

**OPINION NO. 72-113****Syllabus:**

1. A board of county commissioners must commence appropriation proceedings against a landowner in order to obtain the right-of-way needed to relocate a road.

2. A county is liable for the cost of land appropriated for the purpose of establishing roads, but the board of county commissioners may, pursuant to Section 5553.09, Revised Code, order part of the cost to be paid by the owners of lands within the vicinity who will be benefited by the improvement.

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**To: Hamlin C. King, Gallia County Pros. Atty., Gallipolis, Ohio**  
**By: William J. Brown, Attorney General, November 30, 1972**

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

"The township trustees of one of the townships (plus nine other freeholders) in this county have petitioned the county commission to relocate a road closed by a

slip. Two questions have been raised with regard to this request.

"First, who must commence the appropriation proceedings against the land owner in order to obtain the right-of-way for relocating the road, the county or the township?

"Second, who must pay for the right-of-way, the county or the township?"

1. While Section 5553.02, Revised Code, does not specifically give a board of county commissioners the power to relocate a road, it does so by clear implication. That Section reads, in part, as follows:

"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, inclusive, 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 highways shall be had.\* \* \*"

There can be no doubt that this vests in the board of county commissioners the power to locate and establish new roads. One of my predecessors has held that the board holds this power to the exclusion of all others. Opinion No. 1300, Opinions of the Attorney General for 1918. This view was confirmed by the court in State, ex rel. Kerr v. Neitz, 58 Ohio App. 135 (1937), which held that a board of county commissioners cannot shift the power to establish roads to a board of township trustees.

Since the board of county commissioners has the sole power to locate and establish new roads, it would appear that the board also has the sole responsibility for obtaining the necessary land. While Chapter 5553, Revised Code, does not spell out the power of the board to make such appropriations, Sections 307.08 and 5555.09, Revised Code, when read together with Section 5553.02, create an implied power to appropriate land for that purpose. Section 307.08, which gives a power of appropriation to a board of county commissioners in certain instances, reads as follows:

"When, in the opinion of the board of county commissioners, it is necessary to procure real estate, a right-of-way, or an easement for a court house, jail, or public offices, or for a bridge and the approaches thereto, or other structure, or public market place or market house, proceedings shall be had in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code."

Section 5555.09, which gives a board of county commissioners the power to appropriate land for road improvements, reads as follows:

"If the surveys, plans, profiles, and cross sections prepared by the county engineer pursuant to section 5555.07 of the Revised Code show that lands will be required for the improvement, the board of county commissioners shall proceed in accordance with sections 163.01 to 163.22, inclusive, of the Revised Code."

These two Sections give the county commissioners power to appro-

appropriate land for several different reasons, including the improvement of existing roads. When these Sections are read together with Section 5553.02, which gives the commissioners the power to locate and establish roads, it seems clear that the power to appropriate the necessary land must rest in the board of county commissioners. I must conclude, therefore, that a board of county commissioners has an implied power to appropriate land on which to establish roads. The appropriation proceedings must proceed in accordance with Sections 163.01 to 163.22, inclusive, of the Revised Code, as provided in Sections 307.08 and 5555.09.

2. Your second question asks whether the county or the township must pay for the right-of-way which is appropriated for the purpose of establishing a road. One of my predecessors, in Opinion No. 6576, Opinions of the Attorney General for 1956, held that the costs of establishing a road must be borne by the county. The third branch of the syllabus of that Opinion reads as follows:

"Costs and expenses of the statutory proceedings specified in Section 5553.04 et seq., Revised Code, including the cost of notice by publication therein specified, for the establishment of a public road is the liability solely of the county involved."

Since only the board of county commissioners can establish roads and appropriate land therefor, it follows logically that the county, and not the township, must pay for the land which it appropriates. However, Section 5553.09, Revised Code, provides that the county does not have to bear the entire cost in all cases. Section 5553.09 reads as follows:

"If the board of county commissioners is of the opinion that the proposed improvement is of sufficient importance to the public to cause the compensation and damages on account thereof to be paid to the persons entitled thereto out of the county treasury, it may so order. If the board is of the opinion that such improvement is not of sufficient importance to cause the compensation and damages to be paid from the treasury, it may determine to proceed with the improvement only upon the condition that the compensation and damages, or such part thereof as it deems reasonable and just, be paid by the landowners of lands within the vicinity who will be benefited by the improvement, and the balance shall be paid out of the treasury. In such event the board shall include in its order a schedule setting forth the names of such landowners, a pertinent description of such lands, and a statement of the amount of compensation and damages to be paid by the owner of each parcel of such lands. When a portion of the compensation and damages is ordered to be paid by the landowners who will be benefited by the improvement, the board may abandon the improvement on the failure of such benefited landowners to pay the compensation and damages adjudged against them by the time fixed therefor."

I conclude that the county, and not the township, is liable for the cost of land appropriated for the purpose of establishing roads. However, the board of county commissioners may, pursuant to Section 5553.09, order part of the cost to be paid by the owners of lands within the vicinity who will be benefited by the improvement.

In specific answer to your questions it is my opinion, and you are so advised, that:

1. A board of county commissioners must commence appropriation proceedings against a landowner in order to obtain the right-of-way needed to relocate a road.

2. A county is liable for the cost of land appropriated for the purpose of establishing roads, but the board of county commissioners may, pursuant to Section 5553.09, Revised Code, order part of the cost to be paid by the owners of lands within the vicinity who will be benefited by the improvement.