

OPINION NO. 73-059

Syllabus:

When, under R.C. 153.36, the plans of a new county court house or jail are submitted for approval by the designated county officers, the members of the board of county commissioners vote as individuals and not as a single board.

To: Richard E. Bridwell, Muskingum County Pros. Atty., Zanesville, Ohio
By: William J. Brown, Attorney General, June 21, 1973

I have before me your request for my opinion, which reads as follows:

A question has arisen in this county concerning the interpretation of O.R.C. 153.36 for which I respectfully request the opinion of your office.

The statute provides that when a courthouse or jail is to be built or repaired, etc. the plans "shall be submitted to the Board of County Commissioners, together with the Clerk of the Court of Common Pleas, the Sheriff, the Probate Judge and one person to be appointed by the Judge of the Court of Common Pleas. . . ." The question arises as to whether or not in case of a dispute about the plans, the Board of County Commissioners have three votes or one as a Board. It is quite clear, for example, that the Judges of the Common Pleas Court shall have only one vote by the person whom they appoint and the present statute says "Board of County Commissioners". It has been pointed out to the undersigned that the prior statute provided that the plans should be submitted to the "Commissioners" and not the "Board of County Commissioners" and, for this reason, one of the legally trained members of the Committee feels that the "Board" should receive only one vote.

Since Muskingum County is presently considering the erection of a new jail, I would appreciate your prompt assistance in resolving this problem.

In summary, you ask whether the change in wording effected during the 1953 recodification, from "Commissioners" in G.C. 2348 to "Board of County Commissioners" in R.C. 153.36, was intended to reduce the three individual votes given to the County Commissioners under the General Code to one unit vote of the Board under the Revised Code.

Prior to the recodification, G.C. 2348 read as follows:

If the plans, drawing, representations, bills of materials and specifications of work, and estimates of the cost thereof in detail and in the aggregate, required in the preceding sections relate to the building of a courthouse or jail, or an addition to or alteration, repair or improvement thereof, they shall be submitted to the Commissioners, together with the Clerk of the Court, the sheriff and probate judge, and one person to be appointed by the judge of the Court of Common Pleas, for their approval. If approved by a majority of them, a copy thereof shall be deposited with the county auditor, and kept in his office.

The master copy of the Revised Code shows R.C. 153.36, with deletions indicated by * * * and additions by italics, in the following language:

If the plans, * * * drawings, representations, bills of material, and specifications

of work, and estimates of the cost thereof in detail and in the aggregate, required in * * * sections 153.31 to 153.35, inclusive, of the Revised Code, relate to the building of a * * * courthouse or jail, or an addition to or alteration, repair, or improvement thereof, they shall be submitted to the board of county commissioners, together with the clerk of the court of common pleas, the sheriff, and probate judge, and one person to be appointed by the judge of the court of common pleas, for their approval. If approved by a majority of them, a copy thereof shall be deposited with the county auditor * * * and kept in his office. * * *

The General Assembly expressly renounced any intent to change any material element of the General Code by its adoption of the recodification. R.C. 1.24 provides:

That in enacting this act it is the intent of the General Assembly not to change the law as heretofore expressed by the section or sections of the General Code in effect on the date of enactment of this act. The provisions of the Revised Code relating to the corresponding section or sections of the General Code shall be construed as restatements of and substituted in a continuing way for applicable existing statutory provisions, and not as new enactment.

R.C. 1.24 has since been repealed and is now included under R.C. 1.30, which states in pertinent part:

(A) In enacting any legislation with the stated purpose of correcting nonsubstantive errors in the Revised Code, it is the intent of the general assembly not to make substantive changes in the law in effect on the date of such enactment. A section of the Revised Code affected by any such act shall be construed as a restatement and correction of, and substituted in a continuing way for, the corresponding statutory provision existing on its date of enactment.

(B) Acts of the General Assembly with the purpose described in division (A) of this section include:

(1) House Bill No. 1 of the 100th General Assembly; *the 1953 codification*

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There have been no amendments to R.C. 153.36 since the recodification.

I conclude that the term, "Board of County Commissioners", is used in this context as a term of art, inferring no more than a re-designation of the prior members of the approval committee. This is borne out by the uniform manner in which the term is used in the surrounding sections of the Revised Code. In many of these, the terms "Commissioners" or "County Commissioners" have been replaced by "Board of County Commissioners" or "Board". See R.C. 153.21 through 153.48.

Literally, it is possible to read the words, Board of County Commissioners," in terms of the collective action of a single political entity. In this context, however, the surrounding words, "submitted to the board of county commissioners, together with the Clerk of Court of Common Pleas, the sheriff * * *for their approval," indicate a group of individual officers to whom the plans are to be submitted for approval. Giving each word its full import, "together with" does not leave room for a first meeting of the commissioners, followed by a second meeting of the entire committee with one official vote already decided. Since the plans must be submitted for approval to the one collective group gathered together, it follows that each member of that collective committee has an individual vote.

In specific answer to your question it is my opinion, and you are so advised, that when, under R.C. 153.36, the plans of a new county court house or jail are submitted for approval by the designated county officers, the members of the board of county commissioners vote as individuals and not as a single board.