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ASSESSMENT FOR ANY PART OF THE COST OF ROAD IMPROVEMENTS BY THE COUNTY ENGINEER PURSUANT TO AN AGREEMENT BETWEEN THE BOARD OF TOWNSHIP TRUSTEES AND BOARD OF COUNTY COMMISSIONERS—
§§307.15, 5573.07, R.C., OAG No. 7494, 1956, P. 888.

SYLLABUS:

Where road improvements to township roads are made by the county engineer pursuant to an agreement between the board of township trustees and the board of county commissioners under authority of Section 307.15, Revised Code, real estate abutting the improvement may be assessed for any part of the cost of such improvement as provided in Section 5573.07, Revised Code.

Columbus, Ohio, July 13, 1960

Hon. George E. Martin, Prosecuting Attorney
Portage County, Ravenna, Ohio

Dear Sir:

I have before me your letter of June 14, 1960, in which you request an opinion. The request reads in pertinent part as follows:

“Some of our boards of trustees desire to surface treat with oil or light asphalt some of the township roads in their respective townships. They would prefer to have this treatment done by the Portage County Engineer rather than by awarding contracts.

“The Portage County commissioners have authorized the County Engineer to surface treat township roads and have set up the method of payment for such service.

“It is the desire of the trustees to have the Engineer perform the work and assess the abutting property owners their proportionate share determined by the Engineer. The Engineer is of the opinion that the cost of such treatment cannot be assessed against the abutting property owners unless the work is performed under contract.

“Our question is as follows: Can township trustees assess the cost of surface treatment of township roads to the abutting property owners when the work is performed by the County Engineer? Can force account work on roads be assessed to the abutting owners?”

Under Section 307.15, Revised Code, a board of township trustees may enter into an agreement with the board of county commissioners whereby improvements of a township road would be made by the county engineer. Said Section 307.15 reads in part as follows:

“The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation, *township*, port authority, water or sewer district, school district, library district, health district, park district, soil conservation district, water conservancy district, or other taxing district, or with the board of any other county, and such legislative authorities may enter into agreements with the board, whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision, or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render. (Emphasis added)

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In Opinion No. 7494, Opinions of the Attorney General for 1956, page 888, one of my predecessors discussed the power of a board of township trustees to enter into an agreement with the board of county commissioners for the improvement of township roads. The syllabus of that opinion reads as follows:

“When the county commissioners, acting under the provisions of Section 307.15, Revised Code, enter into and perform an agreement to repair and improve township roads, such board of county commissioners may acquire and utilize the necessary materials for such repair and improvement, and the board of township trustees may pay the cost of such materials as well as the other cost incident to the performance of the agreement.”

Although Section 307.15, Revised Code, was amended in 1957, the amendment would not in any way alter the conclusion reached in the 1956 opinion. As a matter of fact the 1956 opinion is bolstered by the amendment because the word “township” was inserted into Section 307.15, Revised Code, thereby making it clear beyond all doubt that a township is one of the political subdivisions with which the board of county commissioners may enter into an agreement.

With regard to the cost of improvement to township roads made pursuant to an agreement between the board of township trustees and the board of county commissioners the 1956 opinion holds that “the board of town-

ship trustees may pay the cost of such materials as well as the other cost incident to the performance of the agreement.” As to the source of the funds with which to pay the cost of improvements to township roads, Section 5573.07, Revised Code, provides as follows:

“The compensation, damages, and costs of township road improvements shall be apportioned and paid in any of the following methods, as set forth in the petition :

- (A) Any part thereof shall be assessed against ;
 - (1) The real estate abutting upon said improvement ;
 - (2) The real estate situated within one-half mile of either side thereof ;
 - (3) The real estate situated within one mile of either side thereof, according to the benefits accruing to such real estate ;
- (B) Any balance shall be paid :
 - (1) From the proceeds of any levy for road purposes upon the grand duplicate of all the taxable property in the township ;
 - (2) From any funds in the township treasury available therefor.

When the board of township trustees acts by unanimous vote, without the filing of a petition, the board shall set forth in its resolution, declaring the necessity for the improvement, the method of apportioning and paying the compensation, damages, and costs of the improvement, which may be any of the methods provided in this section.”

Section 5573.07, Revised Code, does not differentiate between improvements made directly by the trustees and improvements made by the county engineer pursuant to an agreement between the board of trustees and the board of county commissioners. Hence, there is no difference in the manner of payment, whether the improvement be made by a contractor working under a contract with the board of township trustees or by the county engineer pursuant to a contract between the board of trustees and the board of county commissioners. Thus, where the improvement is made under contract with the board of county commissioners, the board of township trustees may specify any of the methods of payment provided by Section 5573.07, *supra*, to pay any part of the cost of such improvement.

It is therefore my opinion and you are hereby advised that where road improvements to township roads are made by the county engineer pursuant

to an agreement between the board of township trustees and the board of county commissioners, under authority of Section 307.15, Revised Code, real estate abutting the improvement may be assessed for any part of the cost of such improvement as provided in Section 5573.07, Revised Code.

Respectfully,

MARK McELROY

Attorney General