

2800.

ASSESSMENTS—FOR ROAD IMPROVEMENTS—AREA WITHIN LIMIT—
PETITION FOR INCREASE OF COST.

SYLLABUS:

1. In making assessments against property owners in accordance with the provisions of Section 1214 of the General Code, the Director of Highways is only authorized to adopt as the assessment area either the property within one-half mile of each side of the improvement or within one mile of each side of the improvement.

2. Under Section 1214 of the Code, the percentage of the cost and expense of constructing a state highway which is to be assessed may be increased over ten per cent thereof upon filing with the Director of Highways of consents in writing signed by sixty per cent of the property owners within the assessment area, which the Director of Highways proposes to assess in connection with the improvement.

COLUMBUS, OHIO, October 29, 1928.

HON. HARRY J. KIRK, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, as follows:

“The following questions have arisen as to the interpretation of Section 34 of the new Highway Law (112 O. L. 448):

1. Is it mandatory that the Director assess the property for one-half mile or one mile on each side of the road; or may he, if he feels justified, assess only the abutting property?

2. Must he assess one-half mile or one mile on each side of the road, or may he use his discretion between these limits, as, for instance, in assessing three-quarters of a mile on each side.

3. It is provided that the assessment may be more than ten per cent if petitioned for by sixty per cent of the property owners. Does this require sixty per cent of all property owners within one mile of the road?

In passing through a locality which is closely built up strict compliance with this section would be very burdensome.”

So far as pertinent, Section 1214 of the General Code provides:

“Not less than five per cent nor more than ten per cent of the cost and expense of constructing a state highway, excepting therefrom the cost and expense of bridges and culverts, shall be a charge upon the property within one-half mile or within one mile of each side of the improvement, provided the total amount assessed against any owner of property shall not exceed twenty per cent of the current tax valuation of the property to be specially assessed. Within the limitations above prescribed, the rate of assessment and the area to be assessed on each improvement shall be determined by the director. Provided, further, upon the filing with the director of a consent in writing therefor signed by at least sixty per cent of the land and lot owners, resident of the county, who are to be specially assessed for such improvement, the director may increase the per cent of the cost and expense of the improvement to be specially assessed in accordance with such consent in writing, but in no event shall the amount assessed against any owner exceed the benefits.

* * * ”

In view of the conclusions which I have reached, your first and second questions may be considered together. The statute specifically provides two assessment areas, viz., property within one-half mile of each side of the improvement and property within one mile of each side of the improvement. The second sentence of the section states that within the limitations above prescribed, the rate of assessment and the area to be assessed on each improvement shall be determined by the director. That is to say, the limitations of the preceding sentence are expressly placed upon the authority of the director to determine the assessment area. Since the preceding sentence prescribes but two areas, I think the only reasonable construction of the section is that the director is limited in his discretion to the selection of either the one-half mile area or the one mile area.

In reaching this conclusion, I am giving effect not only to the language of the statute itself, but also to the general rule of construction applicable to laws authorizing assessments. This rule is set forth in the case of *City of Cincinnati vs. Connor*, 55 O. S. 82, on page 91, as follows:

“The rule generally prevails that, independent of any legislative requirement on the subject, statutes imposing taxes and public burdens of that nature are to be strictly construed; and where there is ambiguity which raises a doubt as to the legislative intent, that doubt must be resolved in favor of the subject or citizen on whom the burden is sought to be imposed.”

This language was used in connection with an assessment case, and is peculiarly applicable in this instance. If the Director of Highways were authorized to assess against abutting property owners alone, it would necessarily increase the amount to be borne by the respective properties. In view of this principle and the language of the section itself, I can reach no conclusion except that the director is limited to the two areas specifically mentioned in the first sentence of the section. I realize that, as you suggest, this conclusion may occasion some difficulty in connection with assessments in closely built up districts. This difficulty will not, however, warrant a departure from the requirements of the statute.

Your third inquiry has already received an answer in Opinion No. 2632, dated September 27, 1928, and addressed to your department. The fourth branch of the syllabus is as follows:

“Under Section 1214 of the Code, the percentage of the cost and expense of constructing a state highway which is to be assessed may be increased over ten per cent thereof upon the filing with the Director of Highways of consents in writing signed by sixty per cent of the property owners within the assessment area, which the Director of Highways proposes to assess in connection with the improvement.”

Accordingly, by way of specific answer to your inquiry, I am of the opinion:

1. In making assessments against property owners in accordance with the provisions of Section 1214 of the General Code, the Director of Highways is only authorized to adopt as the assessment area either the property within one-half mile of each side of the improvement or within one mile of each side of the improvement.

2. Under Section 1214 of the Code, the percentage of the cost and expense of constructing a state highway which is to be assessed may be increased over ten per cent thereof upon filing with the Director of Highways of consents in writing signed by sixty per cent of the property owners within the assessment area, which the Director of Highways proposes to assess in connection with the improvement.

Respectfully,

EDWARD C. TURNER,
Attorney General.