of the General Code, shall be construed to include any state or county road or roads, or any part thereof, or any state or county road or roads, and any city or village street or streets, or any part thereof, which form a continuous road improvement.'

This sentence means that Sections 6906 to 6953 are to be given a broad enough meaning to include either a state or county road or roads, or part thereof, which form a continuous road improvement; or a state or county road or roads, and a city or village street or streets, or any part thereof, which form a continuous road improvement.

It is hardly necessary to add in our municipal code we have very comprehensive provisions for the improvement of municipal streets by the municipality itself. Certainly the provisions of Section 6949 are to be treated as exceptions to the general rule that the municipality shall have charge of improvements within its limits, rather than as conferring any general power on the commissioners to take up the improvement of streets within a municipality not connected with state or county highway improvements. * * *

By virtue of Sections 3629 and 3714 of the General Code, councils of municipalities were vested with complete control over the streets located within their respective municipalities, and the legislature, recognizing this fact, enacted Sections 1193-1 and 6949 of the General Code to enable the Director of Highways and Public Works and a board of county commissioners to improve certain roads and streets within a municipi-

pality, provided the council of such municipality granted its consent to such improvement.

However, the mere giving of the consent of a council of a municipality is not all that is requisite. It will be noted that by the provisions of Section 1193-1 the proposed improvement of a road or street within a village on the part of the State Highway Department must consist of a road or street that has been extended through such village as a part of an intercounty highway or main market road.

Likewise, authority to act on the part of a board of county commissioners under the provisions of Sections 6949 and 6952, is limited, in the improvement of roads and streets extending into, within or through a municipality, to those roads and streets that are necessary to connect or complete county or state road improvements.

It is well to emphasize the fact that under the provisions of Section 6952 of the General Code the legislature has enlarged the meaning of the word "road" to include certain city and village streets, but the improvement of such streets is limited to those instances where it involves a continuous road improvement.

In the present instance the street is not a part of the extension of a state or county highway and the improvement contemplated involves merely the improvement of a street which will not be a part of a continuous road improvement undertaken by the board of county commissioners.

Your attention is also directed to the first part of Section 6952, General Code not heretofore quoted herein, which speaks of the receiving of bids and the letting of a contract and refers to the improving of "* * * such portion of said road as lies within the municipality, either in connection with the remainder of such improvement or separately, as such board may determine. * * *"

From this language it is clearly apparent that the street or road being improved within a municipality by a board of county commissioners must be a "portion of a project involving the improvement of some state or county highway lying without the municipality."

The Supreme Court of Ohio has passed upon this question, although the construction of a bridge was involved, rather than a highway. The same reasoning, however, may be applied to both. I refer to the case of *State ex rel. vs. Commissioners*, 107 O. S. at pages 473 and 474, where the court said:

"This contemplated bridge cannot, by any stretch of the imagination, be held to be *on* either a county road or *on* two county roads; but the most that can be said for it is that it is to be between two county roads, where no connecting road theretofore existed. It does not follow, however, that the board of county commissioners may not, by proper proceedings, acquire the power to build a bridge upon the site indicated by their resolution of 1914, for the Legislature has provided by Section 6949, General Code, that:

'The board of county commissioners may construct a proposed road improvement into, within or through a municipality, when the consent of the council of said municipality has been first obtained.'

The conceded facts being that no state or county road exists between the termini of the proposed bridge, it therefore follows that until such time as the board of county commissioners has laid out and acquired a road according to law between such termini it is without power to construct the bridge upon such site. * * *"

It is not clear to me in whom the title to this real estate rests. If the title is in the city, then it is my opinion that the county commissioners cannot cooperate with the city council in the improvement of the street to which you refer.

However, if the title is in the county, then by virtue of Section 3812 of the General Code, as construed in the case of *Jackson, Treasurer vs. Board of Education*, 115 O. S. (Ohio Law Bulletin & Reporter for January 3, 1927, page 239), the municipality has the power to levy and collect a special assessment against this property just the same as against any other property located on that street.

Respectfully,
EDWARD C. TURNER,
Attorney General.

685.

FORM OF BOND FOR REAL ESTATE BROKERS' LICENSE.

COLUMBUS, OHIO, July 2, 1927.

HON. CYRUS LOCHER, *Director of Commerce, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication, in which you request me to draw up in proper form a bond, both surety and personal, as provided for in Section 6373-35 of the General Code.

Section 6373-35, General Code, above referred to, is a part of the act creating a state board of real estate examiners, prescribing its duties, providing for licenses for real estate brokers and real estate salesmen, and relating to the conduct of the business of dealing in real estate generally. This act has been incorporated into the General Code of Ohio and is now known as Sections 6373-25 to 6373-51, both inclusive.

Section 6373-35 provides as follows:

“No real estate broker's license shall be issued until the grantee thereof shall have executed and filed a bond to the State of Ohio in the sum of \$1,000 and with such surety as the real estate examiners may require. Such bonds shall be filed with the state board of real estate examiners and kept by them in their offices. Such bond shall be conditioned upon the faithful observance of all the provisions of this act and shall also indemnify any person who may be damaged by a failure on the part of the applicant for a real estate broker's license to conduct his business in accordance with the requirements of this act (G. C., Sec. 6373-25 to 6373-51). Any person claiming to have been damaged by any misrepresentation or fraud on the part of a real estate broker or by reason of the violation of the terms of this act, may maintain an action at law against the broker making such representations or perpetrating such fraud or violating the provisions of this act, and may join as parties defendant the sureties on the bonds herein provided for. Such bonds shall be in the form prescribed by the board of real estate examiners and approved by them.”

In accordance with your request and the provisions of Section 6373-35, *supra*, I submit herewith the following suggested form of bond:

“BOND

REAL ESTATE BROKER'S LICENSE

(Sec. 6373-35, General Code)

KNOW ALL MEN BY THESE PRESENTS, That we, -----
----- of -----, as principal, and