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TOWNSHIP ROAD—COUNTY COMMISSIONERS MAY CONTRIBUTE MONEY TO TOWNSHIP FOR ROAD REPAIR—MAY NOT REPAIR VILLAGE STREETS. O. A. G. 1925, p. 716, AFFIRMED.

SYLLABUS:

Under Section 7467, General Code, the county commissioners may contribute money to a township to be used by the township trustees in the repair of a township road, but this statute does not authorize the commissioners to contribute money to a village to be used by the village authorities in the maintenance or repair of streets located within such village. Opinion of Attorney General for 1925, page 716, affirmed.

COLUMBUS, OHIO, January 13, 1936.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: I acknowledge receipt of your communication which reads as follows:

“You are respectfully requested to furnish this department your written opinion upon the following:

Section 7467 of the General Code provides that the state, counties and townships shall each maintain the roads as designated in the classifications therein 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 control of the other.

QUESTION 1: May the county commissioners under this provision legally pay money over to a township to be used by the township trustees in the repair of a township road, under the direction of the township trustees?

This section further provides that the state, counties or townships or any two or more of them, may by agreement, expend any funds available for road construction, improvement or repair of streets inside a village.

QUESTION 2: May the commissioners of a county, under this provision, pay over county money to the authorities of a village, to be used by said authorities in the maintenance and repair of streets in said village?”

Sections 7464 and 7467, General Code, read as follows:

Section 7464.

“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.”

Sec. 7467.

“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 improvement upon roads outside of the village and leading thereto.”

Section 7467 expressly authorizes the county commissioners and township trustees to contribute to the repair and maintenance of roads under the control of the other. “Contribute” means “To supply a share or proportional part of money or property toward the prosecution of a common enterprise or the discharge of a joint obligation.” 13 C. J. 818.

But with respect to the activities of the county or township as to construction, improvement and repair upon roads inside of a village, the

language is somewhat different. However, in Opinions of the Attorney General for 1917, Vol. II, page 1957, and in Opinions of the Attorney General for 1918, Vol. I, page 687, it was held that under this statute the board of county commissioners or the township trustees may contribute toward the construction, maintenance and repair of roads inside of a village, these opinions restricting the right of contribution to streets which are also township, county or state roads and not to those highways which were laid out and established by the village as streets.

A different conclusion was reached in Opinions of the Attorney General for 1925, page 716, in which the following was held :

“County commissioners are not authorized, by Section 7467 of the General Code or elsewhere in the statutes, to make a contribution in money to a village of an amount representing a proportion of the cost of the improvement of a village street, which is also a county road.”

In referring to Section 7467 and the 1918 opinion above referred to, this opinion states :

“It will be noted, from a reading of the last quoted section, that it is the mandatory duty of the political subdivisions mentioned, namely, the state, county and township, to maintain their respective roads, as classified in said Section 7464 of the General Code. This mandatory provision as to maintenance is followed by a proviso wherein it is provided that county commissioners and township trustees may, by agreement, *contribute* to the repair and maintenance of the roads under the control of the other. The section then provides that 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 a village.

The opinion last above referred to is in the form of an approval of an opinion submitted by Hon. John L. Cable, who at that time was prosecuting attorney at Lima, Ohio, and the opinion itself, other than by reference to the opinion of the prosecutor, does not set out in full the holding nor the reasoning upon which the conclusion was reached.

In view of the language of the statute above quoted and referred to, I am unable to reach the conclusion shown by the syllabus of the opinion referred to. As hereinbefore noted, the language of the statute is that the state, county or township, or any two or more of them, may by agreement expend any funds available upon roads inside of a village. This part of the

section does not go so far as to provide that the state, county or township, or any two or more of them, may contribute to the improvement of a road within the limits of a village--the authority being only that these political subdivisions, or any two or more of them, may expend money upon a road inside of a village.

This provision surely contemplates that the administrative functions incident to the expenditure of such funds by the state, county or township, or any two or more of them, shall be exercised and administered by the state, county or township, or any two or more of them, as they may agree upon, and not by the village officers after funds have been turned over to the village by the state, county or township, or any two or more of them."

There must be some effect given to the fact that counties and townships are expressly given the authority to contribute to the repair and maintenance of the roads under the control of the other, but this authority was not expressly given with respect to the construction, improvement and repair of roads inside a village. Since the authority for the transfer of the administrative functions of one board to another should not be inferred when not expressly given, I am inclined to agree with the 1925 opinion referred to.

I am therefore of the opinion that under Section 7467, General Code, the county commissioners may contribute money to a township to be used by the township trustees in the repair of a township road, but that this statute does not authorize the commissioners to contribute money to a village to be used by the village authorities in the maintenance or repair of streets located within such village.

Respectfully,

JOHN W. BRICKER,
Attorney General.