

2155.

COUNTY COMMISSIONERS—DUTY TO MAINTAIN ALL COUNTY ROADS—MAY ELIMINATE COUNTY ROADS UNDER SECTION 6966, GENERAL CODE.

SYLLABUS:

1. *It is the duty of the county commissioners to repair and maintain all roads on the county system of highways.*

2. *In the event a board of county commissioners should, under the provisions of Section 6966, General Code, change the county system of roads so as to result in any given road being eliminated therefrom, such road will become a township road unless it should be designated as a state highway by the Director of Highways in accordance with the provisions of Section 1189, General Code.*

COLUMBUS, OHIO, July 24, 1930.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

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

“There has been some question raised by the township trustees about whose duty it is to maintain the roads on the county system of highways. The county commissioners of our county have been maintaining and repairing all the hard surface roads on the county system, but have left it to the township trustees to take care of the dirt roads, and the partly improved roads such as gravel roads on the county highway system.

1. Must the county commissioners take charge of and maintain all the county roads of whatever kind and description on the county system of highways?

2. May the county commissioners abandon certain roads on the county system of highways and put the burden on the township trustees of taking care of these abandoned roads?”

The general question as to the respective duties of a county and township in reference to the repair of roads within the county involved in the first question of your communication has been the subject of many opinions rendered by my predecessors and myself in response to inquiries of a similar nature to your own. The Legislature has enacted numerous statutes defining the duties of the counties and townships relating to the repair and maintenance of roads:

Section 7464, General Code, as amended in 112 O. L. 496, provides in part:

“The public highways of the state shall be divided into three classes, namely: State roads, county roads and township roads.

* * * * *

(b) County roads shall include all roads which have been or may be established as a part of the county system of roads as provided for under Sections 6965, 6966 and 6968 of the General Code, which shall be known as the county highway system, and all such roads shall be maintained by the county commissioners.

(c) 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."

Section 7467 of the General Code provides:

"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 upon roads outside of the village and leading thereto."

It is significant that House Bill 47 (110 O. L. 267), including Sections 6965 to 6968, inclusive, General Code, cited in Section 7464, General Code, supra, is headed:

"To afford relief to townships by providing for the creation of a system of county highways in each county of the state and authorizing state aid in the construction thereof."

It is evident that in amending Section 7464, Subsection (b), General Code, supra, the 87th General Assembly intended to make it clear that the duty to repair and maintain the county system of roads created under the provisions of Sections 6965 to 6968, inclusive, General Code, supra, rested exclusively on the county, leaving it entirely optional with the township trustees as to the assistance which the township should render, if any, in the maintenance and repair of roads on the county system within the respective townships. It has been the consistent opinion of my predecessors and myself, in construing the statutes relative to this question, that it was the duty of the county to repair all roads properly defined as county roads under the provisions of the statutes prescribing which roads were such. Conversely, it has been held that township trustees could not be compelled to repair and maintain any roads on the county system as defined by the various statutes as enacted and amended by the Legislature from time to time.

It was held by my predecessor (Opinions of the Attorney General for 1927, Vol. 1, p. 301, 303), in construing Sections 7464, General Code, supra, prior to its recent amendment, and 7467, General Code, supra, that inasmuch as Sections 6965, et seq., General Code, related exclusively to the construction, reconstruction and improvement of the roads included in the county system, such roads were not necessarily on the county system within the provisions of Section 7467, General Code, supra, requiring their repair and maintenance by the county. This opinion has been abrogated by the amendment of Section 7464, Subsection (b), above referred to.

It was held by my predecessor in Opinions of the Attorney General for 1928, Vol. 1, p. 292, as disclosed by the third branch of the syllabus:

"By the terms of Section 7464, General Code, as amended in House Bill No. 27, passed by the 87th General Assembly (Norton-Edwards Act) and Section 7467, General Code, the duty of maintaining and repairing all county

roads is placed on the county commissioners regardless of whether they be dirt roads or otherwise."

The question as to the roads in the county the said townships were charged with the duty of repairing, was discussed in an opinion rendered by me to Hon. W. S. Paxson, Prosecuting Attorney of Fayette County, Ohio, June 11, 1929 (Opinions of the Attorney General for 1929, Vol. 1, p. 764). I therein held, as disclosed by the third branch of the syllabus:

"A road which is not a part of the state highway system and has not been designated as a part of the county system of highways under Sections 6965, et seq., of the General Code, is a township road."

In your second question, you refer to county commissioners abandoning certain roads on the county system and placing the burden of maintenance of such roads on the township trustees. Manifestly since the county commissioners are charged with the responsibility of maintaining all roads on the county system, they may not abandon any of such roads so long as they remain as a part of the county system of roads. The only way, therefore, in which a county may be relieved of the responsibility of maintaining any given road on the county system would be in the event proceedings were taken to change the county system so as to eliminate such road therefrom. Section 6965, General Code, provides the detailed steps to be taken in the creation of a county system of highways and Section 6966, General Code, provides that a board of county commissioners "may from time to time make changes in the county system or addition thereto in the manner hereinbefore provided with respect to the creation of the same." It may be observed that a board of county commissioners is limited in making changes in a county system of roads so as to eliminate any given road at least to the extent that such elimination of a road from the county system may not result in rendering the county system disconnected. Section 6966, General Code, provides that the county system of roads shall be "a connected system of county highways * * * connecting with the intercounty highways and main market roads of such county, all of the villages, hamlets and centers of rural population within the county." Subject to this limitation, however, it is obvious that a board of county commissioners may, if it sees fit, change the county system as provided in Section 6966, General Code, so as to eliminate therefrom any given road heretofore a part of such system. It follows that in the event the county system should be changed so as to eliminate any given road therefrom, unless such road is designated as a state highway by the Director of Highways under the provisions of Section 1189, General Code, such road will automatically become a township road under the provisions of Section 7466, *supra*.

In view of the foregoing and in specific answer to your inquiries, I am of the opinion that:

1. It is the duty of the county commissioners to repair and maintain all roads on the county system of highways.

2. In the event a board of county commissioners should, under the provisions of Section 6966, General Code, change the county system of roads so as to result in any given road being eliminated therefrom, such road will become a township road unless it should be designated as a state highway by the Director of Highways in accordance with the provisions of Section 1189, General Code.

Respectfully,

GILBERT BETTMAN,

Attorney General.