

OPINION NO. 84-016**Syllabus:**

The last portion of R.C. 5553.02, which provides that no road shall be "located or established" by a board of county commissioners unless certain specified requirements are met, is not applicable to the acceptance of lands dedicated for road purposes pursuant to R.C. 5553.31.

To: Richard L. Ross, Morgan County Prosecuting Attorney, McConnelsville, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, March 26, 1984

I have before me your request for my opinion as to the relationship between R.C. 5553.02 and R.C. 5553.31. Specifically, you wish to know whether the last sentence of R.C. 5553.02, which provides that no road shall be "located or established" by a board of county commissioners unless certain specified requirements are met, is applicable to R.C. 5553.31, which sets forth the statutory mechanism for dedicating lands for road purposes.

R.C. 5553.02 states:

The board of county commissioners may locate, establish, alter, widen, straighten, vacate, or change the direction of roads as provided in sections 5553.03 to 5553.16 of the Revised Code. This power extends to all roads within the county, except that as to roads on the state highway system the approval of the director of transportation shall be had. However, no public road shall be located

or established, by the board of county commissioners, unless the location or establishment begins on a public road and terminates on a public road, or begins on a public road and services a public park, a state supported educational institution, public school, public aviation area, or a public recreation area, or begins on a public road and services at least three private residences or businesses in the first five hundred feet and one private residence or business in each two hundred feet thereafter.

R.C. 5553.31 states:

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. The board shall not approve and accept the dedication of any land for road purposes until any lien attached to such land under division (A) of section 505.82 of the Revised Code is satisfied. 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 purpose, 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 therefore, but otherwise the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the land so dedicated a public road without any further proceedings thereon.

The last sentence of R.C. 5553.02 was added in 1963. 1963 Ohio Laws 1285 (Am. H.B. 699, eff. Sept. 27, 1963). Since this sentence restricts the conditions under which a road may be "located or established," the issue to be determined is whether the meaning of the term "located or established" as used in R.C. 5553.02 encompasses the R.C. 5553.31 method of dedicating lands for road purposes.

I note that both the statutory and common law methods of accepting lands dedicated for road purposes have been referred to as methods of "establishing" roads. Oberhelman v. Allen, 7 Ohio App. 251, 254 (Hamilton County Ct. of App. 1915); In Re Application of Loose, 107 Ohio App. 47, 49 153 N.E.2d 146, 148 (Franklin County Ct. of App. 1958); 1956 Op. Att'y Gen. No. 7136, p. 690. However, roads can also be "established" by proceedings undertaken by a board of county commissioners to appropriate land for road purposes, R.C. 5553.03 to R.C. 5553.16, and also by prescription. Railroad Co. v. Village of Roseville, 76 Ohio St. 108, 117, 81 N.E. 178, 180 (1907); 1982 Op. Att'y Gen. No. 82-028 at 2-83. Hence, it would appear that the meaning of "establishment" is broad and can encompass any of several methods of setting up roads. See 1928 Op. Att'y Gen. No. 2118, p. 1210. Therefore, the type of "establishment" which is intended in a specific situation must be determined by the context.

The opening sentence of R.C. 5553.02 does not use the terms "locate" and "establish" in a broad, unrestricted sense, but instead specifically refers to the location and establishment of roads "as provided in sections 5553.03 to 5553.16 of the Revised Code." The "location" and "establishment" of roads under these

¹ I note that the last sentence of R.C. 5553.31, which covers the situation where dedicated lands effect a change in an existing road, employs the terms "locate" and "establish" in a context in which such terms cannot be construed as encompassing dedication. In requiring that a change in an existing road be accomplished by the same proceedings as are used in cases where the board by unanimous vote declares its intention to locate, establish, etc., a road, the terms "locate" and "establish" are clearly being used to refer to proceedings other than those set forth in R.C. 5553.31.

sections refers to the situation where a board of county commissioners determines that the public convenience or welfare requires that certain lands be used for road purposes, and then acts to acquire such lands for road purposes and to provide for the payment of compensation and damages involved in such acquisition. The appropriation can occur with or without the consent of the landowner, but it does not involve a gift of lands to the government. In contrast to this type of situation, a "dedication" under R.C. 5553.31 involves an initial determination by a landowner that certain lands should be used for road purposes, and then an offer of the land to the government. The dedication is a gift which allows the government to use the lands for the specified purpose, Railroad Co. v. Village of Roseville, 76 Ohio St. 108, 115, 81 N.E. 178, 179 (1907), and R.C. 5553.31 provides a statutory method of acceptance. See Loose v. City of Columbus, 107 Ohio App. 47, 49, 153 N.E.2d 146, 148 (Franklin County Ct. App. 1958); 1976 Op. Att'y Gen. No. 76-014 at 2-40. Therefore, R.C. 5553.03 to R.C. 5553.16 and R.C. 5553.31 each refer to a discrete situation, with R.C. 5553.03 to R.C. 5553.16 applying where lands are appropriated by a board of county commissioners, and R.C. 5553.31 applying where an individual grants lands to the government for road purposes.

The fact that the General Assembly did not view the terms "locate" and "establish," as used in the opening sentence of R.C. 5553.02, as referring to R.C. 5553.31 is made clear by the legislative history of the two sections. R.C. 5553.02 was originally enacted as G.C. 6860. 1915 Ohio Laws 574 (Am. S.B. 125, eff. Sept. 1915). It read, in relevant part: "The county commissioners shall have power to locate, establish, alter, widen, straighten, vacate, or change the direction of roads as hereinafter provided." (Emphasis added.) R.C. 5553.31 was originally enacted as G.C. 6886, and was part of the same bill as G.C. 6860. G.C. 6886 read substantially the same as the present version of R.C. 5553.31. Since G.C. 6886 was contained in the same chapter as G.C. 6860 and was one of the sections following G.C. 6860, it would appear that the terms "locate" and "establish" as used in G.C. 6860 may have referred, inter alia, to the G.C. 6886 procedure for accepting lands dedicated for road purposes. However, it also is plausible that this language referred only to the provisions of G.C. 6861 to G.C. 6878, which contain the predecessor statutes to R.C. 5553.03 to R.C. 5553.16.

The changes that G.C. 6860 underwent subsequent to its enactment indicate that the latter interpretation is correct. In the 1953 recodification, the General Assembly modified the opening sentence of the statute to read: "The board of county commissioners may locate, establish, alter, widen, straighten, vacate, or change the direction of roads as provided in sections 5553.03 to 5553.17, inclusive, of the Revised Code." 1953 Ohio Laws 7 (Am. H.B. 1, eff. Feb. 25, 1953). (Emphasis added.) Since this modification occurred during the 1953 recodification, it should not be interpreted as a substantive change. State v. Kotapish, 171 Ohio St. 349, 352, 171 N.E.2d 505, 507 (1960). Hence, this change in the language indicates that the General Assembly, at the time of the 1953 recodification, did not view the opening sentence of R.C. 5553.02 as referring to R.C. 5553.31. The opening sentence of R.C. 5553.02 contained this same wording at the time of the 1963 amendment. See Am. H.B. 699.

Subsequent to the 1963 amendment, the General Assembly on two occasions considered the subject to which the opening sentence of R.C. 5553.02 refers. In 1965, the General Assembly changed the reference to "sections 5553.03 to 5553.17, inclusive, of the Revised Code" to read "sections 5553.03 to 5553.16, inclusive, of the Revised Code." 1965 Ohio Laws 1290 (Am. S.B. 94, eff. Jan. 1, 1966). This change was made because of the repeal of R.C. 5553.17. See 1965 Ohio Laws 1477 (Am. S.B. 94, eff. Jan. 1, 1966). In 1973, the General Assembly made an additional change in the above language by omitting the term "inclusive." 1973 Ohio Laws, Part I, 1473 (Am. H.B. 200, eff. Sept. 28, 1973).

This legislative history clearly shows that the General Assembly has not viewed the terms "locate" and "establish," as used in the opening sentence of R.C. 5553.02, as referring to the R.C. 5553.31 provisions for the acceptance of lands dedicated for road purposes. The General Assembly has, on one occasion prior to the 1963 amendment and on two occasions subsequent to that amendment, made changes in the language which describes the authority granted by R.C. 5553.02. On

no occasion did it include R.C. 5553.31 among the sections which it listed as being referred to by the opening sentence of that section. Thus, I conclude that the terms "locate" and "establish" as used in the opening sentence of R.C. 5553.02 do not refer to the R.C. 5553.31 method for accepting lands dedicated for road purposes.

Turning now to the last sentence of R.C. 5553.02, I find that it is clear that in the 1963 amendment the General Assembly was careful to limit only the authority to "locate" and "establish" roads, and to avoid limiting the other authority granted by R.C. 5553.02, *i.e.*, the authority to "alter, widen, straighten, vacate, or change the direction of roads as provided in sections 5553.03 to 5553.16 of the Revised Code." The fact that the amendatory language limits the authority to effect the "location" and "establishment" of roads raises a presumption that the amendment refers to the same authority to "locate" and "establish" roads as is set forth in the opening sentence. In Shuholz v. Walker, 111 Ohio St. 308, 325-326, 145 N.E. 537, 542 (1924), the court states:

It is true that a word repeatedly used in the statute will be presumed to bear the same meaning throughout the statute unless there is something to show that another meaning is intended. 25 Ruling Case Law, 995, Section 238. However, where the subject-matter to which the word refers is not the same in both clauses, or where the surrounding circumstances are different, this presumption yields to an adverse presumption furnished by an analysis of the various purposes of the law and of the language in which those purposes are expressed. State v. Knowles, 90 Md., 646, 45 A., 877, 49 L.R.A., 695.

The circumstances surrounding the uses of the terms "locate" and "establish" in R.C. 5553.02 are that the words are used in the same section and in the same paragraph, which is also the only paragraph of the statute. Moreover, a plain reading of the statute indicates that the amendment simply limits the authority that is conferred in the opening sentence of the section.

An analysis of the purpose of the 1963 amendment does not lead to a different interpretation. My two immediate predecessors each determined that the purpose of the amendment was to ensure that a road is located or established only upon need. 1982 Op. Att'y Gen. No. 82-012 at 2-43; 1965 Op. Att'y Gen. No. 65-5 at 2-14. This purpose would indicate that the General Assembly was concerned with preventing the needless expenditure of funds on the location and establishment of roads. Since a dedication is, as stated above, a grant to the government, the acceptance of lands dedicated for road purposes does not involve the costs which are present when a county acquires lands pursuant to the procedure set forth in R.C. 5553.03 to R.C. 5553.16. See R.C. 5553.09; R.C. 5553.11; R.C. 5553.16; 1972 Op. Att'y Gen. No. 72-113 at 2-437. It is true that because the acceptance of lands dedicated for road purposes under R.C. 5553.31 renders those lands a public road, a responsibility for maintaining such roads is placed upon public authorities. See R.C. 5535.01; R.C. 5535.08; 1981 Op. Att'y No. 81-039 at 2-155. However, there is no evidence to indicate that maintenance costs were a concern in the enactment of the amendment. Moreover, the fact that the amendment does not restrict the authority to "alter, widen, straighten, vacate, or change the direction of roads as provided in [R.C. 5553.03-R.C. 5553.16]" would indicate that the costs associated with the maintenance of roads were not a concern in the enactment of the amendment. Since there is no indication that a purpose of the amendment was to limit the authority granted by R.C. 5553.31, and since another purpose can reasonably be inferred, the application of the rule of statutory construction which states that the implicit limitation of a statute's scope is disfavored, see State v. Amman, 78 Ohio App. 10, 13, 68 N.E.2d 816, 819 (Hamilton County Ct. of App. 1946), leads to the conclusion that the amendment does not apply to R.C. 5553.31.

In conclusion, I do not believe that the 1963 amendment to R.C. 5553.02 should be construed as applying to the R.C. 5553.31 method for accepting lands dedicated for road purposes. It seems highly unlikely that the General Assembly intended to limit the provisions of R.C. 5553.31 by amending R.C. 5553.02 and in

that amendment employing language which, as used in an earlier part of the same statute, has been found by the General Assembly to have no reference to R.C. 5553.31. If the General Assembly had intended to impose limitations on the authority to accept lands dedicated for road purposes, it would have been a simple matter to explicitly deal with that subject, just as it explicitly dealt with that subject in the enactment of R.C. 5553.31.² See In re Hesse, 93 Ohio St. 230, 235, 112 N.E. 511, 512 (1915).

Therefore, it is my opinion, and you are advised, that the last portion of R.C. 5553.02, which provides that no road shall be "located or established" by a board of county commissioners unless certain specified requirements are met, is not applicable to the acceptance of lands dedicated for road purposes pursuant to R.C. 5553.31.

² Note also that in 1978 the General Assembly did specifically limit the authority to accept lands dedicated for road purposes. This limitation was accomplished by the addition of the following sentence to R.C. 5553.31: "The board shall not approve and accept the dedication of any land for road purposes until any lien attached to such land under division (A) of section 505.82 of the Revised Code is satisfied." See 1978 Ohio Laws, Part II, 3824-3825 (Am. H.B. 1099, eff. Sept. 26, 1978).