

OPINION NO. 76-014**Syllabus:**

R.C. 711.041 requires, in addition to approval, an acceptance of the dedication of public streets, roads and highways and, absent acceptance, approval of a plat does not force maintenance of streets, roads and highways described thereon upon the county officials. General maintenance of such streets, roads and highways remains a private matter for abutting landowners until acceptance is had.

To: Thomas A. Unverferth, Putnam County Pros. Atty., Ottawa, Ohio
By: William J. Brown, Attorney General, February 27, 1976

I have before me your recent request for my opinion which reads as follows:

"In a county prior to the establishment of a County Planning Commission where a plat is submitted to the Board of County Commissioners platting lands outside a municipal corporation and on which a street is laid out, does the endorsement by the Board using the word 'approved' but not accepted nor further acted on by the Board, constitute an acceptance and dedication of that portion of the land described in the plat as a street?

"If no further action is taken, who is responsible for the maintenance of such street under Section 5535.01 of the Ohio Revised Code."

R.C. 5535.01 divides the public highways of this state into three classes - state roads, county roads and township roads - and

specifies responsibility for maintenance of public roads. Your question, however, centers upon whether a road shown on a plat approved by a board of county commissioners has been accepted as a county road.

R.C. 5553.31, which specifies the statutory mechanism for the dedication and acceptance of land for road purposes by a board of county commissioners provides as follows:

"Any person may, with the approval of the board of county commissioners, dedicate lands for road purposes. A definite description of the lands to be dedicated with a plat of such lands thereto attached and signed by the party dedicating such lands, with the approval and acceptance of the board indorsed thereon, shall be placed upon the proper road records of the county in which such road is situated. If the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the board by proper resolution approves and accepts the lands for such purposes, as are provided in cases where the board by unanimous vote declares its intention to locate, establish, widen, straighten, vacate, or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the lands so dedicated a public road without any further proceedings thereon."

(Emphasis added.)

It is clear that an acceptance by the board of a proposal to dedicate land for road purposes must occur if the lands are to become a public road.

R.C. 711.041, which deals with approval of plats outside a municipal corporation specifically provides, in pertinent part:

"The approval of a plat by the board of county commissioners shall not be deemed to be an acceptance of the dedication of any public street, road or highway dedicated on such plat." (Emphasis added.)

In interpreting the provisions of R.C. 711.041, the Lorain County Court of Appeals noted, in *Krzewinski v. Eaton Homes*, 108 Ohio App. 175 (1958), at p. 179, "The fact that the plat of this subdivision was approved by the county commissioners and township trustees does not make the roads delineated thereon county or township roads. See Section 711.041, Revised Code."

As you noted in your request, one of my predecessors had reason to consider what constituted an acceptance of land dedicated for use as a public road in 1958 Op. Att'y Gen. No. 2262. His conclusion was that where a plat had been submitted to a board of county commissioners with a proposal for streets to be dedicated as public roads and the board endorsed the plat, using the terms "approved and accepted," an acceptance of the dedication had occurred. Notably, however, the specific term

"accepted" was used in the indorsement and other actions of the board had further indicated actual acceptance.

In the situation you describe, the Board of County Commissioners approved the submitted plats, but did not accept the dedication or take further action to indicate actual acceptance. R.C. 711.041 clearly indicates that an approval alone will not be deemed an acceptance and it is, therefore, my opinion that no acceptance of the proposed dedication has occurred. The streets in question are, therefore, not public streets and the county has assumed no responsibility for maintaining such streets.

In response to your inquiry concerning the responsibility for maintenance of such streets, I believe it is clear that there is no public duty to maintain streets which are not public. I would note that an adjudication concerning the rights and duties as among the private buyers and sellers of land where there is reference to a map showing streets may be necessary. The Court in Krzewinski, supra, concluded that where an owner of land causes a map to be made of the land (upon which are delineated streets and highways) and then sells the lots by use of the map referring to it in the conveyance, one who purchases a lot acquires from the seller the right to have the street upon which his land abuts kept open for travel throughout the length of the street (as shown on that map).

In conclusion, it is my opinion and you are so advised that R.C. 711.041 requires, in addition to approval, an acceptance of the dedication of public streets, roads and highways and, absent acceptance, approval of a plat does not force maintenance of streets, roads and highways described thereon upon the county officials. General maintenance of such streets, roads and highways remains a private matter for abutting landowners until acceptance is had.