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TOWNSHIP TRUSTEES — MAY CONTRIBUTE DEFINITE SUM, IN MONEY, TO DIRECTOR OF HIGHWAYS, WHEN HE PROCEEDS UNDER SECTION 1189-2 G. C. — IMPROVEMENT STATE HIGHWAY IN VILLAGE — SECTION 7467, G. C.

SYLLABUS:

Under the provisions of Section 7467 of the General Code, the township trustees may contribute a definite sum in money to the Director of Highways for the purpose of improving a state highway within the limits of a village when said Director of Highways is proceeding in accordance with the provisions of Section 1189-2 of the General Code.

Columbus, Ohio, April 25, 1940.

Hon. Paul D. Michel, Prosecuting Attorney,
Marion, Ohio.

Dear Sir:

Acknowledgment is made of your recent communication requesting my opinion in the following language:

“State Highway Route No. 739 is an intersecting highway running between Marion, Ohio and Bellefontaine, Ohio and runs through the village of Green Camp, Ohio. The State Highway

Department is constructing a new highway and has asked the Township Trustees of Green Camp Township to contribute \$1000.00 for the payment of material for the construction of this road in the Village of Green Camp. Section 7467 of the General Code reads in part as follows:

'The state, county or township or any two or more of them may by agreement expend any fund available for road construction, improvement or repair upon roads inside of a village or a village may expend any funds available for street improvement upon roads outside of the village and leading thereto.'

Can the Township Trustees of Green Camp Township legally pay the State Highway Department \$1000.00 for the construction of this road through the village of Green Camp?"

Section 1189-2 of the General Code expressly authorizes the Director of Highways in his discretion to, "construct, reconstruct, improve, widen, maintain or repair any section of state highway within the limits of a municipal corporation and pay the entire cost and expense thereof from state funds." The section further, however, provides that before undertaking such a project he shall first obtain the consent of the council or other legislative authority.

Section 7464 of the General Code classifies the highways of the state with reference to, "state roads, county roads and township roads."

Section 7467 from which you quote in your inquiry provides among other things that the state, county and township shall each maintain their respective roads as designated in the classification in Section 7464, *supra*. It is further provided that either the county commissioners or township trustees may, "contribute to the repair and maintenance of the roads under the control of the other." The concluding paragraph of the section then contains the language which you quote in your letter. In this connection consideration has been given to an opinion of the Attorney General for the year, 1925, page 716, the syllabus of which reads:

"County commissioners are not authorized by Section 7467 of the General Code or elsewhere in the statutes, to make a contribution in money to a village of an amount representing a proportion of the cost of the improvement of a village street, which is also a county road."

In that opinion reference was made to another opinion found in Volume I, 1918 Opinions of the Attorney General, page 687 which was in conflict with the opinion of 1925 and overruled. Also in an opinion of the Attorney Gen-

eral found in Volume I, 1936, page 46, the then Attorney General held, as disclosed by the syllabus:

“Under Section 7467, General Code, the county commissioners may contribute money to a township to be used by the township trustees in the repair of a township road, but this statute does not authorize the commissioners to contribute money to a village to be used by the village authorities in the maintenance or repair of streets located within such village. Opinion of Attorney General for 1925, page 716, affirmed.”

The reasoning in the 1925 opinion seems to be based upon a technical distinction in the language used with reference to the express authorization to make “contributions” and the language in the last paragraph of Section 7467 which refers to the expenditure of funds available. It is believed that a careful analysis of the language of said 1925 opinion should be construed as an authority against an affirmative answer to your inquiry. However, the conclusion of that opinion, as well as the opinion of 1936 was to the effect that a contribution in money could not be made to a village for the purpose of improving a village street.

In the situation under consideration, it will be observed that the highway in question may have a dual status in that it in all probability is a village street and at the same time is a state highway for certain purposes. The Director is authorized to improve this thoroughfare and designate it as a route upon the state highway system. In view of the practical methods used in the construction and improvement of highways, it is desirable that such improvements be protected and controlled by the Director of Highways and it would be illogical that the township trustees should actually under their own supervision and direction construct a certain portion of such highway within the village, which would represent an expenditure of a thousand dollars.

Under the language of Section 7467 it is definitely provided that the state, county, or township may by agreement expend “any funds available for road construction, improvement or repair upon roads inside of a village” and it would, therefore, seem that the language is sufficiently clear as to permit the township trustees to enter into agreement with the Director of Highways to pay a definite amount from the township road fund for the purpose of an improvement inside of a village.

In the Opinions of the Attorney General for the years 1925 and 1936

hereinbefore referred to, the question was whether or not a contribution could be made to a village for the improvement of a village street, whereas, the question now is whether or not the contribution may be made to the Director of Highways in connection with road improvement which he is authorized to make within the limits of a village after having obtained the consent. It follows, therefore, that the facts considered in said opinions are clearly distinguishable from the facts under consideration.

In view of the foregoing and in specific answer to the inquiry propounded, it is my opinion that under the provisions of Section 7467 of the General Code the township trustees may contribute a definite sum in money to the Director of Highways for the purpose of improving a state highway within the limits of a village when said Director of Highways is proceeding in accordance with the provisions of Section 1189-2 of the General Code.

Respectfully,

THOMAS J. HERBERT,
Attorney General.