

The abstract of title warranty deed and certificate of the action of the controlling board with reference to section 12 of the General Appropriation Act are herewith returned.

Respectfully,
C. C. CRABBE,
Attorney General.

2942.

APPROVAL, CERTIFIED COPY OF FINAL RESOLUTION ON ROAD IMPROVEMENT IN BUTLER COUNTY.

COLUMBUS, OHIO, November 13, 1925.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2943.

COUNTY COMMISSIONERS ARE NOT AUTHORIZED TO MAKE CONTRIBUTION IN MONEY TO A VILLAGE TO PAY A PORTION OF COST OF IMPROVEMENT OF VILLAGE STREET WHICH IS ALSO A COUNTY ROAD.

SYLLABUS:

County commissioners are not authorized, by section 7467 of the General Code or elsewhere in the statutes, to make a contribution in money to a village of an amount representing a proportion of the cost of the improvement of a village street, which is also a county road.

COLUMBUS, OHIO, November 14, 1925.

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

GENTLEMEN:—This will acknowledge receipt of your recent communication in which you submit the following question:

“May the county commissioners contribute to a village an amount representing a proportion of the cost of the improvement of a village street which is also a county road?”

Accompanying your communication are copies of two letters, written by an examiner of your department, and from these enclosures it is disclosed that the county commissioners of the particular county contemplate the contribution to a village within the county of a sum of money equal to thirty-five per cent of the cost of the improvement of a street, which is a county road, within the village.

By the enclosures referred to, attention is directed to two opinions of my predecessor. The first opinion is found in Opinions of the Attorney General for 1917, Vol. II, page 1956. In this opinion, as shown by the syllabus, it was held:

"Township trustees have authority, under section 3298-1, General Code (107 O. L. 73), to construct or build roads in a municipality, but they have no authority to build or construct public highways within a municipality when they are streets as such, viz., those laid out by the municipality for its use and benefit."

The second opinion referred to is found in the Opinions of the Attorney General for the year 1918, Vol. I, p. 687. By this opinion it is held, as shown by the syllabus:

"Under section 7467, General Code, the board of county commissioners of a county may contribute toward the maintenance and repair of the roads located within a village."

Inasmuch as the first opinion referred to relates to the contribution of money by county commissioners to township trustees, this opinion is passed without comment as being inapplicable to the question submitted by you. The second opinion will be referred to hereinafter.

Section 7464 of the General Code reads:

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

(a) State roads shall include such part or parts of the inter-county highways and main market roads as have been or may hereafter be constructed by the state, or which have been or may hereafter be taken over by the state as provided in this act, and such roads shall be maintained by the state highway department.

(b) County roads shall include all roads which have been or may be improved by the county by placing brick, stone, gravel or other road building material thereon, or heretofore built by the state and not a part of the inter-county or main market system of roads, together with such roads as have been or may be constructed by the township trustees to conform to the standards for county roads as fixed by the county commissioners, 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 reads:

"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 will be noted, from a reading of the last quoted section, that it is the mandatory duty of the political subdivisions mentioned, namely, the state, county and township, to maintain their respective roads, as classified in said section 7464 of the General Code. This mandatory provision as to maintenance is followed by a proviso wherein it is provided that county commissioners and township trustees may, by agreement, *contribute* to the repair and maintenance of the roads under the control of the other. The section then provides that 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 a village.

The opinion last above referred to is in the form of an approval of an opinion submitted by Hon. John L. Cable, who at that time was prosecuting attorney at Lima, Ohio, and the opinion itself, other than by reference to the opinion of the prosecutor, does not set out in full the holding nor the reasoning upon which the conclusion was reached.

In view of the language of the statute above quoted and referred to, I am unable to reach the conclusion shown by the syllabus of the opinion referred to. As hereinbefore noted, the language of the statute is that the state county or township, or any two or more of them, may by agreement expend any funds available upon roads inside of a village. This part of the section does not go so far as to provide that the state, county or township, or any two or more of them, may contribute to the improvement of a road within the limits of a village—the authority being only that these political subdivisions, or any two or more of them, may expend money upon a road inside of a village.

This provision surely contemplates that the administrative functions incident to the expenditure of such funds by the state, county or township, or any two or more of them, shall be exercised and administered by the state, county or township, or any two or more of them, as they may agree upon, and not by the village officers after funds have been turned over to the village by the state, county or township, or any two or more of them.

This conclusion seems to be strengthened by the reasoning in the opinion of my predecessor, found in Opinions of the Attorney General for 1920, Vol. II, p. 968.

It would follow, and you are advised, that county commissioners are not authorized, under the provisions of section 7467 or elsewhere in the statute, to contribute to a village an amount representing a proportion of the cost of the improvement of a village street which is also a county road; and the opinion last referred to and quoted from, being found in Opinions of the Attorney General for 1918, Vol. I, page 687, is not approved and is not followed.

Respectfully,

C. C. CRABBE,
Attorney General.