

This statement also disposes of the contention made by the auditor to the effect that grave injustice will be perpetrated unless the auditor acts. A statement of the same character is found in the case of *Lewis vs. State*. Whether this statement was true with respect to real estate at the time *Lewis vs. State* was decided, it is certainly not true now; for a clear and complete remedy is given to the aggrieved taxpayer—in this instance, the receiver of the corporation acting in the interest of the creditors and stockholders—by an appeal to the board of revision under section 5609. This remedy is both expeditious and adequate, and no injustice will result from denying the power of the auditor to act.

Respectfully,  
 JOHN G. PRICE,  
*Attorney-General.*

3376.

ROADS AND HIGHWAYS—WHERE VILLAGE STREET CONSTITUTING PART OF LINE OF INTER-COUNTY HIGHWAY OR MAIN MARKET ROAD COMES WITHIN PURVIEW OF SECTION 1198, G. C. IN MATTER OF IMPROVING HIGHWAY TO GREATER WIDTH THAN CONTEMPLATED BY HIGHWAY DEPARTMENT WHEN REQUESTED BY ABUTTING OWNERS—PROCEDURE TO BE FOLLOWED.

*A village street constituting part of the line of an intercounty highway or main market road comes within the purview of section 1198 G. C. in the matter of improving a highway to a greater width than that contemplated by the plans of the Department of Highways and Public Works, when such greater width is requested by abutting owners to be provided at their expense. Accordingly, the county commissioners making application for the improvement, may grant a petition of property owners for the additional width, and may assess abutting property owners for the additional width, and may assess abutting property on account of the cost of the additional width. Section 1193-2 G. C., providing for assessment of cost by the village, is not exclusive of section 1198 G. C. when the village itself is not sharing in the cost of the additional width.*

COLUMBUS, OHIO, July 21, 1922.

HON. EUGENE T. LIPPINCOTT, *Prosecuting Attorney, Lima, Ohio.*

DEAR SIR:—You have recently submitted the following for the consideration of this office:

“FACTS.

Bluffton is a village in Allen county. The Dixie Highway runs through the main street thereof. The village is bonded up to its limit. The state and federal government are paving the Dixie Highway. The village is anxious to have the improvement also go through the village and pave the street to the curb instead of only the regulation 18 feet. The abutting property owners have all filed a petition with the county commissioners agreeing to pay for the improvement to the additional width, provided the special assessment is in the usual 10 annual installments. The village has also filed its consent with the county commissioners and the State Highway Department to go through with the improvement.

## QUERY:

Under sections 1193-1 and 1193-2 of the General Code, can the county commissioners make the special assessments directly against the abutting property and proceed with the improvement without the further action of the council or village? If it cannot, what procedure would be applicable?"

Sections 1193-1 and 1193-2 are not quoted here because of their length. Both sections deal with the subject of highway improvement into or through a village when the improvement is carried on by the Department of Highways and Public Works upon proceedings originating with an application of county commissioners or township trustees for state aid.

The first of the two sections provides among other things that if no part of the cost and expense of the proposed improvement is assumed by the village, then no action on the part of the village other than the giving of its consent shall be necessary;

"and in such event all other proceedings in connection with said improvement, *including the making of assessments*, shall be conducted in the same manner as though the improvement was situated wholly without a village."

Provision is then made that the village may by agreement of its council with the county commissioners or township trustees assume and agree to pay all or any part of the cost and expense of that part of the improvement within the village assumed in the first instance by the county commissioners or township trustees. In such cases, the village pays into the county or township treasury, as the case may be, its share of the cost as fixed in the agreement. The statute concludes with this sentence:

"This section shall apply where the *council of a village* does not desire to improve all or any part of said road within such village to a greater width than is contemplated by the proceedings for said improvement by the state highway commissioner and the county commissioners or township trustees; and shall also apply to so much of said road as it was designed to improve by the state highway commissioner and county commissioners or township trustees in cases where the *council of said village* desires to improve all or any part of said road within such village to a greater width than is contemplated by the proceedings of the state highway commissioner and county commissioners or township trustees."

Section 1193-2 provides in detail for the situation arising when the *village council* desires to improve all or any part of the highway within the village

"to a greater width than is contemplated by the proceedings for said improvement by the state highway commissioner and county commissioners or township trustees."

Authority is conferred on a village council to assess against abutting property owners all or any part of the cost and expense of improving said road to the additional width; and provision is also made that the village may by taxation and issuance of bonds provide funds for the improvement of the road to the additional width.

The foregoing description of the two sections is sufficient to show that if they constituted the only legislation on the subject of improving a road within a village to a greater width than is contemplated for the improvement outside of the village, your first inquiry would have to be answered to the effect that the last sentence of

section 1193-1, as above quoted, indicates that as between sections 1193-1 and 1193-2, the latter section governs where the improvement is made to the additional width, and that accordingly, the funds for the additional width improvement, and the assessment on account thereof, would be furnished and made by the village council to the exclusion of the county commissioners or township trustees.

But in view of your second question, there is another section which must be considered namely, section 1198 G. C., which reads as follows:

"The improved portion of such inter-county or main market highway shall not be less than ten nor more than twenty feet in width unless for special reasons the state highway commissioner requires a greater width. The highway shall be improved to a greater width than twenty feet, if there is filed with the application a petition signed by the owners of twenty-five per cent or more of the lineal feet of property abutting that portion of the highway to be constructed to said increased width, requesting that the added cost and expense of such improvement be assessed against the owners of property abutting on that portion to be constructed to the increased width. The county commissioners or trustees of townships in which the highway is situated may agree to pay the added cost and expenses of constructing or improving said highway to such increased width, or such county commissioners and township trustees may jointly agree to pay the increased cost of said improvement or any part thereof, and the abutting property owners may by petition ask for the construction of said improvement to the increased width provided for and request that that portion of the cost thereof not assumed by the county commissioners or township trustees or either of them be assessed against said abutting property owners. The portion of the cost and expenses of said improvement to be assessed against the abutting property owners shall be assessed by the township trustees in the manner hereinafter provided, and such assessment shall be in addition to any other assessments on account of said improvement as herein provided. *If the abutting property owners petition for more expensive improvement, or more expensive material than that intended to be placed on the highway by the highway commissioner, they shall have such power provided they agree in such petition to pay the added expense thereby occasioned, the added cost to be assessed upon the abutting property as in other cases.*"

If, as between sections 1193-1 and 1193-2 the latter is exclusive of the former on the subject of additional width within a village, is it also exclusive as against section 1198 G. C.?

To this question the answer is believed to be in the negative. When section 1198 was enacted in its present form in 106 O. L., 630, sections 1193-1 and 1193-2 were not in existence; they were not enacted until 1917, 107 O. L., 123, 124, where they appear as original and not as amendatory legislation. Contemporaneously with and as part of the same act in which section 1198 was enacted into its present form, section 7467 was enacted as substantially original legislation, then reading and still reading 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 funds available for street improvement (improvement) upon roads outside of the village and leading thereto."

While this section is not as definite as is section 6952 G. C., which specifically includes certain kinds of municipal streets within the purview of the word "road," for the purpose of improvement by county commissioners, yet it recognizes "roads" within villages as subject to improvement by state, county and township. Section 1231-3, which was also enacted as part of the same act enacting section 1198 in its present form, permits the state highway commissioner with the consent of the village council to carry a road improvement into or through a village.

It is clear, then, that even in the absence of sections 1193-1 and 1193-2, there was and is authority in the state, county and township to carry a road improvement into a village, at least in those cases where the village, through its proper officers, gave consent. The evident purpose of the two sections named was not primarily to give the authority just indicated, but rather to provide machinery to the village itself to share in the cost of the improvement when it desired to do so.

With these matters in mind, there is no reason for believing that village streets constituting part of the line of an inter-county highway or main market road are exempt from the provisions of section 1198 G. C. It is therefore the conclusion of this office, as already indicated, that said section furnishes authority for meeting the situation you have in hand, that is to say, that your county commissioners may, in their discretion, grant the petition of the property owners for the improvement to the additional width, and assess against the abutting owners the cost incurred by reason of the additional width. This view is strengthened by reference to the practical side of the matter, since it appears from your statement that it is the *abutting owners* who are asking for the additional width, rather than the village council, and since it appears, furthermore, that section 1198 on the one hand has reference primarily to the desires of the village council.

It cannot be said that section 1198 is limited in its operation to cases where the additional width sought is a width over and above twenty feet; the last sentence of the section negatives such a theory. Nor can it be said that the section requires the assessment to be made in all cases by township trustees; any technical question on that score as to the main part of the section, arising from the failure of the General Assembly to amend the section when it amended section 1214 to provide for the making of assessments by the county commissioners or township trustees making application for state aid, whereas previously in either case the township trustees made the assessment, would not apply to the last sentence of section 1198, since that sentence provides that the added cost is "to be assessed upon the abutting property *as in other cases.*"

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*