

I am of the opinion that neither the municipal court of Zanesville, Ohio, nor the clerk thereof, can legally issue a warrant directed to a member or an officer of an association organized under the provisions of Sections 10200, et seq., of the General Code of Ohio.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

507.

ROADS—STATE, COUNTY AND TOWNSHIP—DETERMINING STATUS—  
WHERE DUTY TO MAINTAIN RESPECTIVE ROADS LIES.

SYLLABUS:

1. *In determining the status of a road as to whether it is a state, county or township road, the provisions of the law creating the state system of highways and the county system of highways, as set forth in Section 7464 and its related sections of the General Code, superseded other classifications made by earlier legislative enactments.*

2. *Inter-county highways were first authorized by the 79th General Assembly in 102 O. L. 333, and main market roads were first authorized by the 80th General Assembly, 103 O. L. 155. Under Sections 1189 and 7464 of the General Code, unless a highway has heretofore been designated as an inter-county highway or a main market road or has been designated as a part of the highway system by the Director of Highways, it is not a part of the state highway system.*

3. *A road which is not a part of the state highway system and has not been designated as a part of the county system of highways under Sections 6965, et seq., of the General Code, is a township road.*

4. *Under the provisions of Section 7464 of the General Code and its related sections, it is the duty of the state, county and township to maintain their respective roads, as defined by Section 7464 of the General Code.*

COLUMBUS, OHIO, June 11, 1929.

HON. W. S. PAXSON, *Prosecuting Attorney, Washington C. H., Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“On August 2, 1904, under the provisions of Section 4615 of the Revised Statutes, as it then provided, a state road was petitioned for to the board of county commissioners of Fayette County and the board of county commissioners of Clinton County. The necessary statutory proceedings were had on this petition, so that on April 25, 1905, the board of county commissioners of this county made a finding establishing said road as a public highway 40 feet in width, and further ordered the auditor of the county to draw his warrants upon the county treasurer for payment of claims for compensation, which had been filed and passed upon. This road was constructed and opened, and is still open for public use. It connects what is known as the Sabina-Plymouth road with the Sabina and Washington road now the Three C Highway.

As above stated it was created as a state road. During the past ten or fifteen years it has received no attention whatsoever; particularly is this true in Clinton County, and it is now practically impassable. The county

commissioners refuse to spend any money on it, claiming that it was established as a state road, and it is therefore not their duty to look after it. I would appreciate receiving an opinion from you on this question, viz.:

Whose duty is it to repair said road so that it will be passable?"

In connection with your inquiry, your attention is directed to Section 7464 of the General Code, as amended by the 87th General Assembly, 112 O. L. 496, which contains the definition as to what constitutes state, county and township roads, and provides:

"The public highways of the state shall be divided into three classes, namely: State roads, county roads and township roads.

(a) State roads shall include the roads and highways on the state highway system.

(b) County roads shall include all roads which have been or may be established as a part of the county system of roads as provided for under Sections 6965, 6966, 6967 and 6968 of the General Code, which shall be known as the county highway system, and all such roads shall be maintained by the county commissioners.

(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."

The above section was first enacted by the 81st General Assembly, 106 O. L. 648, and in said enactment, the Legislature clearly intended the same to supersede former classifications and designations of the public ways within the state. It will first be necessary to determine whether such road is a part of the state highway system as now established or whether it is a part of the secondary or county system of highways as established under the so-called Green Law under Sections 6965, et seq., of the General Code. If it is in neither of the last mentioned classes, then, of course, by virtue of the section, it must be a township road.

Section 1189 of the General Code, as last amended, defines what shall constitute the state highway system in the following language:

"The inter-county highways and main market roads heretofore established by law shall, after the taking effect of this act, be known as state highways, and the system of inter-county highways and main market roads heretofore established by law shall, after the taking effect of this act, be known as the state highway system.

In addition to the inter-county highways and main market roads heretofore established under authority of law, the director shall have authority to designate additional highways or roads, or change existing highways or roads comprising the state highway system after notice and hearings as hereinafter provided.

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The language of the section, part of which is above quoted, requires a consideration of what constitutes an inter-county highway and a main market road. The history of the establishment of such roads becomes important with reference to your inquiry.

The 79th General Assembly (102 O. L. 333) passed an act creating a state highway department, for the purpose of affording instruction, assistance and cooperation in the construction, improvement, maintenance and repair of the public roads and authorized the appointment of a state highway commissioner. Section 11 of said act, which was a part of Section 1184 of the General Code, authorized the state highway commissioner and his deputies to determine, among other things, the relative importance and value for commerce of various public highways of the state. Said section provided for the designation of inter-county highways in the following language :

“They shall designate by name and number the main roads of the state which shall be known as ‘inter-county highways’; and the parts thereof in each county shall be designated so as to form as near as practicable continuous and connected highways and shall designate the order of their relative importance within the county. They shall begin work as soon as the necessary information is furnished the state highway commissioner, and shall complete the work and file their report with the governor within two hundred and forty days from the date of commencing the work, unless further time be granted them for such purpose by the governor. So much of such report shall be printed under the direction of the state highway commissioner as he may deem necessary and a copy thereof shall be immediately furnished the board of county commissioners of each county of the state and shall be carefully preserved in the office of the county auditor thereof. After the filing of such report the state highway commissioner may, subject to the approval of the governor, designate additional roads as ‘inter-county’ highways.

It will be observed that the section above quoted is the origin of the so-called inter-county highways of the state.

The 80th General Assembly (103 O. L. 155) passed an act entitled :

“An act providing a levy and to create a fund for the purposes provided in the act passed May 31st, 1911, entitled ‘an act creating a state highway department, defining the duties thereof and providing aid in the construction and maintenance of highways and to repeal certain sections of the General Code’ approved June 9th, 1911. (102 Ohio Laws, pages 333-349), and for other purpose defined herein.”

Said act levied a tax of one-half of one mill on all the taxable property for the purpose of the state highway improvement fund. Section 2 of the act provided that seventy-five per cent of the proceeds of such levy should be applied to the maintenance of the state highway department and for the construction, improvement, maintenance and repair of the inter-county system of highways in the manner designated in the act of the 79th General Assembly (102 O. L., pp. 333-349), heretofore referred to. Section 3 of the act provided that twenty-five per cent of such moneys should be used for construction, improvement, maintenance and repair of certain main market roads, and in definite and certain language, designated twelve roads as constituting the main market roads of the state. Sections 2 and 3 of said act above referred to were designated as Section 6859-3 of the General Code.

From the foregoing, it will clearly be seen that the road to which you refer, established in 1904, would have no status as a state road, unless it had subsequently been designated as an inter-county highway or a main market road or other action had been taken by the director of highways to include it within the state highway system.

Whether or not it is a part of the secondary system, the county system of highways, of course, depends upon whether it had been so designated under the provisions of the so-called Green Law, Sections 6965 to 6972, inclusive, of the General Code. Section 7467, General Code, provides:

"The state, county and township shall each maintain their respective roads as designated in the classification hereinabove set forth; provided, however, that either the county or township may, by agreement between the county commissioners and township trustees, contribute to the repair and maintenance of the roads under the control of the other. The state, county or township or any two or more of them may by agreement expend any funds available for road construction, improvement or repair upon roads inside of a village or a village may expend any funds available for street impovement (improvement) upon roads outside of the village and leading thereto."

It follows that if the road under consideration has never become a part of the state highway system or has never been designated as a part of the county system of highways, it must necessarily be a township road, and if so, it would be the duty of the township trustees to maintain it. In connection with your inquiry, information has been obtained from the department of highways to the effect that the road about which you inquire has not been designated as a part of the state system. However, from the description given, the highway department was unable to definitely determine whether or not the same has been designated as a part of the county system.

In view of the foregoing, it is my opinion that:

(1) In determining the status of a road as to whether it is a state, county or township road, the provisions of the law creating the state system of highways and the county system of highways, as set forth in Section 7464 of the General Code, superseded other classifications made by earlier legislative enactments.

(2) Inter-county highways were first authorized by the 79th General Assembly in 102 O. L. 333, and main market roads were first authorized by the 80th General Assembly, 103 O. L. 155. Under Section 1189 of the General Code, unless a highway has heretofore been designated as an inter-county highway or a main market road or has been designated as a part of the highway system by the director of highways, it is not a part of the state highway system.

(3) A road which is not a part of the state highway system and has not been designated as a part of the county system of highways under Sections 6965, et seq., of the General Code, is a township road.

(4) Under the provisions of Section 7464 of the General Code and its related sections, it is the duty of the state, county and township to maintain their respective roads, as designated by Section 7464 of the General Code.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

508.

PROBATION OFFICERS—JUVENILE COURT—RIGHT TO GO ARMED  
WHEN BOND PROVIDED UNDER TERMS OF SECTION 12819, GEN-  
ERAL CODE.

SYLLABUS:

*Probation officers appointed by a judge of the juvenile court authorized to appoint*