

of substitution for existing leases now held by the Pennsylvania Railroad Company as to each of the parcels of land covered by the leases now presented for my approval; and that acting under the authority of Section 9 of said act said railroad company has surrendered the leases now held by it for the purpose of securing the leases here under consideration as provided for in Section 9 of said act.

Upon consideration of the provisions of said leases supplemented by information from your office touching the right of the Pennsylvania Railroad Company to these leases upon surrender of those now held by it, I am of the opinion that said leases and provisions thereof conform to the provisions of said act of the Legislature above noted, and said leases and each of them are accordingly hereby approved as to legality and form, as is evidenced by my approval endorsed upon said leases and upon the duplicate and triplicate copies thereof.

Respectfully,
GILBERT BETTMAN,
Attorney General.

2127.

TOWNSHIP TRUSTEES—POWER TO ACCEPT DONATION OF LAND
FOR RIGHT OF WAY IN CONNECTION WITH IMPROVEMENT TO
AVOID A GRADE CROSSING.

SYLLABUS:

A board of township trustees has the power to accept the donation of right of way for a township road rendered necessary by the change of direction of such road in connection with proceedings for its improvement.

COLUMBUS, OHIO, July 22, 1930.

HON. ALFRED DONITHEN, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—This acknowledges receipt of your recent communication as follows:

“There is located in Tully Township of this county a road known and designated as No. 199-B, extending in a northerly and southerly direction, crossing a railroad. Immediately south of the railroad right of way this road connects with another road designated as No. 197, Sections C and D, extending in a northwesterly and southeasterly direction. Both of these roads are to be improved as a single improvement by the trustees by resolution. Both branches of the improvement cross the railroad within about thirty-five rods of each other and meet immediately south thereof.

A farmer owning property north of the railroad right of way is willing to donate a strip of land thirty feet wide, connecting the two branches of the improvement north of the railroad and thus do away with one of these grade crossings. The land to be donated will cost the trustees nothing and the change is one which does not affect the route and termini of the improvement at all. It is in reality a safety measure and is being proposed by the board of trustees under Section 3298-1 which holds in part that the township trustees shall have right to widen, straighten or change the direction of any part of a

road in connection with the proceedings for its improvement. A map illustrating this question is herein enclosed.

The question is, first, has the board of township trustees the right to accept the donation of the land for road purposes, and second, would the accepting of such land and the consequent improvement of it as a part of this road improvement, and the changing of the route of the road to eliminate the one grade crossing be within the powers of the board to straighten or change the direction of any part of the road, under Section 3298-1, keeping in mind that the general route and termini of the road are not changed to any appreciable extent?"

The provisions of Section 3298-1, et seq., of the Code are such as to indicate clearly the power of township trustees to acquire property for widening, straightening or changing the direction of any township road in connection with the proceedings for its improvement. While it is true that the procedure outlined indicates the necessity of making compensation to an owner and affords to the owner the right of appeal in the manner provided for appeals in road cases, yet I have no hesitancy in saying that, where an owner is willing to surrender his claim for compensation for land taken and deed the necessary property gratuitously, the authority to receive the donation may be said clearly to exist. See also Section 3281 of the Code.

In the instance here under consideration, the direction of the road is changed somewhat as an incident to its improvement and the change appears to be commendable in view of the circumstances. I accordingly am of the opinion that the suggested course is authorized.

A somewhat closer question exists, however, concerning which you do not inquire. The purpose of the change is to avoid one of the crossings at grade. It is therefore assumed that, when the change is made, the desire of all concerned is to close and abandon the small portion of road across the railway rendered unnecessary by reason of the improvement. While perhaps township trustees have the right to abandon for public use portions of township roads rendered unnecessary by reason of proceedings for straightening or changing direction, yet that right does not clearly appear in the statutes. At all events, nowhere has there been given to township trustees express power to vacate roads or portions thereof.

I am enclosing herewith a copy of my Opinion No. 1758, dated April 10, 1930, and addressed to the Honorable Colonel G. L. Yearick, Prosecuting Attorney, Newark, Ohio, which deals with the right of township trustees to abandon roads. You will note particularly in this opinion the next to the last paragraph which suggests that, in the proceeding then before it, it would be wiser to secure the cooperation of the county commissioners in the formal vacation of that portion of the road no longer needed for public purposes. I feel that the suggestion there made is equally applicable here. In order that all question with regard to the authority of the township trustees may be resolved, it would seem to be proper to secure action by the county commissioners in vacating the portions of the road across the railroad.

Respectfully,

GILBERT BETTMAN,

Attorney General.