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1. STREETS DEDICATED—OUTSIDE BUT WITHIN THREE MILES OF CORPORATE LIMITS — MUNICIPALITY — NO AFFIRMATIVE ACTION BY COUNTY COMMISSIONERS TO ESTABLISH STREETS AS PART OF COUNTY HIGHWAY SYSTEM—TOWNSHIP TRUSTEES RESPONSIBLE TO MAINTAIN STREETS—SECTIONS 3586-1, 7464, G. C.
2. PLANNING COMMISSION—APPROVAL—PLAT OF TERRITORY OUTSIDE LIMITS OF MUNICIPAL CORPORATION — FILED IN OFFICE OF COUNTY RECORDER—COUNTY COMMISSIONERS AUTHORIZED TO EXPEND IN MAINTENANCE OF STREETS A SUM EQUAL TO BUT NOT MORE THAN 50% OF MONEYS COLLECTED AS TAXES FROM NEWLY PLATTED TERRITORY FOR ROAD OR HIGHWAY PURPOSES—SECTION 6906-1, G. C.
3. STANDARDS AS TO CONSTRUCTION OF STREETS LYING OUTSIDE OF CORPORATE LIMITS OF MUNICIPALITY BUT WITHIN THREE MILES—SECTION 3586-1, G. C. DOES NOT GIVE, NOR DOES ANY OTHER PROVISION OF GENERAL CODE GIVE AUTHORITY TO MUNICIPALITY TO ESTABLISH SUCH STANDARDS.

SYLLABUS:

1. Where streets have been dedicated on the plat of a subdivision lying outside of, but within three miles of the corporate limits of a municipality, and such plat has been approved by the planning commission of such municipality and filed in the office of the county commissioners, as provided in Section 3586-1, of the General Code, and no affirmative action has been taken by the county commissioners establishing such streets as part of the county highway system, the responsibility for the maintenance of such streets rests upon the township trustees under the provisions of Section 7464, General Code.

2. When territory outside the limits of a municipal corporation has been subdivided and a plat thereof bearing the approval of the planning commission of such municipality has been filed in the office of the county recorder, the county commissioners are authorized under the provisions of Section 6906-1, General Code, to cause to be expended each year on the maintenance of the streets in such newly platted territory, until such time as such streets shall have been permanently improved or such territory shall have become a part of a municipal corporation, a sum equal to, but not more than 50% of the moneys levied and collected during such year, as taxes for road or highway purposes from said newly platted territory.

3. Section 3586-1, General Code, giving the planning commission of a municipality authority to adopt rules and regulations governing plats and subdivisions of land falling within its jurisdiction, lying outside of, but within three miles of the corporate limits of such municipality, does not give such municipality any authority for establishing standards as to the construction of streets in such territory, and such authority is not found in any other provisions of the General Code.

Columbus, Ohio, August 1, 1951

Hon. Paul J. Mikus, Prosecuting Attorney
Lorain County, Elyria, Ohio

Dear Sir:

I have before me your communication, in which you request my opinion in regard to the responsibility for the maintenance of streets laid out and shown on a plat of territory lying outside of, but within three miles of a city, such plat having been approved by the planning commission of such city and filed with the county recorder as provided in Section 3586-1 of the General Code. The statute in question provides that no plat of a subdivision of land lying within three miles of a municipality shall be recorded until it has been approved by such city planning commission, and such approval endorsed in writing on the plat.

There can, of course, be no responsibility thrown upon the municipality for the improvement of streets in such territory. The mere fact that the municipality is given authority to grant or withhold its approval to

such plat before it can be recorded, does not in any way place responsibility on the municipality, for the maintenance of such streets. Even Section 3714, General Code, which imposes upon the municipality the duty of keeping the streets within its own limits in repair and free from nuisance, is considered by the courts as being in derogation of the common law, which imposes no such liability. *Wooster v. Arbenz*, 116 Ohio St., 281; *Hilton v. Dille*, 120 Ohio St., 127; *Wall v. Cincinnati*, 150 Ohio St., 411.

That the county is not responsible for such maintenance in the absence of an express acceptance by the county commissioners of the plat and dedication of streets, was held in *Robinson v. Swing*, 70 O. App., 83, to which case your letter refers. The syllabus of that case is as follows:

"1. Statutes imposing liability on county commissioners in their official capacity for the negligent performance of their official duties are to be strictly construed.

"2. The approval by a city planning commission of a plat of land showing roads for a subdivision within three miles of a city, under Section 3586-1, General Code, and the filing of such plat with the county recorder, 'operate as an acceptance and confirmation of the dedication of the public highways, contained therein,' under Section 3583, General Code.

"3. Roads so dedicated and accepted are not roads 'established' by the board of county commissioners, for the negligent maintenance of which the commissioners are liable in their official capacity to respond in damages under Section 2408, General Code.

"4. The county commissioners must take affirmative action in order that a county road may be established as such."

In the opinion, the court refers to Section 6906-1, General Code, which provides, in substance, that the filing of the plat of lots within three miles of the corporate limits of a municipality, shall have the effect of bringing "all streets in such newly platted territory * * * under the control and supervision of the county commissioners of the county." That section further provides that the board of county commissioners may cause to be expended each year, for the maintenance of such streets, a certain portion of the taxes raised each year in such territory, "for road or highway purposes," but the court held in effect that this statute only had the effect of bringing these streets within the *jurisdiction* of the county commissioners, and did not place upon them the obligation and responsibility of maintaining them, and the liability imposed on them by Section 2408, General Code, for failure to do so.

The court, in the course of its opinion, referred to Section 7464, General Code, which divides highways into three classes: (a) state roads; (b) county roads, and (c) township roads. County roads are defined as "all roads which have been or may be established as a part of the county highway system, and all such roads shall be maintained by the county commissioners."

As to township roads, that statute provides as follows:

"(c) Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships; and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act."

In Opinion No. 2681, Opinions of the Attorney General for 1928, page 2286, all of the statutes above referred to were considered, and it was held:

"Township trustees are by virtue of the provisions of Section 7464, General Code, charged with the duty of maintaining roads and streets in platted territory outside the boundaries of any municipality, unless such roads or streets are, by action of the county commissioners of the state, incorporated in either the county or state system."

To the same effect see Opinion No. 1209, Opinions of the Attorney General for 1949, page 838.

Accordingly, it is my opinion that where streets have been dedicated on a plat of a subdivision lying outside of, but within three miles of the municipality, with the approval of the planning commission of the municipality as provided in Section 3586-1, General Code, and no affirmative action has been taken by the county commissioners establishing such streets as part of the county highway system, the responsibility for the maintenance of said streets rests upon the township trustees.

Your letter raises the further question as to the right of the municipality under the provisions of Section 3586-1 or any other section of the General Code, to establish minimum standards for the construction of streets in an allotment or subdivision of the character mentioned.

Section 3586-1, General Code, contains the following provision :

“Any planning commission, platting commissioner or village council may adopt general rules and regulations governing plats and subdivisions of land falling within its jurisdiction to secure and provide for the coordination of the streets within the subdivision with existing streets and roads or with the city or village plan or plats, for the proper amount of open spaces for traffic, circulation and utilities and for the avoidance of future congestion of population detrimental to the public health or safety ; but such rules and regulations shall not require the dedication to the general public of open grounds or spaces other than streets and ways, nor impose a greater minimum lot area than thirty-five hundred square feet, nor any requirement as to the minimum percentage of lot occupancy, nor as to the height, bulk, location or use of buildings: and minor streets shall not be required to be wider than fifty feet. * * *”

It will be observed that the power of the municipality to establish standards does not include any provision whatever for establishing standards as to the construction of streets, and since I find no other provision in the General Code giving such authority, it is my opinion that none exists.

You further inquire as to the meaning of that provision of Section 6906-1, General Code, which authorizes the county commissioners to expend not more than 50% of certain taxes arising from such territory for maintenance of the streets in platted territory of the character which we have been considering. That section, so far as pertinent, reads as follows :

“* * * The board of county commissioners may cause to be expended each year on the maintenance of the streets in such newly platted territory, until such time as such streets shall have been permanently improved or such territory shall have become a part of a municipal corporation, a sum equal to not more than *fifty per cent of the moneys levied or collected during such year as taxes from said newly platted territory, for road or highway purposes.* Provided, however, that the provisions of this section shall not apply to any existing or outstanding levies against said newly platted territory heretofore made.” (Emphasis added.)

The above quoted provision, it should be noted, does not authorize the county commissioners to use any of the tax receipts which the township may have obtained by a levy for “road or highway purposes”, but rather authorizes the county commissioners to expend, presumably out of funds at their disposal, for maintenance of the streets in question, a sum

equal to 50% of the amount realized from such taxes. This authority to assist the township trustees fits in with, and qualifies the provision of Section 7464, *supra*, giving the county commissioners authority "to assist the township trustees in maintaining all such (township) roads."

The use of a comma before the words "for road or highway purposes" makes the meaning of the statute a little vague, since it might be argued that it was intended to allow an expenditure by the county commissioners for road and highway purposes in an amount equal to 50% of all taxes levied and collected for all purposes on the territory in question. But that construction would in my opinion be unjustified, since the words "on the maintenance of streets" have already expressed the purpose for which the expenditure may be made, and it would be useless repetition to add the words "for road or highway purposes" as controlling the purpose of such expenditure. The comma mentioned may in my opinion be disregarded in the interest of arriving at what seems to me to be the intention of the legislature, *viz.*, that the commissioners may expend for the maintenance of said streets an amount equal to, but not more than 50% of the amount levied and collected for road and highway purposes in the territory in question.

Respectfully,

C. WILLIAM O'NEILL
Attorney General