

4039.

TOWNSHIP TRUSTEES—AUTHORIZED TO EXPEND FUNDS FROM ROAD AND BRIDGE FUND FOR IMPROVEMENT OF STREETS OUTSIDE MUNICIPALITY WHEN—OBSTRUCTIONS REMOVABLE FROM PLATTED AREA OUTSIDE MUNICIPALITY WHEN.

SYLLABUS:

1. *The township trustees have the authority to expend funds from the road and bridge fund for the improvement of duly dedicated streets in a platted area outside a municipality.*
2. *The county commissioners have the authority to order the removal of obstructions from streets within a platted area outside a municipality.*
3. *The township trustees have authority to order the removal of obstructions from streets within a platted area outside a municipality other than those set forth in section 6906-1, General Code, which are under the control of the county commissioners, when such obstructions make said streets unsafe for public travel.*

COLUMBUS, OHIO, March 13, 1935.

HON. HOWARD A. TRAUL, *Prosecuting Attorney, Bellefontaine, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication in which you ask the following question:

“Do Township Trustees have the right to expend funds from the Road and Bridge Fund for the improvement of streets in a platted area outside of a municipality where said streets have been appropriated to the public use, but where the width of the same is less than the statutory 30', as provided in Section 6861?”

You also state that:

“The question has arisen who has the power to order an obstruction off of a public way or street within a platted area outside of a municipality.”

I assume that the streets in question have been duly dedicated and their dedication accepted.

Section 6861, General Code, to which you refer, simply provides that roads shall not thereafter be established by the county commissioners less than thirty feet in width. It has nothing to do with the improving of existing roads by county commissioners which is controlled by sections 6906, et seq., General Code.

The public highways of the state, outside of municipalities, are classified by section 7464, General Code, as state roads, county roads and township roads. As to township roads, this section reads as follows:

“Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships; and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing

herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act."

This section was a part of an act passed May 17, 1915, to provide a system of highway laws for this state. Under this section the streets in question must be considered township roads. Opinions of the Attorney General for 1928, Volume III, page 2286.

Section 3298-1, General Code, which was a part of that same act, authorizes township trustees to improve not only township roads but also county and state roads within their township with the approval of the county commissioners and the state highway director respectively.

Section 7467, General Code, which was also a part of that same act, reads as follows:

"The state, county and township shall each maintain their respective roads as designated in the classification hereinabove set forth; provided, however, that either the county or township may, by agreement between the county commissioners and township trustees, contribute to the repair and maintenance of the roads under the control of the other. The state, county or township or any two or more of them may by agreement expend any funds available for road construction, improvement or repair upon roads inside of a village or a village may expend any fund available for street improvement upon roads outside of the village and leading thereto."

Section 3370, General Code, also a part of said act, reads in part as follows:

"The township trustees shall have control of the township roads of their township and shall keep the same in good repair. The township trustees may, with the approval of the county commissioners or state highway commissioner, as the case may be, maintain or repair a county road or inter-county highway or main market road within the limits of their township. In the maintenance and repair of roads the township trustees may proceed in any one of the following methods as they may deem for the best interest of the public,* * *."

From the above sections it is seen that while it is mandatory upon the township trustees to maintain and keep in repair township roads within their township, they have authority to improve other roads in their township with the proper approval.

Section 6973, General Code, reads as follows:

"The board of county commissioners of any county within the state shall have power as hereinafter provided to improve by grading, draining, paving, constructing storm sewers, sidewalks, curbs and gutters, or by otherwise improving the same, any road, street or alley or portion thereof lying within or bounded on both sides thereof by any platted lands, and situated without a municipal corporation."

While this section gives to the county commissioners power to improve streets within platted areas outside a municipality, there is no mandatory duty imposed upon them to do so.

In Opinions of the Attorney General for 1928, Volume III, page 2286, the following was held:

* *

"Township trustees are by virtue of the provisions of Section 7464, General Code, charged with the duty of maintaining roads and streets in platted terri-

tory outside the boundaries of any municipality, unless such roads or streets are, by action of the county commissioners of the state, incorporated in either the county or state system."

I agree with this opinion so far as it applies to streets other than those in a platted area within three miles of the limits of a municipality having a planning commission or a platting commissioner and since the statutes give to the township trustees ample authority to improve township roads, they would have the power to improve such streets in the manner provided by sections 3298-1, et seq., General Code, and pay the cost thereof out of the road and bridge fund as authorized by section 3298-15, General Code.

As to streets in a platted area within three miles of the limits of a municipality having a planning commission or a platting commissioner, section 6906-1, General Code, which is a later statute than the others referred to herein, reads as follows:

"Whenever any territory outside of the limits of a municipal corporation having a planning commission or a platting commissioner, and within three miles of the corporate limits of such municipality, shall have been platted into building lots and the plan of the streets therein set forth approved by such planning commission or platting commissioner, and the plat of such addition shall have been regularly filed in the office of the recorder of the county, all streets in such newly platted territory shall be under the control and supervision of the board of commissioners of the county. The board of county commissioners may cause to be expended each year on the maintenance of the streets in such newly platted territory, until such time as such streets shall have been permanently improved or such territory shall have become a part of a municipal corporation, a sum equal to not more than fifty per cent of the moneys levied or collected during such year as taxes from said newly platted territory, for road or highway purposes. Provided, however, that the provisions of this section shall not apply to any existing or outstanding levies against said newly platted territory heretofore made."

As to these streets, there would be no mandatory duty upon township trustees to maintain them at least until they are permanently improved. However, since the township trustees are given express authority to improve roads within the jurisdiction of the county commissioners with their approval, it follows that the township trustees would have authority so to improve such streets.

As to your second question, sections 7204 and 7204-1a, General Code, authorize the county commissioners to order the removal of obstructions from all roads within the county other than state highways and, in case said order is not complied with, to remove said obstructions and charge the cost thereof against the parties responsible therefor. The latter section also authorizes the county commissioners to consent to the erection of an obstruction on any road except a state highway, provided such obstruction does not interfere with traffic or with the construction or repair of such road. It is clear therefore that the county commissioners have the authority to order the removal of an obstruction from the streets in question.

I find no such express authority given to township trustees. However, in view of the duty of the township trustees to maintain and keep in repair township roads, and the liability which is imposed upon them by section 3298-17, General Code, for negligence in the discharge of their official duties, I am of the view that where obstructions are of such nature that they make streets unsafe for public travel the township trustees would have the authority to order them off the streets other than those

specified in section 6906-1, General Code, which are under the control of the county commissioners, and if such order is not complied with, to remove such obstructions, I know of no authority of the township trustees to charge the cost thereof against the persons responsible therefor.

I am of the opinion, therefore, that:

1. The township trustees have the authority to expend funds from the road and bridge fund for the improvement of duly dedicated streets which are in a platted area outside a municipality.

2. The county commissioners have the authority to order the removal of obstructions from streets within a platted area outside a municipality.

3. Township trustees have authority to order the removal of obstructions from streets within a platted area outside of municipality other than those set forth in section 6906-1, General Code, which are under the control of the county commissioners, when such obstructions make said streets unsafe for public travel.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4040.

CITY—MAY ADOPT ORDINANCE ESTABLISHING AGE LIMIT FOR POLICEMAN WHEN.

SYLLABUS:

A non-charter city may, by ordinance, provide an age limit beyond which a policeman shall be ineligible to serve on the police force, provided that such limitations as to age are reasonable and there is no discrimination.

COLUMBUS, OHIO, March 13, 1935.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your request for my opinion which reads as follows:

“A city in Ohio has had a police department for years created under the provisions of section 4372 G. C., and the members of this department were appointed and are holding office under civil service regulations. The city does not maintain a police relief fund.

On January 15, 1934, an ordinance was passed, a copy of which is inclosed, and from which we are quoting section four:

‘That no person shall be appointed as an officer or patrolman unless such persons shall be twenty-three years of age and under forty-five years of age, and no patrolman shall be eligible to serve on the police force of the city of after said patrolman has passed the age of sixty years. Any patrolman before reaching sixty years of age shall be eligible to a captaincy.’

On February 14, 1934, when this ordinance became effective, a member of the department had reached the age of sixty years and the question arises whether this officer must retire from the service.