

1129.

## APPROVAL, BONDS OF MARGARETTA TOWNSHIP RURAL SCHOOL DISTRICT, ERIE COUNTY—\$40,000.00.

COLUMBUS, OHIO, October 30, 1929.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

1130.

## GASOLINE TAX—TOWNSHIP'S SHARE—WHERE AND HOW USED—WHETHER CINDERED ROAD IS UNIMPROVED A QUESTION OF FACT.

## SYLLABUS:

1. *The proceeds of the gasoline tax distributed to townships under the provisions of Section 5541-8 of the General Code, must be used upon the unimproved dirt roads of the secondary system, if any such exist. Such use must be by way of construction, reconstruction or widening, and must be of such character as not to constitute merely maintenance and repair, but the improvement made need not necessarily include a traffic bearing surface of materials other than the natural soil itself.*

2. *It is a question of fact whether or not a road upon which cinders have been used should be regarded as an unimproved dirt road. The determination of the question depends upon the extent of the improvement by the use of cinders and this question must be determined by the township trustees, whose judgment would not, in the absence of its abuse, be disturbed.*

COLUMBUS, OHIO, October 30, 1929.

HON. HOWARD M. NAZOR, *Prosecuting Attorney, Jefferson, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication, which reads as follows:

“General Code Section 5541-8 provides that the money received by townships from the gasoline tax must be expended by each township for the sole purpose of constructing, widening and reconstructing the public roads and highways within such township; provided, however, that such fund shall be used by the township trustees for the purpose of constructing, widening and reconstructing unimproved dirt roads of the secondary or county system of highways within the township.

Each township in Ashtabula County has roads in it of the secondary county system, so that the money received by all the townships will need to be expended in accordance with the foregoing provisions.

In your opinion, would a road which had been cindered be an unimproved dirt road, and could the township trustees, under the supervision of the county surveyor, repair dirt roads under the above provisions? It is impossible for me to see how a dirt road could be reconstructed unless the meaning of that term should be construed to mean the repairing of the same and the keeping