

2913.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS,  
MONROE COUNTY, OHIO.

COLUMBUS, OHIO, March 8, 1922.

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

2914.

ROADS AND HIGHWAYS—REAL ESTATE WITHIN ASSESSMENT ZONE  
AND LYING WITHIN CORPORATE LIMITS OF VILLAGE SUBJECT  
TO ASSESSMENT NOTWITHSTANDING HIGHWAY IMPROVED  
MAY NOT LIE WITHIN CORPORATE LIMITS OF SUCH VILLAGE—  
SECTION 1214 G. C. AND RELATED SECTIONS CONSIDERED.

*Under the provisions of section 1214 G. C. and related sections dealing with assessment of lands in connection with state aid highway improvements, benefited real estate within the assessment zone and lying within the corporate limits of a village is subject to assessment notwithstanding that the highway improved may not lie within the corporate limits of such village.*

COLUMBUS, OHIO, March 9, 1922.

HON. C. A. MAXWELL, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—You have recently submitted for the opinion of this office a statement of facts and inquiry substantially as follows:

The National road passes through the incorporated village of Norwich. However, the road itself is not included within the corporate limits—the corporation consisting of strips about half a mile long and three hundred feet wide on each side of the roadway, specifically excluding the roadway. In the year 1918, the section of the National road passing through the village was improved by the state under the state aid plan upon application of the county commissioners. The village took no action whatever in the matter of the improvement.

Your question is, who should be assessed on account of the improvement in question?

It is presumed that your inquiry has reference to the point whether lands within the village are subject to assessment. The answer is clearly in the affirmative. The matter of the assessment is provided for by section 1214 G. C. and related sections; and these sections both in their present form and earlier forms specify that a certain percentage of the cost of the improvement "shall be a charge upon the *property* abutting on the improvement" or, if appropriate action is taken by the county com-

missioners, the assessment may be made against "the *real estate* within one-half mile of either side of the improvement or against the *real estate* within one mile of either side of the improvement." Section 1214-1, enacted in 108 O. L. 478 (504) also employs the expression "against the real estate situated within one and one-half miles of either side of such improvement."

The statutes in point make no exemption of "property" or "real estate" merely because it happens to lie within the limits of a municipal corporation. The real test is not the location of the real estate, but whether it is within the assessment zone and benefited by the improvement.

Judicial authority exactly in point, in principle, is found in the case of *Commissioners of Putnam County vs. Young*, 36 O. S., 288, a case dealing with statutes authorizing road improvement on the plan of assessing benefited lots and lands within two miles of the contemplated improvement. The third syllabus in that case reads as follows:

"3. The 'lots and lands' to be assessed to defray the expense of the improvement of a public road authorized by said commissioners include lots within the limits of a municipal corporation, where the same are within two miles of the improvement, and are benefited thereby."

In the course of the opinion the court say at page 295:

"The statute requires the viewers and engineer to report for assessment all lots and lands lying within two miles of the contemplated improvement, which, in their judgment, will be benefited thereby, and which ought to be assessed therefor; the said distance to be computed in any direction from either side, end or terminus of said road. An owner of a village lot is as much a land owner as the owner of a farm; and in some circumstances such lot may be quite as much benefited by a road improvement as a parcel consisting of many acres. Such lots, being embraced within the words of the statute, are to be held within its meaning unless, from a consideration of all its parts, a contrary intention appears."

Respectfully,  
JOHN G. PRICE,  
*Attorney-General.*

2915.

JUVENILE COURT—SECTION 1653 G. C. AUTHORIZES COMMITMENTS OF DEPENDENT AND NEGLECTED CHILDREN TO CARE OF INDIVIDUALS—NO PROVISION FOR PAYMENT BY COUNTY OF BOARD OF SUCH COMMITTED CHILDREN—SECTION 3092 G. C. CONFERS NO AUTHORITY ON COUNTY TO PAY BOARD OF NEGLECTED AND DEPENDENT CHILDREN COMMITTED BY JUVENILE COURT TO INDIVIDUALS IN COUNTIES WHERE COUNTY CHILDREN'S HOME PROVIDED.

1. *Section 1653 G. C. while authorizing commitments by the juvenile court of dependent and neglected children to the care of suitable private individuals of good*