

2121.

TOWNSHIP ROADS—LOCATION AND ESTABLISHMENT—COUNTY COMMISSIONERS AND NOT TOWNSHIP TRUSTEES POSSESS SUCH POWER—HOW EXERCISED.

SYLLABUS:

1. *A board of county commissioners may, by a unanimous vote without a petition, or upon a petition being filed as provided in Section 6862, General Code, locate or establish any road within the county.*
2. *Township trustees have no authority to locate or establish public roads within their townships, such authority being vested only in the board of county commissioners.*

COLUMBUS, OHIO, July 22, 1930.

HON. DUSTIN W. GUSTIN, *Prosecuting Attorney, Portsmouth, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“We are informed by the local board of county commissioners that at frequent intervals persons living in the various townships of the county file petitions with their board asking that a road be located, established and constructed along certain routes in the township described in their petitions. They also state that at times persons interested in the location, establishment and construction of roads in the various townships of the county come before the board seeking to have such work done without filing petitions.

The commissioners also informed us that petitions filed with various township trustees by residents living in the rural sections of the county seeking to have roads located, established and constructed are being referred to the board of county commissioners by the trustees with the claim that it is the duty of the board of commissioners to locate and establish the road before they proceed with its construction.

Under these various situations which are constantly confronting this board of commissioners, the following propositions of law are involved:

‘Do the township trustees of the various townships of the county have exclusive authority, under Sections 3298-1 to 59 inclusive of the General Code, to locate and establish a township road by unanimous action of their board, or upon a petition filed by residents in accordance with Section 3298-2 and subsequent sections having reference to such petitions, or is the authority to locate and establish a proposed township road solely vested in the board of county commissioners under Sections 6860 to 6889 inclusive of the General Code?’ ”

The authority to locate and establish all roads within a county is vested in the county commissioners under the provisions of Section 6860, General Code, as amended by the 87th General Assembly. This section provides as follows:

“The county commissioners shall have power to locate, establish, alter, widen, straighten, vacate or change the direction of roads as hereinafter provided. 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.”

The reference in this section as to the matter of the approval of the director of

highways can only apply to the alteration, widening, straightening, vacation or change of the direction of roads of the state highway system and can obviously have no reference to the location or establishment of a new road. It follows, therefore, that the commissioners may locate or establish any new road within their county whether such road may subsequently be a state highway, a county highway or a township road.

Sections 6862 and 6863, General Code, 112 O. L. 484, provide as follows:

Sec. 6862.

"When the county commissioners are of the opinion that it will be for the public convenience or welfare to locate, establish, alter, widen, straighten, vacate or change the direction of a public road they shall so declare by resolution, which resolution shall set forth the general route and termini of the road, or part thereof, to be located, established, or vacated, or the general manner in which such road is to be altered, widened, straightened, or the direction thereof changed. When a petition signed by at least twelve freeholders of the county residing in the vicinity of the proposed improvement is presented to the board of county commissioners of any county requesting said board to locate, establish, alter, widen, straighten, vacate or change the direction of a public road, such board of county commissioners shall view the location of the proposed improvement, and if they are of the opinion that it will be for the public convenience or welfare to make such improvement, they may take the action prescribed by this and the succeeding sections and proceed to make such improvement. Such petition shall set forth the general route and termini of the road, or part thereof, to be located, established or vacated, or the general manner in which such road is to be altered, widened, straightened or the direction thereof changed."

Sec. 6863.

"The commissioners shall, in said resolution, fix a date when they shall view the proposed improvement, and also a date for a final hearing thereof.

The word 'improvement' used in this and related sections signifies any location, establishment, alteration, widening, straightening, vacation or change in the direction of a public road, or part thereof, as determined upon by a board of county commissioners or joint board by resolution."

In order to determine whether or not a petition is, in all instances, necessary before the board of county commissioners may locate and establish a public road in their county, it is necessary to consider the provisions of Section 6862 prior to amendment in the year 1927. This section then provided:

"Applications to locate, establish, alter, widen, straighten, vacate or change the direction of a public road shall be made by petition to the county commissioners signed by at least twelve free holders of the county residing in the vicinity of the proposed improvement, which petition shall set forth the route and termini of the road, or part thereof, to be located, established, or vacated, or the particular manner in which such road is to be altered, widened, straightened, or the direction thereof changed.

When such road or proposed road lies wholly within any school district and is necessary for the convenience and welfare of the pupils in such dis-

tract, the board of education of such district may, by resolution, petition for such road. The word 'improvement' used in Sections 6862 to 6878 inclusive of the General Code signifies any location, establishment, alteration, widening, straightening, vacation or change in the direction of a public road, or part thereof, as requested in a petition filed under the authority of such sections, or determined upon by a board of county commissioners or joint board by resolution adopted by unanimous vote."

A careful reading of this section clearly discloses that a board of county commissioners had authority to take jurisdiction in the establishment of a road upon a petition having been filed or upon the passage of a resolution adopted by a unanimous vote. Section 6862, supra, in its present form, contains no express language to the effect that a unanimous vote shall be required in order that a board of county commissioners may take jurisdiction in the establishment of a road. However, Section 6863 provides that the word "improvement" as used "in this and related sections signifies any location, establishment * * * of a public road, or part thereof, as determined upon by a board of county commissioners or joint board by resolution." While omitting the reference heretofore contained in Section 6862 to a unanimous vote in the absence of a petition, the provision that the word "improvement" shall include any location or establishment of a road, has been extended to refer to "related sections" rather than to Sections 6862 to 6878, inclusive, as heretofore. Sections 6862 to 6878 related particularly to locating, establishing, altering, widening, straightening, vacating and changing the direction of roads. Section 6910, General Code, expressly provides that the county commissioners, without the presentation of a petition, may construct, reconstruct, *improve*, or repair a public road or part thereof. I think the provisions relating to the improvement of public roads as contained in Section 6906, et seq., are sections which are "related" to Section 6860, et seq., relating to the location of roads, and therefore the provision of Section 6910 to the effect that county commissioners may, in the absence of a petition, proceed by unanimous vote, is applicable to the proceedings in connection with the location or establishment of a road. This view is strengthened by a consideration of the language of the first sentence of Section 6862 in its present form, which sentence makes no reference to the requirement as to a petition being filed.

It is, therefore, my opinion that a board of county commissioners may, by a unanimous vote without a petition, or upon a petition being filed as provided in Section 6862, General Code, locate or establish any road within the county.

Considering next the authority of the township trustees to locate or establish a road within their township, Section 3298-1, General Code, provides that such trustees shall have power "to construct, reconstruct, resurface or improve any public road or roads, or part thereof, under their jurisdiction." I do not find any provision in Section 3298-1, et seq., authorizing the township trustees to locate or establish roads. It was held in the case of *State, ex rel. vs. Zangerle*, 100 O. S. 414, that these sections specifically cover all forms of road improvements, maintenance and repair by township trustees, and that they are exclusive. Since public officers have only such powers as are granted by statute, it must follow that the authority to locate or establish public roads within a township is vested only in the board of county commissioners.

Respectfully,

GILBERT BETTMAN,
Attorney General.