

## OPINION NO. 1274

**Syllabus:**

Section 5557.02, Revised Code, does not authorize a board of county commissioners to undertake the improvement or to join with a municipality in undertaking the improvement of a municipal street forming no part of a state or county highway.

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**To: Earl W. Allison, Franklin County Pros. Atty., Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, August 6, 1964**

Your request for my Opinion reads as follows:

"The Franklin County Board of Commissioners have requested me to ask your opinion on the following legal question:

"Karl Road was formerly duly laid-out and dedicated as a Franklin County road, which has a general north-south direction with its southern termini being Oakland Park, a City of Columbus municipal street, and its norther termini being State Road #161, popularly known as Dublin-Granville Road. Through successive piece-meal annexations to the City of Columbus, Karl Road presently lies wholly within the municipal boundaries of the City of Columbus which causes it to be a municipal street and to lose its identity as a county road. There are small areas along Karl Road in which county residences property abut, however, the substantial majority of the property owners abutting thereon are municipal residents. See Steubenville v. King, 23 O.S. 610; Wabash R. Co. v. Defiance, 10 CC 27, affirmed 52 O.S., 262; Lawrence R. Co. v. Commissioners, 35 O.S. 1; 1935 O.A.G., page 780.

"Section 5555.02, Revised Code, generally empowers a board of county commissioners to improve a public road, specifically excluding roads and highways on the state highway system, except by approval.

"Section 5557.02, Revised Code, authorizes a board of county commissioners to construct a proposed road improvement into, within, or through a municipal corporation, with the latter's consent. However, Section 5557.08 of the same chapter provides, in full, as follows:

"The board of county commissioners may repair that portion of a county road extending into or through a municipal corporation, or a part of a county road and a municipal corporation's streets extending into or through a municipal corporation and forming a continuous road improvement, when the

consent of the legislative authority of said municipal corporation has been first obtained, and such consent shall be evidenced by the proper legislation of the legislative authority of the municipal corporation, entered upon its records.'

"Besieged by abutting property owners to improve Karl Road, the appropriate officials of the City of Columbus have requested the Franklin County Board of Commissioners to proceed with the necessary steps to improve Karl Road.

"A question has arisen as to whether or not Franklin County has the legal authority to expend county funds and use county personnel on the proposed improvement which lies wholly within municipal boundaries. Franklin County officials take the position that the improvement of Karl Road can, in no sense, be considered 'forming a continuous road improvement,' of a county road, since Karl Road is bounded perpendicularly on the north by a state road and on the south by a municipal street.

"Therefore, we would respectfully request your opinion as to whether a board of county commissioners may improve a municipal street, no part of which is a county road, or an extension of a county road, and which abuts upon a state highway at one end and a municipal street at the other end."

A determination of your question concerning a street improvement by a board of county commissioners involves a construction of Section 5557.02, Revised Code, which provides in pertinent part as follows:

"The board of county commissioners may construct a proposed road improvement into, within or through a municipal corporation, when the consent of the legislative authority of such municipal corporation has been first obtained.\* \* \*"

The word "road" as used in Section 5557.02, supra, is defined in Section 5557.01, Revised Code, as follows:

"As used in Sections 5557.02 to 5557.07, inclusive, of the Revised Code, 'road' includes any state or county roads, or the streets of any municipal corporation, or any part of such roads or streets, which forms a continuous road improvement."

The word "road" as grammatically construed in this section may include "state or county roads" or "streets of any municipal corporation." If this be true, then under Section 5557.02, supra, a board of county commissioners obviously could improve a municipal street solely within a municipality as long as such improvement was continuous.

Under the above interpretation it might be assumed that the Franklin County Board of Commissioners would have the legal right

to construct an improvement of Karl Road even though Karl Road is a city street solely within the municipal boundaries of Columbus and in no way part of a state or county highway. However, the definition of the word "road" in Section 6952, General Code, predecessor to the definition Section 5557.01, Revised Code, indicates such an interpretation is not possible. Section 6952, General Code, defines the word "road" as follows:

"\* \* \*Meaning of the word 'road.' The word 'road' as used in Sections 6906 to 6953, inclusive of the General Code, shall be construed to include any state or county road or roads, or any part thereof, or any state or county road or roads, and any city or village street or streets, or any part thereof, which form (sic) a continuous road improvement."  
(Emphasis supplied)

Obviously a different connotation of the word "road," insofar as municipal streets are concerned, can be derived as between Section 5557.01, Revised Code, and Section 6952, General Code. In Section 5557.01, "streets of any municipal corporation" is preceded by the word "or" and in Section 6952 "any city or village street" is preceded by the word "and." This change in language is not a substantive change in the law by the State Legislature, merely a grammatical change inadvertently made by the Bureau of Code Revision in drafting the Revised Code of Ohio, successor to the General Code of Ohio.

In case of such a conflict, the State Legislature in enacting the Revised Code of Ohio succinctly provides that no substantive change per se is made of superseded sections of the General Code of Ohio. Section 1.24, Revised Code, provides as follows:

"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 enactments."

Perforce, any question of interpretation given the word "road" as between Section 5557.01, Revised Code, and Section 6952, General Code, must be resolved in favor of its meaning as set forth in Section 6952, General Code.

In 1919 the Attorney General received a request from the Prosecuting Attorney of Jefferson County analogous to the request in question. In that question the Jefferson County Commissioners were concerned about their legal authority to improve a street in the city of Steubenville, no part of which street was part of a state or county highway. This opinion is found in Opinion No. 397, Opinions of the Attorney General for 1919, the syllabus of which is as follows:

"Section 6949, G.C., does not authorize county commissioners to undertake the improvement, or to join with a municipality in under-

taking the improvement of a municipal street forming no part of a state or county highway."

At pages 662 and 663 of the above-referred to Opinion a complete discussion is made concerning improvements of roads by county commissioners under Sections 6949 and 6952, General Code (Sections 5557.02 and 5557.01, Revised Code).

In that Opinion on page 663 the Attorney General makes the following cogent statement in defining the word "road" as set forth in Section 6952, General Code:

"This sentence means that Sections 6906 to 6953 are to be given a broad enough meaning to include either a state or county road or roads, or part thereof, which forms a continuous road improvement; or a state or county road or roads, and a city or village street or streets, or any part thereof, which forms a continuous road improvement."

Moreover, a later opinion of the Attorney General is directly in point with the request in question and follows the reasoning of the abovenoted 1919 Opinion of the Attorney General. It is reported in Opinion No. 634, Opinions of the Attorney General for 1927, the first branch of the syllabus of which is as follows:

"1. By the provisions of Section 6949, General Code, a board of county commissioners is not authorized to assist a municipality in a street improvement no part of which is a part of a state or county highway improvement project."

In that 1927 Opinion, the Attorney General places the same interpretation on the word "road" in Section 6952, General Code, as did the Attorney General in the above-noted 1919 Opinion.

The Supreme Court of Ohio has passed upon this question, although the construction of a bridge was involved, rather than a highway. The same reasoning, however, may be applied to both. This is the case of State ex rel. vs. Commissioners, 107 Ohio St., 465 at pages 473 and 474, where the court said:

"The contemplated bridge cannot, by any stretch of the imagination, be held to be on either a county road or on two county roads; but the most that can be said for it is that it is to be between two county roads, where no connecting road theretofore existed. It does not follow, however, that the board of county commissioners may not, by proper proceedings, acquire the power to build a bridge upon the site indicated by their resolution of 1914, for the Legislature has provided by Section 6949, General Code, that:

"The board of county commissioners may construct a proposed road improvement into, within or through a municipality, when the consent of the council of said municipality has been first obtained.

"The conceded facts being that no state or county road exists between the termini of the proposed bridge,

it therefore follows that until such time as the board of county commissioners has laid out and acquired a road according to law between such termini it is without power to construct the bridge upon such site."

Therefore, it is my opinion and you are hereby advised that Section 5557.02, Revised Code, does not authorize a board of county commissioners to undertake the improvement or to join with a municipality in undertaking the improvement of a municipal street forming no part of a state or county highway.