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LANDS PROPERLY DEDICATED IN VILLAGE ALLOTMENT AS PART OF STATE HIGHWAY — PLAT OF ALLOTMENT, INCLUDING ALL STREETS AND ALLEYS, THEREAFTER VACATED BY COURT ORDER — SUCH ACTION WILL NOT RESULT IN VACATION OF HIGHWAY OR ANY PART THEREOF — SECTION 3595 G. C.

SYLLABUS:

Where lands are properly dedicated as part of a state highway in a village allotment, and the plat of said allotment including all streets and alleys is thereafter vacated by order of the court under Section 3595 of the General Code, such action will not result in the vacation of said highway or any part thereof.

Columbus, Ohio, September 30, 1944

Hon. D. Deane McLaughlin, Prosecuting Attorney

Canton, Ohio

Dear Sir:

Acknowledgment is made of your communication requesting my opinion, which reads:

"In a court action brought under G. C. No. 3595, the Court of Common Pleas of Stark County vacated an addition known as 'Lake View Allotment' in Magnolia, Ohio. The decree of the Court vacated the plat of said Allotment 'together with all the streets and alleys shown thereon.' One of the streets is Harrison Street and Harrison Street is a part of State Route 80, a state road. At the point of vacation the state road has been established forty feet wide. The plat had dedicated an additional twenty feet on each side of this state road for road purposes. We are enclosing a map which shows the street in question.

The question now comes up as to whether or not the decree mentioned above vacates the portion of the plat which was dedicated for street purposes along side State Route 80. Your attention is directed to two sections of the General Code, one section being No. 3595, which provides 'the vacation of a municipal corporation, addition, or part thereof, shall not vacate any part of a state or county road'. Your attention is also directed to G. C. Section 6860, which vests in the board of county commissioners the power to establish or to vacate county roads. I also know that the power to vacate the roads is vested in the State, although I do not have the citation before me at the present time.

The specific question that we have is this:

Did the dedication of the twenty foot portion on either side of the state road within a municipality become such a part or parcel of said state road that a court was not thereafter empowered to vacate it."

For the purpose of this opinion, it will be assumed that State Route No. 80, which is designated as Harrison Avenue upon the plat submitted, existed at least to the width of 40 feet at the time of the dedication to which you refer.

It will further be assumed that the necessary steps were taken to complete the dedication, and that there was a proper acceptance thereof on the part of the public. This assumption is important for the reason that it has frequently been held that until such time as there has been a proper acceptance, the dedicator may cancel same.

Section 3580, et seq. relate to the procedure to be followed in the establishment of additions and subdivisions to municipalities. The various procedures are outlined therein with reference to different situations. That

is to say, in some instances plats are required to be approved by a platting commission within municipalities. In other instances planning commissions with reference to territory outside of municipalities must approve such plats. However, in all cases such a plat is required to be certified by the surveyor and approved by the county commissioners, where lands are involved outside of a municipal corporation and public highways are dedicated.

While you do not state the facts with reference to the procedure in connection with the dedication, as hereinbefore stated it will be assumed that the law has been complied with in this respect.

Section 3595 to which you refer authorizes the court of common pleas, after a notice has been given as provided for in the preceding section, to vacate or alter such an addition. However, the section expressly provides: “* * * The vacation of a municipal corporation addition or part thereof shall not vacate any part of a state or county road.”

Section 1189 of the General Code, among other things, provides:

“* * * The state highway routes into or through municipal corporations, as the same are now designated or indicated by state highway route markers erected thereon, or as the same may hereafter be designated or indicated as provided herein, are hereby declared to be state highways and a part of the state highway system. * * *”

It is a well established principle of law that highways properly dedicated, preclude the dedicator from reclaiming such premises from the public so long as they are used for the purposes for which the dedication was made.

As stated in 13 O. J. at Page 779:

“* * * When a dedication of ground for a particular public use has been consummated or completed, either under statute, or by the operation of common-law principles, the dedicator cannot thereafter, by conveyance or otherwise, change the character of such use. * * *”

In view of the express language of said Section 3595, it is not believed that the language of the Court in referring to all of the streets and

alleys could be construed as intending to include the state highway under consideration. In the event that such order could be said to include a state or county road, then to the extent that such highways were included, the order would be void for the reason that the Court never had any jurisdiction under the statute to make such a vacation.

Section 1202-1 of the General Code expressly authorizes the Director of Highways to vacate “* * * any highway or portion thereof on the state highway system which he finds no longer necessary for the purposes of a public highway, * * *” and fully sets forth therein the procedure to be followed in connection with such vacation which is ample to protect the constitutional rights of abutting land owners.

In specific answer to your inquiry, you are advised that, where lands are properly dedicated as part of a state highway in a village allotment, and the plat of said allotment including all streets and alleys is thereafter vacated by order of the court under Section 3595 of the General Code, such action will not result in the vacation of said highway or any part thereof.

Respectfully,

THOMAS J. HERBERT

Attorney General