

OPINION NO. 66-086**Syllabus:**

1. Section 5571.02, Revised Code, does not make it mandatory that a board of township trustees follow any of the methods of providing for the maintenance and repair of roads mentioned therein.

2. Pursuant to Section 5549.21, Revised Code, a board of township trustees may employ a "road inspector" whose duty is to determine the condition of township roads and report to the board of township trustees.

To: David F. McLain, Trumbull County Pros. Atty., Warren, Ohio
By: William B. Saxbe, Attorney General, May 6, 1966

You have requested my opinion in a letter which with subsequent changes reads in part as follows:

"Howland Township in Trumbull County has not followed any of the three particular methods designated in Section 5571.02, Revised Code/ and they appointed a road inspector who works a one-half day at this job for the purpose of determining the condition of the township roads.

"My questions are as follows:

"Is the Board of Township Trustees authorized to engage a road inspector where his job is ministerial and does not require the exercise of administrative discretion?

"In view of the fact that Section 5571.02 indicates that the Board of Township Trustees may proceed in any one of the following methods, may the township trustees use any one, a combination of the three or none of the three methods designated in the maintenance of their township roads?"

Section 5571.02, Revised Code, provides the following:

"The board of township trustees shall have control of the township roads of its township and shall keep them in good repair. The board of township trustees may, with the approval of the board of county

commissioners or the director of highways, maintain or repair a county road, or intercounty highway, or state highway within the limits of its township.

"In the maintenance and repair of roads the board of township trustees may proceed in any of the following methods:

"(A) It may designate one of its number to have charge of the maintenance and repair of roads within the township.

"(B) It may divide the township into three road districts, in which event each trustee shall have charge of the maintenance and repair of roads within one of such districts.

"(C) It may appoint some competent person, not a member of the board of township trustees, to have charge of maintenance and repair of roads within the township, who shall be known as 'township highway superintendent' and shall serve at the pleasure of the board of township trustees.

"The method to be followed in each township shall be determined by the board of township trustees by resolution entered on its records."

Section 5571.02, supra, was formerly Section 3370, General Code. In Opinion No. 1101, Opinions of the Attorney General for 1929, Volume II, page 1652, the following comment regarding Section 3370, supra, appears at page 1653:

"* * * It will be noted that the statute provides that the trustees 'may' adopt one of the three methods therein provided for, which of course indicates that the section is not mandatory * * *. While under certain circumstances the courts have held that the word 'may' will be construed to mean shall, it is not believed that such circumstances exist in this case. In other words, the statute authorizes the trustees to adopt one of the three methods for their convenience, but they may act as a body if they so desire."

Thus, it appears that the methods set forth in Section 5571.02, supra, are primarily for the convenience of the board of township trustees. Accordingly, they may choose not to follow any of these methods and decide to act as a body instead.

Section 5549.21, Revised Code, reads in part as follows:

"The board of township trustees may purchase or lease such machinery and tools as are necessary for use in constructing, reconstructing, maintaining, and repairing roads and culverts within the township,

and shall provide suitable places for housing and storing machinery and tools owned by the township. It may purchase such material and employ such labor as is necessary for carrying into effect this section, or it may authorize the purchase of employment of such material and labor by one of its number, or by the township highway superintendent, at a price to be fixed by the board. All payments on account of machinery, tools, material, and labor shall be made from the township road fund. All purchases of materials, machinery, and tools shall, where the amount involved exceeds one thousand dollars, be made from the lowest responsible bidder after advertisement, as provided in section 5575.01 of the Revised Code. * * *

From the above provision it appears that a board of township trustees may employ labor to carry out its duty of maintaining township roads. It is my opinion that a "road inspector" who determines the condition of the township roads and reports to the board of township trustees may be employed by the board. The employment of such a road inspector is not outside the scope of authority possessed by a board of township trustees.

Therefore, it is my opinion and you are hereby advised that:

1. Section 5571.02, Revised Code, does not make it mandatory that a board of township trustees follow any of the methods of providing for the maintenance and repair of roads mentioned therein.

2. Pursuant to Section 5549.21, Revised Code, a board of township trustees may employ a "road inspector" whose duty is to determine the condition of township roads and report to the board of township trustees.