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ROAD IMPROVEMENT — MUNICIPALITY ASSUMING PORTION OF COST—RESOLUTION OF COUNTY COMMISSIONERS MUST BE UNANIMOUS IN ABSENCE OF PETITION SIGNED BY LAND OWNERS TO BE ASSESSED.

*SYLLABUS:*

*A road improvement into, within or through a municipality proposed to be constructed under the provisions of sections 6949, et seq., in which the municipality assumes a part of the cost and expense thereof, is governed by the provisions of section 6911, General Code, and the resolution of the county commissioners finding that the public convenience and welfare require such improvement must be adopted by a unanimous vote in the absence of a petition thereof signed by at least fifty-one per cent of the land or lot owners to be specially assessed as provided by section 6906-2, General Code.*

COLUMBUS, OHIO, July 26, 1932.

HON. ROBERT N. GORMAN, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“I have been requested by the Board of County Commissioners to request an opinion from you as to whether or not it takes only a majority vote or a unanimous vote of the Commissioners to adopt a preliminary resolution to share in the cost of the improvement of Section B of Montgomery Road, which is entirely within the limits of the City of Norwood, Ohio. In this improvement as I now understand it the city of Norwood is to pay fifty per cent of the cost. Upon the vote Commissioners Urban and Brown voted ‘aye’ and Commissioner Ach voted ‘no’.

On June 15, 1932, I rendered an opinion stating that it would require a unanimous vote of the commissioners. I was later advised by Mayor Harry Baker of Norwood that the city of Norwood was paying fifty per cent of the cost. This fact I did not know prior to the rendition of the opinion on June 15, and accordingly on June 21, 1932, I rendered an opinion stating that in my opinion a majority vote only was required.

The Commissioners now have requested that I submit the matter to you as Attorney General. I am therefore enclosing the two opinions which we rendered for your consideration, and would appreciate an opinion from your office on the subject at the earliest date possible.” Section 6911, General Code, reads in part as follows:

“The board of county commissioners may by resolution, which said resolution shall be 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 the same and constructing or reconstructing any bridges and culverts necessary for such improvement, and in said resolution shall fix the route and termini of such improvement, and shall apportion the cost thereof, which apportionment may be made upon different bases for various portions of any road to be improved, which shall be apportioned and

paid in any one of the methods provided for by section 6919 of the General Code.”

Section 6906-2, General Code, reads as follows:

“When a petition signed by at least fifty-one per cent of the land or lot owners who are to be specially assessed praying for the improvement of any road is filed with the board of county commissioners as provided in section 6907 of the General Code said improvement may be determined upon and all orders with reference thereto may be made by a majority vote of the county commissioners. The procedure for such improvement shall otherwise be the same as in the case where the commissioners proceed without a petition.”

It is seen, therefore, that in every road improvement by county commissioners the resolution finding that the public convenience and welfare require such improvement must be adopted by a unanimous vote where a petition of at least fifty-one per cent of the land or lot owners to be specially assessed is not filed with such commissioners, unless section 6949, General Code, is an exception to this requirement. This section refers to road improvements in a municipality and reads as follows:

“The board of county commissioners may construct a proposed road improvement into, within or through a municipality, when the consent of the council of said municipality has been first obtained, and such consent shall be evidenced by the proper legislation of the council of said municipality entered upon its records, and said council may assume and pay such proportion of the cost and expense of that part of the proposed improvement within said municipality as may be agreed upon between said board of county commissioners and said council. If no part of the cost and expense of the proposed improvement is assumed by the municipality, no action on the part of the municipality, other than the giving of the consent above referred to, shall be necessary; and in such event all other proceedings in connection with said improvement shall be conducted in the same manner as though the improvement were situated wholly without a municipality.”

This section is in the same chapter as section 6911. This chapter relates to road improvements under the jurisdiction of the county commissioners and the statutes included therein are in *pari materia*. As was said in Opinions of the Attorney General for 1928, Vol. III, page 1631:

“Section 6911, General Code, as amended, is a part of a series or group of statutes pertaining to the improvement of roads under the jurisdiction of the county commissioners, beginning with Section 6906, General Code, and ending with Section 6950, General Code, and these sections, being in *pari materia*, must be construed together to carry out the intent of the Legislature and to accomplish the purposes for which said statutes have been enacted.”

In an opinion rendered by me on July .22, 1930, appearing in Opinions of

the Attorney General for 1930, Vol. II, page 1170, the question was considered as to whether the county commissioners could proceed without a land owner's petition under the provisions of section 6862, et seq., relating to locating, establishing, altering, widening, straightening, vacating and changing the direction of roads, and I held that the provisions of these sections are related to the provisions of sections 6906, et seq., and that the county commissioners could proceed by unanimous vote in the absence of a petition.

Some doubt has been raised by reason of the fact that the last sentence of section 6949 provides that:

"If no part of the cost and expense of the proposed improvement is assumed by the municipality, no action on the part of the municipality, other than the giving of the consent above referred to, shall be necessary; and in such event all other proceedings in connection with said improvement shall be conducted in the same manner as though the improvement were situated wholly without a municipality."

It has been suggested that since this section provides that all proceedings in connection with such improvement shall be conducted in the same manner as though the improvement were wholly without a municipality where the municipality assumes no part of the cost thereof, those proceedings shall not govern an improvement where the municipality does assume a part of the cost, and that since this statute is silent on the vote required, unanimity of action is not necessary. I can see no reason for distinguishing in respect to the vote required between an improvement in which the municipality participates in the cost and an improvement in which the municipality does not participate, and I do not believe the legislature intended to make such a distinction.

I am of the view that the provision that the proceedings in connection with such an improvement shall be conducted as though the improvement were wholly outside the municipality where the municipality does not participate was made for the reason that where a municipality does participate there are certain additional proceedings required by sections 6950, et seq., to be taken by both the municipality and the county commissioners, and that it was not the intention that none of the requirements contained in the preceding sections should govern an improvement in which the municipality assumes a part of the cost thereof.

I am of the opinion, therefore, that a road improvement into, within or through a municipality proposed to be constructed under the provisions of sections 6949, et seq., in which the municipality assumes a part of the cost and expense thereof, is governed by the provisions of section 6911, General Code, and therefore the resolution of the county commissioners finding that the public convenience and welfare require such improvement must be adopted by a unanimous vote in the absence of a petition therefor signed by at least fifty-one per cent of the land or lot owners to be specially assessed as provided by section 6906-2, General Code.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*