

Note from the Attorney General's Office:

1958 Op. Att'y Gen. No. 58-2696 was overruled in part by 1988 Op. Att'y Gen. No. 88-036.

2696

HIGHWAYS—TOWNSHIP TRUSTEES—VILLAGE STREETS—MAINTENANCE AND REPAIR OF TOWNSHIP ROADS WITHIN MUNICIPAL CORPORATION—§§5535.08, 5571.01 R.C.—EXPENDITURE OF FUNDS—732 OAG 1917, p. 1956, APPROVED AND FOLLOWED.

SYLLABUS:

A board of township trustees, under the provisions of Sections 5535.08 and 5571.01, Revised Code, may expend funds available for highway purposes and cooperate with a village authority for the repair, reconstruction, maintenance or improvement of a village street located within a municipal corporation when such public street constitutes a part of a township road. Opinion No. 732, Opinions of the Attorney General for 1917, p. 1956, approved and followed.

Columbus, Ohio, September 8, 1958

Hon. Robert O. Hamilton, Prosecuting Attorney
Union County, Marysville, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“May the Board of Township Trustees expend money from the road fund of the township for the purposes of reconstructing or improving public streets within a village located in the township? Said improvement would be done in co-operation with the village authorities.”

The classification of public highways is contained in Section 5535.01, Revised Code.

“The public highways of the state shall be divided into three classes: state roads, county roads, and township roads:

“(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.”

Section 5571.01, Revised Code, further provides :

“The board of township trustees may construct, reconstruct, resurface, or improve *any public road or part thereof under its jurisdiction* or any county road, intercounty highway, or state highway within its township. In the case of a county road the plans and specifications for the proposed improvement shall first be submitted to the board of county commissioners of the county and receive its approval, and in the case of an intercounty or state highway, plans and specifications shall first be submitted to the director of highways and receive his approval. The board of township trustees may widen, straighten, or change the direction of any part of a road in connection with the proceedings for its improvement.” (Emphasis added)

Cooperation between municipalities and other subdivisions is authorized by Section 5535.08, Revised Code :

“The state, county, and township shall each maintain its roads, as designated in section 5535.01 of the Revised Code ; however, the county or township may, by agreement between the board of county commissioners and the board of 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 a village.* A village may expend any funds available for street improvement upon roads outside the village and leading thereto.” (Emphasis added)

The issue you present was determined in Opinion No. 723, Opinions of the Attorney General for 1917, p. 1956, the syllabus reading :

“1. Under section 7467 G. C., township trustees have authority, by agreement with a village, to contribute to the maintenance and repair of the ROADS of the village, but not of the streets as such, viz., the highways of a village which were laid out by the village as streets.

“2. Township trustees have authority, under section 3298-1 G.C. (107 O. L. 73) to construct or build roads in a municipality, but they have no authority to build or construct public highways within a municipality when they are streets as such, viz., those laid out by the municipality for its use and benefit.”

This opinion recognized the distinction between a village street and a township road. Public highways of the state are established under the procedures of Chapter 5553., Revised Code. If a public highway is not a part of the state highway system and has not been accepted by the board

of county commissioners as a county highway such highway becomes a part of the township highway system and the duty to maintain and improve such highway devolves upon the board of township trustees. I find no authority for a municipal corporation to create a public highway whereby the burden of its repair, maintenance and improvement is placed upon a board of township trustees. If, however, a particular township road runs through, into, or from a municipal corporation, the board of township trustees is authorized to repair, maintain and improve such highway and may by agreement, as provided in Section 5535.08, *supra*, cooperate with the village in which such public highway is located for the purpose of improving, maintaining or repairing such highway.

It is to be noted that Section 723.01, Revised Code, places upon municipal corporations the duty to care for, supervise, control, and maintain public highways within such municipality. For such purpose municipal corporations receive apportionments of the motor vehicle fuel taxes. Sections 5735.23 and 5735.27, Revised Code.

Section 5535.08, *supra*, specifically provides for intergovernmental action to maintain and repair public highways. Since the board of township trustees is authorized to perform only those highway projects involving public roads under its jurisdiction, only such roads within the limits of a municipal corporation may be reconstructed and improved by a board of township trustees. If a particular municipal street is a county or state highway, the board of township trustees must secure approval (1) by the village, and (2) the board of county commissioners or director of highways as provided in Section 5571.01, *supra*, before executing any project with respect to such highway, since this must be done "by agreement" with the village. Section 5535.08, Revised Code.

Therefore, it is my opinion and you are accordingly advised that a board of township trustees, under the provisions of Sections 5535.08 and 5571.01, Revised Code, may expend funds available for highway purposes and cooperate with a village authority for the repair, reconstruction, maintenance or improvement of a village street located within a municipal corporation when such public street constitutes a part of a township road. Opinion No. 732, Opinions of the Attorney General for 1917, p. 1956, approved and followed.

Respectfully,
WILLIAM SAXBE
Attorney General