

the first half of the tax on personal property is not paid on or before the twentieth day of December, or on or before the twentieth day of January in case the time is extended, the ten per cent penalty attaches and applies to the second half of the taxes as well as the first half.

Respectfully,
GILBERT BETTMAN,
Attorney General.

1101.

TOWNSHIP TRUSTEES—MAY ACT AS A BODY IN MAINTAINING ROADS—NUNC PRO TUNC ENTRY TO SHOW TOWNSHIP DISTRICTS—TWO MEMBERS ACTING IN ONE DISTRICT VALID—SAME PROCEDURE IN REPAIRING COUNTY ROADS PERMISSIBLE.

SYLLABUS:

1. *Under Section 3370, General Code, it is not mandatory that the trustees employ one of the methods of procedure in connection with roads set out in the section, but they may proceed to act as a board in such matters.*

2. *When the trustees have actually divided the township into districts and failed to record such action upon their minutes, a nunc pro tunc entry may be made showing such action.*

3. *In the event the trustees have divided the township into districts and a majority acts upon any proceeding instead of the individual member designated, such proceeding is not invalid.*

4. *In maintaining and repairing county roads, with the approval of the county commissioners, the trustees may proceed in the same manner as they proceed with township roads.*

COLUMBUS, OHIO, October 25, 1929.

HON. HOWARD GOLDSBERRY, *Prosecuting Attorney, Chillicothe, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following inquiries:

"1. Is it mandatory under Section 3370 of the General Code that the township trustees adopt one of the three methods designated for the maintenance and repair of township roads or may the trustees act as a body?

2. In the event the township trustees agree among themselves to divide up the township into districts, as designated by method number two, under Section 3370 of the General Code, and do not enter said agreement upon their minutes, but do act thereunder, is such act illegal?

(a) If two trustees act together upon the repair of the road under the same conditions set out in paragraph two, would their acts be illegal?

(b) If the township trustees were maintaining a county road with the permission and consent of the county commissioners and the cost of the repair was less than \$50.00 would the same rule apply as to township road under the conditions set out in paragraph two and in Section A of paragraph two?"

Section 3370 of the General Code, to which you refer, provides:

"The township trustees shall have control of the township roads of their township and shall keep the same in good repair. The township trustees may, with the approval of the county commissioners or state highway commissioner, as the case may be, maintain or repair a county road or intercounty highway or main market road within the limits of their township.

In the maintenance and repair of roads the township trustees may proceed in any one of the following methods as they may deem for the best interest of the public, to wit:-

1. They may designate one of their number to have charge of the maintenance and repair of roads within the township, or
2. They may divide the township into three road districts, in which event each trustee shall have charge of the maintenance and repair of roads within one of such districts, or
3. They may appoint some competent person, not a member of the board of trustees, to have charge of the maintenance and repair of roads within the township which person shall be known as township highway superintendent, and shall serve at the pleasure of the township trustees. The method to be followed in each township shall be determined by the township trustees by resolution duly entered on their records."

In connection with your first inquiry it will be noted that the statute provides that the trustees "may" adopt one of the three methods therein provided for, which of course indicates that the section is not mandatory with respect to your first inquiry. While under certain circumstances the courts have held that the word "may" will be construed to mean shall, it is not believed that such circumstances exist in this case. In other words, the statute authorizes the trustees to adopt one of the three methods for their convenience, but they may act as a body if they so desire.

In response to your second inquiry, it is believed that the determining factor is whether or not the trustees, as a matter of fact, did, by proper action, divide the township into districts. If such action were taken, it is believed that the rule in reference to making nunc pro tunc entries can be applied and the record may be corrected to speak the truth. In the case of *Village of Vinton vs. James*, 108 O. S., 220, it was stated in the opinion that:

"It is in accord with the spirit of the law to permit the amendment of errors in records after the proper time for the making of the record has passed. Nunc pro tunc entries are authorized in courts when the proof is that the written memorial does not accurately reflect the facts, 15 Corpus Juris, p. 975, et seq.

Records of administrative and legislative bodies are allowed to be changed, after the time when they should have been made, in order to conform with the actual truth."

Replying to your third question it is believed that no valid objection could be raised as to two of such trustees acting, even though one of them, under the method adopted would be sufficient. In other words, the fact that one member is authorized to act will in no wise invalidate an action in which a majority of the board concurs.

It is stated in *Rockel's Guide for Township Trustees* on page 851 of the 17th Edition, that:

"* * * In such cases, while a certain one trustee would have certain

territory to look after, his power would not be absolute; he would be under the general control of the entire board, just in the same manner as the board of trustees have control over the township highway superintendent."

In considering your fourth inquiry, it is assumed that in mentioning the sum of fifty dollars, you have reference to Section 3571-1, General Code, which provides:

"In the maintenance and repair of roads the township trustees and any township highway superintendent, appointed by them, shall be subject to the general supervision and direction of the county surveyor. They shall follow the direction of the county surveyor as to methods to be followed in making repairs and all expenditures made by them for maintenance and repair purposes shall where the amount involved exceeds fifty dollars receive the approval of the county surveyor before payment is made."

It is believed that the section last quoted would not affect your question. Section 3370, General Code, expressly authorizes the trustees to maintain or repair a county road or an intercounty highway with the approval of the county commissioners or State Highway Director. When such an approval is given, then it is believed that they may proceed in the same manner as they proceed in connection with township roads.

In specific answer to your inquiries, it is my opinion that:

First, under Section 3370, General Code, it is not mandatory that the trustees employ one of the methods of procedure in connection with roads set out in the section, but they may proceed to act as a board in such matters.

Second, when the trustees have actually divided the township into districts and failed to record such action upon their minutes, a nunc pro tunc entry may be made showing such action.

Third, in the event the trustees have divided the township into districts and a majority acts upon any proceeding instead of the individual member designated, such proceeding is not invalidated.

Fourth, in maintaining and repairing county roads, with the approval of the county commissioners, the trustees may proceed in the same manner as they proceed with township roads.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1102.

COMPLAINT—SWORN TO BY COMPLAINANT'S ATTORNEY—VERIFIED
WITHIN PURVIEW OF SECTION 6373-42, GENERAL CODE—EXCEP-
TION—JURISDICTION OF REAL ESTATE BOARD ACTING AFTER
IMPROPER COMPLAINT FILED, NOT QUESTIONABLE.

SYLLABUS:

1. *A complaint sworn to by a complainant before his attorney who is a notary public is a verified complaint within the meaning of Section 6373-42, General Code, unless such notary public is a party to a specific real estate transaction complained of, and, accordingly, financially interested in the matter of the complaint to an extent beyond the matter of attorney's fees for professional services.*