

2509

WHERE PETITION MADE TO LEGISLATIVE AUTHORITY OF A MUNICIPAL CORPORATION FOR VACATION OF STREET OR ALLEY, SAID PETITIONS MUST CONTAIN PLAT SHOWING WAY TO BE VACATED AND SAID PLAT SHOULD BE RECORDED BY COUNTY RECORDER AND FEE FOR SUCH RECORDING TO BE PAID BY SAID LEGISLATIVE AUTHORITY—§§723.04, 711.39, 317.32, R.C.

SYLLABUS:

Where, pursuant to Section 723.04, Revised Code, a petition is made to the legislative authority of a municipal corporation for the vacation of a street or alley, the petition must contain a plat showing the public way to be vacated, and, upon vacation, the legislative authority should record said plat in the office of the county recorder pursuant to Section 711.39, Revised Code; and the fee for such recording as prescribed by Section 317.32, Revised Code, must be paid by said legislative authority.

Columbus, Ohio, September 14, 1961

Hon. Geo. Cleveland Smythe, Prosecuting Attorney
Delaware County, Delaware, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Where a street or alley is vacated by a City on petition filed under Section 723.04, R. C., does Section 711.39, R. C., have application relative to the filing and recording of the plat of said vacated portion with the County Recorder?"

"If it does have application what fees should be collected and by whom should they be paid?"

"If it does not have application is there any provision or requirement that would cause said vacation to be shown on the original plat in the Recorder's Office?"

Section 723.04, Revised Code, provides:

"The legislative authority of a municipal corporation, on petition by a person owning a lot in the municipal corporation praying that a street or alley in the immediate vicinity of such lot be vacated, or narrowed, or the name thereof changed, upon hearing, and upon being satisfied that there is good cause for such change of name, vacation or narrowing that it will not be detrimental to the general interest, and that it should be made, may, by ordinance, declare such street or alley vacated, narrowed, or the name thereof changed. The legislative authority may include in one ordinance the change of name, vacation, or narrowing of more than one street, avenue, or alley."

Section 711.39, Revised Code, reads in part:

"Upon the institution of proceedings by the legislative authority of a municipal corporation, the board of county commissioners of a county, the department of highways of the state, or an individual, partnership, or corporation in the court of common pleas, for the vacation of any public street, alley, avenue, lane, road, boulevard, driveway, or other public way, or any portion thereof, in a village, or addition to or subdivision in a municipal corporation, a plat, map or other plane representation showing such public way sought to be vacated, and all intersecting or connective public ways, shall be prepared and certified to by a licensed surveyor or engineer, and shall form a part of the petition and proceedings for such vacation. Any such public way sought to be vacated shall be shown on said plat by measurements, descriptions, coloring, hatched lines, or other method of identification to distinguish the extent, limit, width, and area of the public way or parts thereof sought to be vacated from those not vacated.

"Such plat, map, or plane representation shall be transferred in the office of the county auditor and recorded in the office of the county recorder of the county in which said land is located in the same manner as are plats originally transferred and recorded.

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Section 723.04, *supra*, clearly authorizes the legislative authority of a municipal corporation to vacate a street or alley in the immediate vicinity of a lot upon petition of the owner of the lot.

Section 711.39, *supra*, places a condition upon the vacation of a street or alley by the various entities authorized to institute proceedings to vacate, including individuals and municipal corporations. Under that section a plat must be prepared and made a part of the petition; and when the vacation is accomplished, the plat must be transferred in the office of the county auditor and recorded in the office of the county recorder.

Accordingly, since Section 711.39, *supra*, applies to *all* vacations of streets and alleys and specifically includes a vacation instituted by an individual or a municipal corporation, it follows that it applies to a vacation proceeding under Section 723.04, *supra*.

Your second question deals with the fees to be paid for the recording of a plat showing the vacation of a street or alley. As to recording fees, Section 317.32, Revised Code, reads in part :

“For his services, the county recorder shall charge and collect the following fees :

“* * * * * * * * *

“(H) For recording any plat not exceeding six lines, one dollar, and for each additional line, ten cents ;

“* * * * * * * * *

“In any county where the recorder employs the photostatic or any similar process for recording maps or plats, he shall charge and collect for the recording or re-recording of any map, plat, or print a fee of one cent per square inch, for each square inch of paper required for such recording, with a minimum fee of one dollar; for certifying copy from the record the same fee as for the record.

“The fees provided in divisions (A) to (I), inclusive, of this section shall be paid upon the presentation of the instruments for record, or upon the application for any certified copy of the record excepting fees and expenses incurred in the filing of United States tax liens, discharges, and releases the payment for which shall be governed by section 317.09 of the Revised Code.”

It would appear that since under Section 723.04, *supra*, the legislative authority of the municipal corporation does the actual vacating, said legislative authority would have the duty to record the plat pursuant to Section

711.39, *supra*. Thus, the fee prescribed by Section 317.32, *supra*, for recording should be paid by the legislative authority.

In conclusion, it is my opinion and you are advised that where, pursuant to Section 723.04, Revised Code, a petition is made to the legislative authority of a municipal corporation for the vacation of a street or alley, the petition must contain a plat showing the public way to be vacated, and, upon vacation, the legislative authority should record said plat in the office of the county recorder pursuant to Section 711.39, Revised Code; and the fee for such recording as prescribed by Section 317.32, Revised Code, must be paid by said legislative authority.

Respectfully,

MARK McELROY

Attorney General