

**OPINION NO. 1198****Syllabus:**

1. A board of county commissioners may proceed under Section 5553.20, Revised Code, to prosecute actions to determine the true course and boundary line of a road only where a petition has been filed pursuant to Section 5553.18, Revised Code, and the county engineer acting under the direction of the board has been unable to determine with certainty the true course and boundary line of a road.

2. A board of county commissioners, when acting under Chapter 5553, Revised Code, to locate, establish, alter, widen, straighten, vacate, or change the direction of a road or under Chapter 5555, Revised Code, to improve a public road by grading, draining, paving, straightening, or widening and constructing or reconstructing bridges or culvers, may determine to what extent there is a previously acquired but unused portion of a right of way adjacent to an existing highway which may be used to widen such highway as part of an improvement or construction program.

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**To: George C. Steinemann, Erie County Pros. Atty., Sandusky, Ohio**  
**By: William B. Saxbe, Attorney General, July 8, 1964**

Your request for my opinion reads:

"The early Road Records for county and township roads in Erie County are, in many instances, incomplete; and in these situations, there is little or no documentation from which it can be determined exactly where the centerline and outer boundaries of a road should lie. In other instances, it has been discovered that the actually occupied area of county and township roads does not coincide with the records which are in existence in the Office of the Erie County Engineer.

"With the increased emphasis on road improvement and maintenance, it becomes extremely important that these highway records be put in a correct condition so that there can be no question as to the location of a particular highway and of the right of the township or county to improve the particular area.

"In February, 1963, this office directed to you an inquiry stating that Erie County contemplated bringing a series of proceedings under Section 5553.20 of the Ohio Revised Code, which provides in part as follows:

"When the county engineer is unable to ascertain with certainty the true

course and boundary line of a road, the board of county commissioners may prosecute a civil action against the owners of the land abutting upon such road to ascertain and have the boundaries of such road judicially established in one action. Any road, the true course of which is surveyed and fixed as provided in this section and Sections 5553.18 and 5553.19 of the Revised Code, shall to the limits of such boundaries be a public highway.'

and requesting your opinion as to whether the gasoline tax and auto license tax monies provided for highway construction and maintenance could be used to employ a survey party and to purchase equipment in order to determine the presently existing centerline of the township and county roads in question. Your Opinion No. 129, under date of April 3, 1963, answered this inquiry in the negative.

"A statement in the second paragraph of the text of Opinion No. 129 casts doubt as to whether Section 5553.20 provides the proper procedure for the program proposed and suggests that the program may be broader in scope than that authorized by said section.

"In spite of the state of the road records, these roads have been used by the public and have been maintained by county and township funds for many years, and have formed integral parts of the county and township highway systems. It is for this reason that we do not believe that the provisions of Section 5553.01 et seq. providing, among other things, for the location or establishment of public roads, are applicable to the situation at hand.

"In the absence of road records, we believe that we are limited in our claim for right of way to the area actually occupied by the improved portion of the highway plus the parking berms and the area occupied by roadside drainage, where same has been made available.

"Your opinion as to the correct procedure to be followed and as to the limits of the portion which can be claimed for highway purposes will be appreciated."

As suggested in Opinion No. 129, Opinions of the Attorney General for 1963, issued April 3, 1963, it is my opinion that Section 5553.20, Revised Code, does not authorize a board of county commissioners to prosecute actions against owners of land throughout the county as part of a general plan to review and correct the records of county roads.

Section 5553.18, Revised Code, directs that the board of

county commissioners shall cause the county engineer to view and find the true line of a road, but this action is initiated only by a petition signed by at least twelve free-holders of the county residing in the vicinity of such road. Section 5553.19, Revised Code, directs the board of county commissioners as to the procedure to be followed after the county engineer has completed the view and survey of the road and has made a return of the survey or plat to the board. This section directs that notice of the filing of the report shall be given and then reads in part:

"\* \* \*Such notice shall state the date and time of the hearing upon the report of the engineer. If exceptions or objections are made, the board shall hear them, and it may approve or reject said report. If the report of the engineer is approved, the board shall cause such report to be recorded, together with the survey and plat of such road."

Section 5553.20, Revised Code, reads:

"When the county engineer is unable to ascertain with certainty the true course and boundary line of a road, the board of county commissioners may prosecute a civil action against the owners of the land abutting upon such road to ascertain and have the boundaries of such road judicially established in one action. Any road, the true course of which is surveyed and fixed as provided in this section and sections 5553.18 and 5553.19 of the Revised Code, shall to the limits of such boundaries be a public highway. The engineer and board may not change the line of any road under sections 5553.18 and 5553.19 of the Revised Code from that which has been opened and used by the public for a period of seven years immediately preceding the application provided for in section 5553.18 of the Revised Code; but this section does not authorize any encroachment by abutting property owners on said road as opened and used."

I look upon Section 5553.20, Revised Code, as relating only to proceedings initiated by a petition pursuant to Section 5553.18, Revised Code, and as applying where the county engineer has been unable to determine the true course of the road so that his report could be accepted by the board of county commissioners.

Boards of county commissioners have broad statutory authority in the establishment and maintenance of county roads. A board acting pursuant to Chapter 5553, Revised Code, may locate, establish, alter, widen, straighten, vacate, or change the direction of roads where the board has determined that such improvement will serve the public convenience or welfare. A board acting under this chapter shall direct the county engineer to make an accurate survey and plat of the improvement and furnish an accurate and detailed description showing the center line and right of way lines.

Chapter 5555, Revised Code, authorizes the construction of new roads and improvement, reconstruction, or repairing of any existing road.

Section 5555.02, Revised Code, reads in part:

"The board of county commissioners may construct a public road by laying out and building a new road, or by improving, reconstructing, or repairing any existing public road or part thereof by grading, paving, widening, altering, straightening, vacating, changing the direction, draining, dragging, graveling, macadamizing, resurfacing, applying dust preventatives, or by otherwise improving the same, and where an established road has been relocated the board may construct and maintain such connecting roads between the old and new locations as will provide reasonable access thereto.\* \* \*"

Section 5555.06, Revised Code, directs in part as follows:

"The board of county commissioners may by resolution adopted by a unanimous vote find that the public convenience and welfare require the improving of any public road or part thereof by grading, draining, paving, straightening or widening such road and constructing or reconstructing any bridges and culverts necessary for such improvement\* \* \*."

Where a board is proceeding under this chapter of the Revised Code, the county engineer must prepare the necessary surveys, plans, profiles, cross sections, estimates of cost, and specifications. Boards acting under these chapters are authorized to fix and award compensation and damages due to property owners because of the proposed improvement or construction program.

I find no provision of the law which I could interpret as authorizing a board of county commissioners to initiate a county-wide plan to redetermine the actual center lines and right of way lines of the highways and roads of the county system and to prosecute actions against owners of abutting property where such action is not part of and incidental to a highway improvement or construction program. Clearly the law contemplates that adequate and accurate surveys showing this information shall be prepared as part of a highway construction or improvement program and shall become a permanent record of the county. Where for some reason there is variation between the actual right of way secured and shown on the highway maps and records and the line of the road actually used for the county road, this deviation would become apparent and could be corrected by appropriate action at the time any improvement or construction program is initiated. The surveys and plans then prepared by the county engineer would show the width of the right of way formerly acquired by the county and available for its use for highway purposes. I know of no reason that the entire width of such right of way would not be available for highway purposes. Where there has been encroachment upon the highway right of way by the owner

of abutting property, appropriate action could then be taken to remove such encroachment. Of course, any encroachment at any time which is inconsistent with the public use of the highway would be immediately apparent and would be subject to action by the board of county commissioners.

It is, therefore, my opinion and you are advised:

1. A board of county commissioners may proceed under Section 5553.20, Revised Code, to prosecute actions to determine the true course and boundary line of a road only where a petition has been filed pursuant to Section 5553.18, Revised Code, and the county engineer acting under the direction of the board has been unable to determine with certainty the true course and boundary line of a road.

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