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1. COUNTY ENGINEER HAS DUTY TO FURNISH SERVICES WHEN ORDERED BY TOWNSHIP TRUSTEES—CONTEMPLATED ROAD IMPROVEMENT.
2. SECTION 5559.09 R.C.—NO EXCEPTION TO RULE—COUNTY ENGINEER IS NOT AUTHORIZED TO CHARGE TOWNSHIP TRUSTEES FOR HIS SERVICES—COST NOT TO BE MADE A PART OF COST OF ROAD IMPROVEMENT—NO. 4410, O.A.G. 1932, AFFIRMED AND FOLLOWED.
3. SECTION 711.04, 711.041 R.C.—DEDICATION OF PUBLIC ROAD—APPROVAL BY COUNTY COMMISSIONERS AND TOWNSHIP TRUSTEES DOES NOT CONSTITUTE ESTABLISHMENT OF ROAD—TOWNSHIP TRUSTEES HAVE NO DUTY TO MAINTAIN—NO POWER TO IMPROVE.
4. PRIOR TO AMENDMENT—SECTION 711.04 R.C.—APPROVAL BY COMMISSIONERS OF PLAT CONTAINING DEDICATION OF PUBLIC ROADS CONSTITUTED ACCEPTANCE AND ESTABLISHMENT—SECTION 5535.01 R.C.—MADE PART OF COUNTY HIGHWAY SYSTEM OR BECAME TOWNSHIP ROAD—TOWNSHIP TRUSTEES HAD DUTY TO MAINTAIN AND IMPROVE.

SYLLABUS:

1. When, under the terms of Section 5573.01, Revised Code, a board of township trustees orders a county engineer to make such surveys, plans, profiles, cross sections, estimates and specifications as may be required for a contemplated township road improvement, together with alternative surveys, plans, etc., it is the mandatory duty of the county engineer to make the said surveys, plans, etc., and alternatives therefor if ordered.

2. Section 5559.09, Revised Code, does not create an exception to the rule that a county engineer is not authorized to charge a board of township trustees for his services in preparing surveys, plans, etc., for township roads, as provided in Section 5573.01, Revised Code, and is not authorized to make the cost of said services a part of the cost of such road improvement (Opinion No. 4410, Opinions of the Attorney General for 1932, affirmed and followed).

3. Under statutes effective since October 19, 1953 (Section 711.04, Revised Code, as amended effective October 19, 1953, and Section 711.041, Revised Code, effective October 6, 1955), the approval by a board of county commissioners of a plat containing the dedication of a public road or street, together with the acceptance of such dedication and approval of the improvement of such road or street by a board of township trustees, does not constitute an establishment of such road or street so as to impose upon such board of township trustees the duty of maintaining such road or street nor to empower such board to undertake the improvement thereof.

4. Prior to October 19, 1953, the effective date of Amended Substitute House Bill No. 629, One Hundredth General Assembly, amending Section 711.04, Revised Code, the approval by a board of county commissioners of a plat containing the dedication of a public road or street constituted an acceptance of such dedicated road or street and an establishment thereof, and under the terms of Section 5535.01, Revised Code, if such road or street was not made a part of the county highway system it became a township road, and the board of township trustees had the duty to maintain it and the power to improve it.

Columbus, Ohio, September 19, 1956

Hon. Theodore Lutz, Prosecuting Attorney
Richland County, Mansfield, Ohio

Dear Sir:

I am in receipt of your request for my opinion, in which you raise the following questions:

"1. Is it the mandatory duty of the County Engineer to comply with the order of Township Trustees for the preparation of engineering data and assessment roles in conjunction with a township road improvement?

"2. Does the County Engineer have authority to list engineering costs as a part of a cost estimate prepared at the order of Township Trustees for *any* township road improvement where

services are performed by regular employes of the County Engineer?

"3. Does Section 5559.09 authorize payment by Township Trustees to the County Engineer of engineering costs incident to a township road improvement within platted territories where the services are performed by regular employes of the County Engineer and may such costs be assessed against abutting property owners?

"4. Does the approval of a plat by the County Commissioners constitute an establishment of a public road so as to impose upon Townships the duty of maintenance and so as to give Township Trustees authority thereafter to undertake a township road improvement? (It would be appreciated if this question might be answered with respect to approvals granted before and after the 1953 amendments to Chapter 711., Ohio Revised Code cited above.)

"5. Are the obligations of the County Engineer in any way altered where under presently effective statutes there is an approval of platted territories but no formal acceptance of the streets dedicated therein by the County Commissioners and the Township Trustees undertake a road improvement therein?"

Section 5573.01, Revised Code, reads in pertinent part:

"When the board of township trustees has determined that any road shall be constructed, reconstructed, resurfaced, or improved, such board shall determine by resolution, by unanimous vote if acting without a petition, and by a majority vote if acting upon a petition, the route and termini of such road, the kind and extent of the improvement, and *at the same time shall order the county engineer to make such surveys, plans, profiles, cross sections, estimates, and specifications as are required for such improvement.*

*"The board may order the engineer to make alternate surveys, plans, profiles, cross sections, estimates, and specifications, providing therein for different widths of roadway, or different materials, and approve all or any number of such alternate surveys, plans, profiles, cross sections, estimates, and specifications. * * *"* (Emphasis added.)

Section 5573.02, Revised Code, reads in pertinent part:

"Upon the completion of the surveys, plans, profiles, cross sections, estimates, and specifications for a road improvement by the county engineer, *he shall transmit to the board of township trustees copies of the same. * * ** (Emphasis added)

Section 5543.01, Revised Code, reads in pertinent part:

“The county engineer shall have general charge of the following:

“* * *

* * *

* * *

“(B) Construction, reconstruction, resurfacing, or improvement of roads by boards of township trustees under sections 5571.01, 5571.06, 5571.07, 5571.15, 5573.01 to 5573.15, inclusive, and 5575.02 to 5575.09, inclusive, of the Revised Code.

“* * *

* * *

* * *.”

The language of Section 5573.01, Revised Code, *supra*, is significant. The word *order* is used twice. The word *request* is not used. To give effect to this language, a mandatory duty upon the engineer must be implied. Otherwise the order of the board of township trustees would have the effect of a request only, and the use of the term *order* would be rendered meaningless. As you know, the presumption is that every word in a statute is designed to have some effect, and statutes must be so construed as to give effect to every word thereof. I am of the opinion, therefore, that when, under the terms of Section 5573.01, Revised Code, a board of township trustees orders a county engineer to make such surveys, plans, profiles, cross sections, estimates and specifications as may be required for a contemplated township road improvement, together with alternative surveys, plans, etc., it is the mandatory duty of the county engineer to make the said surveys, plans, etc., and alternatives therefor if ordered.

Your second question is whether the county engineer has authority to list engineering costs as part of a cost estimate prepared under the provisions of Section 5573.01, Revised Code. I assume you refer to the cost of engineering services rendered by the office of the county engineer and specifically the cost of the surveys, plans, etc., made under the terms of Section 5573.01, Revised Code. In Opinion No. 4410, Opinions of the Attorney General for 1932, page 759, it was held, reading from the syllabus:

“Where township trustees desire to improve a township road, and preliminary to such improvements request the county surveyor to survey said road for the purposes of determining its location and boundaries, such surveyor may not charge such township for his services and the township trustees have no authority to pay such surveyor thereof.”

On page 761 it was said:

“I find no provision authorizing the payment by a township of fees for charges for services rendered by a county surveyor in

connection with township roads, and no provision for making the cost of surveys, plans, etc., for a township road improvement a part of the cost of such improvement.”

I see no reason to disagree with that opinion and therefore affirm and follow it.

Your third question is whether Section 5559.09, Revised Code, creates an exception to the rule just affirmed. Chapter 5559 of the Revised Code, deals with the improvement of roads in platted territory. Section 5559.02, Revised Code, reads:

“*The board of county commissioners* may, as provided in sections 5559.03 to 5559.16, inclusive, of the Revised Code, improve by grading, draining, paving, constructing storm sewers, sidewalks, curbs, and gutters, any road, street, alley, or portion thereof lying within or bounded on both sides by any platted lands, and situated outside a municipal corporation.”

(Emphasis added)

Sections 5559.03 through 5559.16 Revised Code, provide for procedures whereby *the board of county commissioners* may effect the improvements authorized by Section 5559.02, Revised Code, *supra*. Section 5559.09, Revised Code, reads:

“The entire compensation, damages, and costs of the improvement, including the expense of engineering and inspection, shall be assessed against the real estate abutting upon an improvement under section 5559.02 of the Revised Code according to the benefits accruing to such real estate.”

This section does not create an exception to the rule affirmed above in the answer to your second question because Section 5559.09, Revised Code, being one of the sections enumerated in Section 5559.02, Revised Code, is concerned only with road improvement by the board of county commissioners and has no application to road improvement projects accomplished by a board of township trustees.

The problem involved in your fourth question is the subject of further comment in the following paragraph on page 7 of the request:

“It is the understanding of this office that as a matter of policy, though not a result of legislation, the Richland County Commissioners in the approval of a platted dedication of a public road qualify such approval verbally with the statement that such an approval does not constitute the acceptance by the County Com-

missioners of the public roadway. The persons, whose plats are thus approved, are instructed by the Commissioners that the roadway thus platted will be accepted and opened to public use upon the improvement by the individual of such roadway to the extent required by the individual township for acceptance into its township road system. Thus, it would appear that there is an attempt by the County Commissioners to delegate to the Township Trustees the authority granted the County Commissioners under Section 5553.02, R. C. to establish a public road. It is our understanding that no further action is taken by the County Commissioners to establish the roadway.”

As you are aware the terms dedication and establishment are often used in a manner which would indicate them to be equivalent and interchangeable. It appears to me, however, that there is a distinction, though often without a difference, it is true. Establishment, as it seems to me, implies acceptance by the public authorities of responsibility for the proper maintenance of a road, rendering it safe for public use. Of course, under certain circumstances, particularly in the case of statutory dedication, the act of public authorities in accepting a dedication may have the effect of establishment. Certainly it is clear that a completed dedication is a condition precedent to establishment. See 15 Words and Phrases, 266 and 271.

In *Oberhelman v. Allen*, 7 O. App., 251, it was held that a public road or street is established in one of three ways: (1) by statutory dedication, (2) by common-law dedication, and (3) by prescription. Since your case does not involve prescription, the question is only whether the course of action above described amounts to an establishment by statutory or common-law dedication.

I refer you to Opinion No. 7113, Opinions of the Attorney General for 1956. The first paragraph of the syllabus of that opinion reads:

“1. Section 5553.31, Revised Code, now provides the sole statutory method by which lands outside municipalities may be dedicated for use as public roads and streets, and thus no dedication of such lands can be effected without the prescribed action by the county commissioners.”

Section 5553.31, Revised Code, which is referred to in the above-quoted syllabus, reads:

“Any person may, with the approval of the board of county commissioners, dedicate lands for road purposes. A definite description of the lands to be dedicated with a plat of such lands thereto attached and signed by the party dedicating such lands,

with the approval and acceptance of the board indorsed thereon, shall be placed upon the proper road records of the county in which such road is situated. If the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the board by proper resolution approves and accepts the lands for such purpose, as are provided in cases where the board by unanimous vote declares its intention to locate, establish, widen, straighten, vacate, or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the lands so dedicated a public road without any further proceedings thereon.’”

Thus, it is clear that under the statutes presently in force, there is no statutory dedication without the prescribed action by the county commissioners.

If, then, the course of action which you describe and which you indicate was not intended to comply with the requirements of Section 5553.31, Revised Code, is to effect a dedication and an establishment of a public road, it must be as the consequence of the operation of common-law dedication. But even common-law dedication, in the case of roads and streets, requires acceptance by public authority. In *Railroad Company, v. The Village of Roseville*, 76 Ohio St., 108, the court said, at page 117:

“* * * They (local subdivisions) can act only by their officers, and the duty to care for the roads and streets and the liability for damages for neglecting to perform the duty can not be imposed on them by proof of user by the public but only by an acceptance by the authorities whose duty it would be to care for the road or the street if it should be established.”

This language would appear to hold that a board of township trustees might accept a dedication and establish a road, since such board might be the public authority responsible for the care of the road once established. Nonetheless a township cannot establish a street or road, except in the very specific circumstances outlined in Section 5571.011, Revised Code, which deals with relocation of a road by a property owner through whose land such road passes, a situation not involved here. Section 5571.01, Revised Code, grants to boards of township trustees their general powers with regard to roads. That section, in so far as pertinent, reads:

“The board of township trustees may construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction or any county road, intercounty highway, or state highway within its township. * * *”

It will be observed that the roads upon which boards of township trustees are authorized to act are all *previously established* public roads and highways. All of the sections of Chapters 5571. and 5573., Revised Code, are conditioned upon Section 5571.01, Revised Code, because the general grant to boards of township trustees of powers with regard to roads is provided therein. Thus, none of the sections in those chapters can be interpreted so as to grant to boards of township trustees the power to establish public roads. There is, of course, no *specific* statutory grant to them of that power except under Section 5571.011, Revised Code, which, as noted above, deals with a very limited situation and does not apply here. Further, it has been held that the power of the board of county commissioners to establish roads within the county, as granted by Section 5553.02, Revised Code, is exclusive and cannot be delegated. *State, ex rel., Kerr v. Neitz*, 58 O. App., 135. Thus, in the light of that ruling, and in the absence of a statute granting it such power, a board of township trustees has, for the purposes involved here, no power, either statutory or in common law, to establish roads or streets. Accordingly, we must again look to the board of county commissioners for some act effecting a common-law dedication.

Under Section 711.04, Revised Code, as amended effective October 19, 1953 (Amended Substitute House Bill No. 629, One Hundredth General Assembly, 125 Ohio Laws, 448), and the presently effective Sections 711.04 and 711.041, Revised Code, (Amended Substitute House Bill No. 607, One Hundred First General Assembly, 126 Ohio Laws, 929), effective October 6, 1955, it is provided that the approval of a plat by the board of county commissioners shall not constitute an acceptance of the dedication of any public street, road or highway dedicated on such plat. Approval of the plat appears to be the only action being taken by your board of county commissioners. As noted above, with one minor exception, neither under statute nor common law can any action by a board of township trustees effect the establishment of a public road. I am of the opinion, therefore, that the approval of a platted dedication of a public road by a board of county commissioners, together with acceptance of such road and approval of the improvement thereof by a board of township trustees, does not constitute the establishment of a public road.

You have also requested that this question be answered with respect to approval of plats granted prior to the effectuation of the 1953 amendments to Chapter 711., Revised Code. I refer you to Opinion No. 1209, Opinions of the Attorney General for 1949, page 835. The syllabus to that opinion reads:

“1. Roads or streets in platted territory outside of municipalities may be dedicated pursuant to either Sections 6886 or 3580 et seq., General Code (Sections 5553.31 and 711.01 et seq., Revised Code—prior to the 1953 and 1955 amendments of Chapter 711., Revised Code). (Parenthetical matter added.)

“2. The duty of maintenance of improved roads or streets in platted territory outside of municipalities rests with the trustees of the township in which such roads or streets are located.”

A reading of the first paragraph of that syllabus and of the former Section 711.04, Revised Code, clearly shows that prior to 1953 the approval by the county commissioners of a plat constituted acceptance of the dedication of public roads and streets dedicated on the plat. Consequently, prior to 1953, when a plat was approved by a board of county commissioners, the streets dedicated thereon were accepted, the dedication of them was complete, and they were established as public roads. Then, under the terms of Section 5535.01, Revised Code, if such roads were not made a part of the county highway system they were township roads. Being township roads, the board of township trustees would have the duty to maintain them, under the provisions of Section 5535.01, Revised Code, and the permissive power to construct, reconstruct, resurface, or improve them under the terms of Section 5571.01, Revised Code.

As to your fifth question, I have advised you above that under presently effective statutes, where the board of county commissioners approves a plat but does not accept the streets dedicated thereon, the board of township trustees has no authority to improve the roads dedicated on such plat.

In sum, I am of the opinion and advise you that:

1. When, under the terms of Section 5573.01, Revised Code, a board of township trustees orders a county engineer to make such surveys, plans, profiles, cross sections, estimates and specifications as may be required for a contemplated township road improvement, together with alternative surveys, plans, etc., it is the mandatory duty of the county engineer to make the said surveys, plans, etc., and alternatives therefor if ordered.

2. Section 5559.09, Revised Code, does not create an exception to the rule that a county engineer is not authorized to charge a board of township trustees for his services in preparing surveys, plans, etc., for township roads, as provided in Section 5573.01, Revised Code, and is not authorized to make the cost of said services a part of the cost of such road improve-

ment (Opinion No. 4410, Opinions of the Attorney General for 1932, affirmed and followed.

3. Under statutes effective since October 19, 1953 (Section 711.04, Revised Code, as amended effective October 19, 1953, and Section 711.041, Revised Code, effective October 6, 1955), the approval by a board of county commissioners of a plat containing the dedication of a public road or street, together with the acceptance of such dedication and approval of the improvement of such road or street by a board of township trustees, does not constitute an establishment of such road or street so as to impose upon such board of township trustees the duty of maintaining such road or street nor to empower such board to undertake the improvement thereof.

4. Prior to October 19, 1953, the effective date of Amended Substitute House Bill No. 629, One Hundredth General Assembly, amending Section 711.04, Revised Code, the approval by a board of county commissioners of a plat containing the dedication of a public road or street constituted an acceptance of such dedicated road or street and an establishment thereof, and under the terms of Section 5535.01, Revised Code, if such road or street was not made a part of the county highway system it became a township road, and the board of township trustees had the duty to maintain it and the power to improve it.

Respectfully,
C. WILLIAM O'NEILL
Attorney General