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LANDS DEDICATED FOR ROAD PURPOSES—CONSTITUTE A PUBLIC ROAD—A ROAD SO DEDICATED OUTSIDE OF ANY MUNICIPAL CORP.—AND IS NOT DESIGNATED COUNTY OR STATE ROAD—IT IS A TOWNSHIP ROAD—TRUSTEES MUST MAINTAIN ROAD—§§5553.71, 711.091, 5535.01 (C) R.C.

SYLLABUS:

1. Where under Section 5553.31, Revised Code, lands are dedicated for road purposes under the procedure specified by the section and the dedication is accepted by the board of county commissioners, the lands so dedicated constitute a public road without any further proceeding thereon; and the fact that the county engineer has endorsed or not endorsed the construction of the road under Section 711.091, Revised Code, does not effect such acceptance and dedication.

2. Where a road so dedicated is located outside of any municipal corporation and is not designated a county or state road, it is a township road, and under the provisions of division (C) of Section 5535.01, Revised Code, the board of township trustees has the duty to maintain such road.

Hon. John S. Ballard, Prosecuting Attorney
Summit County, Akron, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The practice of the County Commissioners in this County in approving and recording allotment plats under Chapter 711.,

Revised Code, has been to accept the dedication of the roads shown on the plat under Section 5553.31, Revised Code, before they are actually constructed, and to require that a bond be posted to assure the actual construction of the roads. The question has arisen as to the duties and liabilities of a Board of Township Trustees in relation to roads which have been dedicated as township roads, but have not yet been approved by the County Engineer as provided by Section 711.091, Revised Code.

"We, therefore, request your opinion on the following questions:

"(1) Are such roads public roads?

"(2) If they are public roads, do the township trustees have a duty to maintain them and repair them?

"(3) If they are public roads which the township trustees have a duty to maintain and repair, what is the legal effect of the endorsement or lack of endorsement on the approved plat by the County Engineer as provided in Section 711.091, Revised Code?"

The allotment plats here concerned are described in Section 711.01, Revised Code, reading:

"Any person may lay out a village, or sub-division or addition to a municipal corporation, by causing the territory to be surveyed, and by having a plat of it made by a competent surveyor. The plat shall particularly describe the streets, alleys, commons, or public grounds, and all in-lots, out-lots, fractional-lots, within or adjacent to such village. The description shall include the courses, boundaries, and extent."

Section 711.041, Revised Code, reads as follows:

"No plat certifying lands outside a municipal corporation may be recorded without the approval thereon of the board of county commissioners of the county wherein such lands are situated.

"The approval of a plat by the board of county commissioners shall not be deemed to be an acceptance of the dedication of any public street, road, or highway dedicated on such plat.

"This section does not apply to such plats as are required by section 711.09 or 711.10 of the Revised Code to be approved by a planning commission."

The immediate question relates to the dedication of roads outside of municipal corporations, which are included in the allotment plats. Regarding the dedication of such roads, Section 5553.31, Revised Code, reads:

“Any person may, with the approval of the board of county commissioners, dedicate lands for road purposes. A definite description of the lands to be dedicated with a plat of such lands thereto attached and signed by the party dedicating such lands, with the approval and acceptance of the board indorsed thereon, shall be placed upon the proper road records of the county in which such road is situated. If the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the board by proper resolution approves and accepts the lands for such purpose, as are provided in cases where the board by unanimous vote declares its intention to locate, establish, widen, straighten, vacate, or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the lands so dedicated a public road without any further proceedings thereon.”

In referring to the above section it is stated in the first headnote of *In re Application of Loose et al. for Vacation of Alley*, 107 Ohio App., 47;

“Section 5553.31, Revised Code, providing for method for dedication of land for county road purposes, requires no acknowledgement, but only that the plat be signed by the party dedicating such land, and that it be approved and accepted by the board of county commissioners and filed for record; and when such requirements have been complied with there is valid statutory dedication of such land for public road purposes.”

Regarding the posting of a bond such as you describe, I find that Section 711.101, Revised Code, provides:

“As to land falling within its jurisdiction or the jurisdiction of its planning commission, the legislative authority of a municipal corporation, or the board of county commissioners, * * *.

“* * * may establish standards and specifications for the construction of streets, curbs, gutters, sidewalks, street lights, water mains, storm sewers, sanitary sewers, and other utility mains, piping, and other facilities, may require complete or partial installation of such improvements, and may make such installation a condition precedent to the sale or lease of lots in a subdivision or the issuance of a building permit for the improvement of a lot, and may require in lieu of actual construction a performance agreement and the furnishing of a performance bond or other guarantee or security for the purpose of assuring the installation of such improvements deemed necessary or appropriate in the public interest. The legislative authority of a municipal corporation or the board of county commissioners may accept such performance bond or other guarantee or security, under such

conditions and time limitations as it may determine. However, any actual construction or performance bond required by the legislative authority of a municipal corporation or board of county commissioners shall be limited to improvements and facilities directly affecting the lots to be improved or sold.

“* * *”

(Emphasis added)

For the purposes of this opinion I will assume that the plats and plans in question are required under Sections 711.05, 711.09 or 711.10, Revised Code, and that the board of county commissioners adopted a rule requiring the posting of bonds as provided in the section.

Section 711.091, Revised Code, to which you refer, reads as follows:

“The city or village engineer in the case of lands within a city or village, and the county engineer in the case of lands outside of a city or village, shall, upon written request by the owner of the land upon which the street has been constructed check the construction and if the engineer finds that such street has been constructed in accordance with the specifications set forth on the approved plat, and that such street is in good repair, then such finding, endorsed on the approved plat, shall constitute an acceptance of the street for public use by the city, village or county as the case may be, provided such street has been theretofore duly dedicated.”

The first paragraph of the syllabus of Opinion No. 7113, Opinions of the Attorney General for 1956, page 679, reads:

“Section 5553.31, Revised Code, now provides the sole statutory method by which lands outside municipalities may be dedicated for use as public roads and streets, and thus no dedication of such lands can be effected without the prescribed action by the county commissioners.”

Also, at page 683 of that opinion, it is stated:

“Section 711.091, Revised Code, does not provide a method of effecting acceptance and a completed dedication alternative to the method provided in Section 5553.31, Revised Code.”

Regarding said Opinion No. 7113, I am not at all certain that I agree with the conclusion that no dedication of lands for roads can be effected without action by the board of county commissioners under Section 5553.31, *supra*. In arriving at his determination, the writer of that opinion concluded that the words of Section 711.091, *supra*, reading “provided such street has been therefore duly dedicated” means that the land must have

been dedicated and accepted by the board of county commissioners before action by the county engineer would be valid. It will be noted that the section does not require a "dedication and acceptance" but only that the street has been "dedicated." "Dedicate" as a verb is defined in Black's Law Dictionary as "to appropriate and set apart one's private property to some public use; as to make a private way public by acts evincing an intention to do so." (See also Words and Phrases, page 430) Thus, the verb "dedicate" may convey a different meaning than the noun "dedication" which has been defined as including both the offer of land for a public purpose plus the acceptance by the public authority. (See Opinion No. 7113, *supra*, page 683).

In view of the foregoing and in view of the provisions of Section 711.01, *et seq.*, Revised Code, I can see great merit in the theory that a road may be dedicated as a public road with the approval of the county engineer under Section 711.091, *supra*, even though the board of county commissioners has not accepted the road pursuant to Section 5553.31, *supra*. As the board in the instant case *has* accepted the road pursuant to Section 5553.31, *supra*, however, I do not deem it necessary to further discuss this question.

Answering your first question, Section 5553.31, *supra*, quite clearly states that when the board of county commissioners accepts the dedication of land in accord with the requirements of the section "the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the *lands* so dedicated a public road without any further proceedings thereon." (Emphasis added.) In view of this plain language and of the ruling of *In re Application of Loose, et al.*, *supra*, I thus answer your first question in the affirmative.

Under Section 535.01, Revised Code, township roads include all public highways other than state or county roads. County roads are determined under the procedure provided in Section 5541.02, Revised Code. State roads are designated pursuant to Section 5511.01, Revised Code. Regarding the maintenance of township roads, division (C) of Section 5535.01, *supra*, reads:

"(C) Township roads include all public highways other than state or county roads. The board of township trustees shall maintain all such roads within its township. The board of county commissioners may assist the board of township trustees in maintaining all such roads. This section does not prevent the board of township trustees from improving any road within its township."

Answering your second question, therefore, since the roads in question are not county or state roads, they are township roads, and the board of township trustees has the duty of maintenance thereon.

Coming to your third question, while there may be some doubt as to acceptance under said Section 711.091, it is quite plain that acceptance under Section 5553.31 constitutes the lands so dedicated a public road *without any further proceeding thereon*. Accordingly, whether the county engineer has or has not approved the land for road purposes has no bearing in the instant case.

I note that in your request you state that the board of county commissioners accepts dedications of roads under Section 5553.31, *supra*, *before they are actually constructed*. Thus, under the conclusions reached herein, the board of trustees might be given the duty to maintain roads which actually have never been completed. This might, of course, prove not to be a desirable result, but under the language of Section 5553.31, *supra*, making the dedicated *lands* public roads, the situation is unavoidable under the given set of facts. Such could, of course, be avoided if the board of county commissioners were to adopt a different policy as to the acceptance of dedications.

In conclusion, it is my opinion and you are advised:

1. Where under Section 5553.31, Revised Code, lands are dedicated for road purposes under the procedure specified by the section and the dedication is accepted by the board of county commissioners, the lands so dedicated constitute a public road without any further proceedings thereon; and the fact that the county engineer has endorsed or not endorsed the construction of the road under Section 711.091, Revised Code, does not affect such acceptance and dedication.

2. Where a road so dedicated is located outside of any municipal corporation and is not designated a county or state road, it is a township road, and under the provisions of division (C) of Section 5535.01, Revised Code, the board of township trustees has the duty to maintain such road.

Respectfully,

MARK McELROY

Attorney General