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WHETHER TO ESTABLISH PUBLIC ROAD AT DIRECTION OF BOARD OF COUNTY COMMISSIONERS AFTER CONSIDERING IF SAID ROAD WOULD BE FOR PUBLIC CONVENIENCE AND WELFARE—§5553.04, R.C.

## SYLLABUS:

Whether a board of county commissioners should establish a public road pursuant to Section 5553.04, Revised Code, is at the discretion of the board after said board has considered whether such establishment will be for the public convenience or welfare.

Columbus, Ohio, July 28, 1961

Hon. James M. Drennen, Prosecuting Attorney  
Pike County, Waverly, Ohio

Dear Sir:

Your request for my opinion reads:

“The Board of County Commissioners have requested me to ask for your opinion with respect to the following question:

“More than twelve freeholders of the county have petitioned the board requesting that they establish a public road to a privately owned public golf course. The present road is a private lane leading from a county road and terminates at the golf course. It is used by approximately one hundred fifty people each week from May to November, mostly by residents of Pike County, Ohio.

“Under the provisions of Section 5553.04, Revised Code, would it be for the public convenience and welfare for the County Commissioners to establish the present private lane as a public road?”

Section 5553.04, Revised Code, to which you refer, is the provision granting a board of county commissioners authority to establish public roads. It reads in part:

“When the board of county commissioners is of the opinion that it will be for the public convenience of welfare to locate, establish, \* \* \* a public road, it shall so declare by resolution,  
\* \* \*

“When a petition, signed by at least twelve freeholders of the county residing in the vicinity of the proposed improvement, \* \* \* is presented to the board requesting the board to locate, establish, \* \* \* a public road, such board shall view the location of the proposed improvement, and, if it is of the opinion that it will be for the public convenience or welfare to locate, improvement, it may proceed to make such improvement as provided in this section and sections 5553.04 to 5553.17, inclusive, of the Revised Code. \* \* \*

“\* \* \*

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The language used could not express the legislature’s intent more clearly; a public road is to be established when the *board of county commissioners* is of the opinion that the road would be for the public convenience or welfare. This and other sections establish procedures by which the board should arrive at its opinion. The statute quoted requires the board to view the location of the proposed road. Such a view of the premises would present facts impossible for me to ascertain. The resolution required by the quoted section must contain the date at which the proposed road will be viewed and it must contain the date for a final hearing in regard to the proposed road. These and the dates for both must be publicized. Section 5553.05, Revised Code. The county engineer must survey and plat the proposed road and report to the board prior to the date fixed for the final hearing and set forth his opinion for or against the proposed road. Section 5553.06, Revised Code. At the final hearing the engineer’s report must be read and testimony must be taken in regard to the necessity of the improvement for the public convenience or welfare. In this regard, Section 553.07, Revised Code, provides:

“\* \* \* If *the board* finds such improvement *will serve the public convenience and welfare*, it shall by resolution enter such finding on its journal and determine to proceed with the improvement. If *it finds* such improvement will not serve the public convenience and welfare, it shall refuse to proceed with the improvement.”  
(Emphasis added)

Each step taken would produce facts and opinions for the board of county commissioners to consider in carrying out the responsibility given it by the legislature. These are not available to me and it would not be proper for me to substitute my judgment for that of the board.

Answering your question, therefore, it is my opinion and you are advised that whether a board of county commissioners should establish a public road pursuant to section 5553.04, Revised Code, is at the discretion

of the board after said board has considered whether such establishment will be for the public convenience or welfare.

Respectfully,

MARK McELROY

Attorney General