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## APPROVAL—CONTRACT FOR HIGHWAY IMPROVEMENT IN LICKING COUNTY, OHIO.

COLUMBUS, OHIO, February 16, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval the following contract:

County—Licking

City—Newark

State Highway—No. 356

Section—Newark (Part)

Finding said contract correct as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2291.

## APPROVAL—CONTRACT FOR HIGHWAY IMPROVEMENT IN KNOX COUNTY, OHIO.

COLUMBUS, OHIO, February 16, 1934.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—You have submitted for my approval the following contract:

County—Knox

City—Mt. Vernon

State Highway—No. 333

Section—Mt. Vernon (Part)

Finding said contract correct as to form and legality, I have accordingly endorsed my approval thereon and return the same herewith.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

2292.

## TOWNSHIP TRUSTEES—TWO MEMBERS THEREOF MAY DETERMINE SIZE AND LOCATION OF ROAD DISTRICTS AND ASSIGN DISTRICTS WHEN.

## SYLLABUS:

*Under section 3370, General Code, two members of a board of township trustees, being a majority of such board, may, at any legal meeting of the board, by resolution, determine the size and location of the three road districts as provided for in paragraph 2 of such section and thereafter assign to each member of said board, by majority vote, the district in which each member must take charge of the maintenance and repair of the roads therein.*

COLUMBUS, OHIO, February 17, 1934.

HON. ELMO M. ESTILL, *Prosecuting Attorney, Millersburg, Ohio.*

DEAR SIR:—Your communication of recent date reads as follows:

“I am interested in your interpretation of Section 3370, General Code, and your opinion on the following question pertaining thereto.

Under Section 3370, General Code, may two members of a Board of Trustees, being a majority of a board of Trustees, by Resolution determine the size and location of the three road districts as provided for in part two of said section and thereafter assign to each member of the Board, by such majority vote, the district, the roads of which each must maintain and repair?”

Section 3370, General Code, referred to in your communication, reads as follows:

“The township trustees shall have control of the township roads of their township and shall keep the same in good repair. The township trustees may, with the approval of the county commissioners or state highway commissioner, as the case may be, maintain or repair a county road or intercounty highway or main market road within the limits of their township.

In the maintenance and repair of roads the *township trustees* may proceed in any one of the following methods as they may deem for the best interest of the public, to wit:—

1. They may designate one of their number to have charge of the maintenance and repair of roads within the township, or

2. *They* may divide the township into three road districts, in which event each trustee shall have charge of the maintenance and repair of roads within one of such districts, or

3. They may appoint some competent person, not a member of the board of trustees, to have charge of the maintenance and repair of roads within the township which person shall be known as township highway superintendent, and shall serve at the pleasure of the township trustees. The method to be followed in each township shall be determined by the *township trustees* by resolution duly entered on their records.” (Italics the writer’s.)

It may be noted from the italicized portion of section 3370, General Code, *supra*, that the legislature has provided that the “township trustees”, shall determine the method of procedure to be followed in the maintenance and repair of township roads. However, no language is used to expressly require that an unanimous vote of the three trustees constituting the board of trustees as established by section 3268, General Code, shall be required to exercise the powers conferred on the board by such section 3370. A reference to sections 3298-5 and 3298-6, General Code, shows that the legislature has clearly expressed the instances in which it intended to allow a power conferred on township trustees to be exercised only by a vote of all three members of the board. Sections 3298-5 and 3298-6, General Code, provide in part:

Sec. 3298-5. "The *township trustees* may, without the presentation of a petition, take the necessary steps to construct, reconstruct, resurface, or improve a public road, or part thereof, as hereinbefore provided, *upon the passage of a resolution by unanimous vote* declaring the necessity therefor. \* \* \*

Sec. 3298-6. "When the board of township trustees has determined that any road shall be constructed, reconstructed, resurfaced or improved, as herein provided for, such board shall determine by resolution *by unanimous vote*, if acting without a petition, and by a majority vote, if acting upon a petition, the route and termini of such road. \* \* \*

(Italics the writer's.)

It is the general rule of common law, applicable to public boards, as stated in the case of *The State ex rel., Cline vs. Wilkesville Township*, 20 O. S. 288, at page 293, that "in matters of public concern, though it is necessary for all to be present, yet the majority will conclude the minority." This common law rule does not appear to be altered by any general statute of this state.

By section 7 of the act of the Ohio legislature of March 14, 1853, entitled An Act "For the incorporation of townships", (51 Ohio Laws, 489) the legislature provided for a board of three township trustees and by the 14th section of the same act, it was provided that "a majority shall be a quorum to do business at all meetings of the trustees." This latter provision of section 14 of the act of March 14, 1853 was incorporated in section 1568 of Swan and Critchfield's Revised Statutes. However, in the revision of the statutes by the legislature in 1880, the foregoing provision that a majority of the board of township trustees "shall constitute a quorum to do business" was omitted from the laws and there is now nothing in the General Code to control the matter. In Annual Report of the Attorney General for 1911-1912, volume II, page 1410, it was held, as disclosed by the syllabus of an opinion which considered the Cline case, *supra*, at the time of the rendition of which section 14 of the act of March 14, 1853, was in force:

"The statutory provision providing that a majority of the township trustees should constitute a quorum to do business was repealed after the supreme court construed that provision to allow special meetings to be held at any time and place without previous notice to all trustees. At the present time, therefore, all trustees must be present to do business either actually or 'constructively' (i. e. must be notified) and *a majority may then conduct business.*" (Italics mine.)

Two recent opinions of this office harmonize on the rule that where the statutes confer powers and duties on a board of township trustees, such powers may be exercised by a majority vote of the board, or two members.

In the latest of these opinions, that of Opinions of the Attorney General for 1930, volume I, page 266, it was held in the third paragraph of the syllabus:

"A deed for a township cemetery lot executed in accordance with the provisions of section 3488, General Code, by at least two members of the board of township trustees is sufficient compliance with this section."

In the opinion, at page 268, the then Attorney General stated:

"In regard to the number of trustees which shall be necessary to execute a deed for a cemetery lot, section 3448, supra, merely provides that such deed shall be executed 'by the trustees.' The general rule is set forth in 29 Cyc. 1434, wherein it is said:

'Where official authority is conferred upon a board of commission, composed of three or more persons, such authority may be exercised by a majority of the members of such board.'

In the case of *State, ex rel., vs. Wilkesville Township*, 20 O. S. 288, it was held that the execution of certain bonds by two township trustees when the third trustee was absent from the state, was sufficient compliance with the statute providing that 'the trustees may \* \* \* issue bonds.' There is no provision in section 3448, supra, to the effect that these deeds shall be executed by all of the trustees, and the execution of such a deed by at least two members of the board, does, in my view, constitute a sufficient compliance with the section."

In the other opinion, that of Opinions of the Attorney General for 1929, volume II, page 1390, it was held in the third branch of the syllabus:

"Where there is a vacancy in the board of township trustees, two trustees constitute a quorum to transact such business as does not expressly require unanimous vote."

At page 1391 of the opinion it is stated:

"Coming now to your third question, viz., whether the remaining two members of the board of trustees can function until the third is appointed: The rule is that unless otherwise provided, a majority of the board of township trustees shall constitute a quorum to transact business. (*State vs. Wilkesville Tp.* 20 O. S. 288)."

In view of the foregoing discussion, I am of the opinion in specific answer to your question that under section 3370, General Code, two members of a board of township trustees, being a majority of such board, may, at any legal meeting of the board, by resolution, determine the size and location of the three road districts as provided for in paragraph 2 of such section and thereafter assign to each member of said board, by majority vote, the district in which each member must take charge of the maintenance and repair of the roads therein.

Respectfully,

JOHN W. BRICKER,  
*Attorney General.*

2293.

BOARD OF EDUCATION—CLERK—ELECTED BY BOARD—TERM MAY NOT EXTEND BEYOND LIFE OF BOARD.

SYLLABUS:

1. *Each board of education, upon its organization on the first Monday of January after the election of members of such board, in accordance with Section 4747, General Code, should elect a clerk.*

2. *A board of education is without authority to elect a clerk for a term extending beyond the life of the board.*