

179.

ROADS—CONSTRUCTION, MAINTENANCE AND REPAIR—SYSTEM DEFINED—SECTIONS 6965 TO 6972, 5537 AND 7464, GENERAL CODE, CONSTRUED.

SYLLABUS:

1. Sections 6965 to 6972, inclusive of the General Code, have to do exclusively with the construction, reconstruction and improvement of roads and highways in the system of county highways and in no wise change or amend Sections 7464 and 7467, General Code, which relate to the maintenance and repair by the state, counties and townships of their respective roads as defined in Section 7464, and unless and until roads in the system of county highways are brought within the provisions of paragraph (b) of Section 7464, *supra*, by the improvement thereof as defined by such section, it is not the duty of the county commissioners to maintain and repair such roads, although upon agreement with the township trustees, they may do so, by virtue of the sections last named.

2. The term "the county system of public roads and highways" as used in Section 5537, General Code, refers to the system of county highways created under the provisions of Section 6966, General Code, and related sections, and that county commissioners may use that part of the gasoline tax funds apportioned to the county for the sole and only purpose of maintaining and repairing roads in the county system of roads provided for in Section 6966, *supra*, and related sections.

COLUMBUS, OHIO, March 12, 1927.

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

GENTLEMEN:—I acknowledge receipt of your communication of recent date reading as follows:

"Section 6966, G. C., 110 O. L., 268, provides for the establishing of a system of highways in each county. It further provides that all of the roads composing the said system shall thereafter be known and designated as county roads: Section 7464 G. C. classifies the various roads into state, county and township. Section 7467 G. C. provides that the state, county and township shall each maintain their respective roads as designated in the classification set forth.

Question 1. After the county commissioners have established a county system of highways as provided in Section 6966 G. C., will the matter of maintaining and repairing of roads within such system be in the hands of the county commissioners even though some of the roads in such system come within the classification of township roads under the provisions of Section 7464, General Code?

Section 5537 G. C., 111 O. L., 299, provides that the proportion of the gasoline excise tax fund paid to each county shall be used for the sole purpose of maintaining and repairing the county system of public roads and highways within such county.

Question 2. Does the county system of public roads and highways as mentioned in this section refer to the county system of highways designated by the county commissioners under Section 6966, General Code?"

Your questions will be answered in the order asked.

1. Sections 6965 to 6972, inclusive, of the General Code, were enacted April 6, 1923, as Sections 1 to 8, inclusive, of an act (commonly called the "Green Law") :

"To afford relief to townships by providing for the creation of a system of county highways in each county of the state and authorizing state aid in the construction thereof." (110 v. 267)

Section 6965, General Code, provides in part as follows :

"There shall be created in each county within the state a system of county highways, which system shall be selected and determined in the following manner, to-wit :

Within sixty days after the taking effect of this act, the township trustees of each township within the state shall upon request and under direction of the county commissioners * * * make a report to the county commissioners setting forth the relative value of each road in the township in consecutive order as a used highway, the kind of traffic over such road, its length and present condition, together with such other information as may be desired and requested by the county commissioners. * * * "

In Section 6966, General Code, it is provided *inter alia* :

"It shall be the duty of the board of commissioners of each county to determine from the statistics and information furnished by the several boards of township trustees within such county the relative importance and value for traffic of the various public highways of the entire county. They * * * after a careful review and consideration of the information furnished by such trustees shall select and designate a connected system of county highways of such mileage as they may deem proper and expedient, connecting with the intercounty highways and main market roads of such counties all of the villages, hamlets and centers of rural population within the county. Such system of highways when selected and designated by the county commissioners in the manner herein prescribed shall be known as the system of county highways of said county, and all of the roads composing said system shall thereafter be known and designated as county roads. * * * "

Sections 6967, 6968, 6969 and 6970 relate to the construction, reconstruction and improvement of highways in the county system by the county commissioners, and the apportionment of the cost thereof to the county, township and abutting property owners.

Section 6971 provides for financial aid by the state for "the purpose of encouraging the *construction* of a secondary or county system of highways."

Section 6972 reads as follows :

"This act (G. C. Secs. 6965 to 6972) shall be supplementary to all existing provisions of law for the construction and improvement of highways by the state and the counties or townships therein, and no such section of law or part thereof shall be held to be repealed or otherwise affected by this act."

Nowhere in the sections enumerated is any provision made for the maintenance

or repair of the roads and highways included in the county system, the sections in question having to do *only* with the *construction*, reconstruction and *improvement* of such roads and highways.

Section 7464, General Code, provides that :

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

(a) (Defines state roads)

(b) County roads shall include all roads which have been or may be improved by the county by placing brick, stone, gravel or other road building material thereon, or heretofore built by the state and not a part of the inter-county or main market system of roads, together with such roads as have been or may be constructed by the township trustees to conform to the standards for county roads as fixed by the county commissioners, 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.”

Section 7467, General Code, provides :

“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. * * * ”

Your question is probably engendered by the fact that in Section 6966, *supra*, the legislature provided that :

“Such system of highways when selected and designated by the county commissioners * * * shall be known as the system of county highways of said county, and *all* of the roads comprising said system shall *thereafter be known and designated as county roads.*”

As above pointed out, Sections 6965 to 6972, inclusive, of the General Code, relate exclusively to the *construction*, *reconstruction* and *improvement* of the roads included in the county system, and have nothing whatever to do with the *maintenance* and *repair* of such roads.

In so far as the maintenance and repair of the roads and highways mentioned in your inquiry are concerned, Sections 7464 and 7467, *supra*, make provision therefore, and the provisions of these sections are in no wise changed by Sections 6965 to 6972, which are later enactments.

You will observe that paragraph (b) of Section 7464, *supra*, provides that county roads shall include :

1. Roads improved by the county by placing road building material thereon.

2. Roads built by the state and not a part of inter-county or main market roads, and
3. Roads constructed by township trustees to conform to standards for county roads as fixed by the county commissioners.

All of these classes named are *improved* roads as are the state roads described in paragraph (a) of the same section. And since by paragraph (c) of this section, township roads include all public highways other than state and county roads, township roads are, *generally speaking*, highways that are unimproved or those that are improved but not of such a standard as to become county roads.

Section 7467, *supra*, plainly refers to Section 7464, *supra*, stating that "the state, county and township shall each maintain their respective roads *as designated in the classification hereinabove set forth.*" It is manifest that it was the intention of the legislature not to require the county to maintain and repair roads that were unimproved, and while Section 6966, General Code, states that the roads in the county system shall "be known and designated as county roads" there is nothing in such section or in any of the sections contained in the same act (Sections 6965 to 6972, inclusive) to indicate that it was the intention or purpose of the legislature to change the law as to maintenance and repair as contained in Sections 7464 and 7467. In other words, while under Sections 6965 to 6972, roads and highways in the county system are county roads for the purpose of construction, reconstruction and improvement thereof by the county commissioners, such roads and highways are not county roads within the meaning of Sections 7464 to 7467, in so far as their maintenance and repair are concerned.

The above conclusions are supported by the fact that according to information furnished by the Department of Highways and Public Works, the construction herein placed on the sections in question, is the practical construction given by the various public officials over the state charged with the duty of maintaining and repairing the class of roads under consideration. As stated by Sutherland in Lewis' Sutherland Statutory Construction, vol. 2, page 889:

"The practical construction given to a doubtful statute by the department or officers whose duty it is to carry it into execution is entitled to great weight and will not be disregarded or overturned except for cogent reasons, and unless it is clear that such construction is erroneous,"

although, of course, a practical construction will not be followed when it would defeat the obvious purpose of the statute. *Id.* 891.

In answer to your first question, since Section 6965 to 6972, inclusive of the General Code, have to do *exclusively* with the *construction, reconstruction and improvement* of roads and highways in the system of county highways and in nowise change or amend Sections 7464 and 7467, General Code, which relate to the maintenance and repair by the state, counties and townships of their respective roads as defined in Section 7464, it being the intendment of the sections last mentioned that county commissioners should only be required to maintain and repair roads that have been improved, it is my opinion that unless and until roads in the system of county highways are brought within the provisions of paragraph (b) of Section 7464, *supra*, by the improvement thereof as defined by such section, it is not the duty of the county commissioners to maintain and repair such roads, although upon agreement with the township trustees, they may do so, by virtue of the sections last named.

2. Your second question must be answered in the affirmative.

Section 5537 of the General Code provides in part:

" * * * Twenty-five per cent of such gasoline tax excise fund shall

be paid on vouchers and warrants drawn by the auditor of state in equal proportions to the county treasurer of each county within the state and shall be used *for the sole purpose of maintaining and repairing the county system of public roads and highways within said counties.*"

This section is a part of the "Gasoline Tax Law" and was enacted April 17, 1925 (111 v. 294).

In the construction and interpretation of statutes it is a cardinal rule that the legislature is presumed to know existing statutes, and the state of the law relating to subjects with which they deal. It must be presumed, therefore, that in the enactment of Section 5537, the legislature knew of the existence of the "system of county highways" created under the provisions of Sections 6965 to 6972, supra, and had such system in mind when it used the term "county system of public roads and highways" in Section 5537. There is of course a slight variation in the words used in the two sections, but the terms employed in the two sections in question are substantially identical.

Moreover, when it is remembered that the county system provided for in Sections 6965 to 6972, supra, is a secondary system, composed of the roads of the greatest relative importance and value in traffic in the county, connecting with the inter-county highway and main market road all the villages, hamlets and centers of population within the county, the intent of the legislature to limit the use of the county's apportionment of the gasoline tax funds to the maintaining and repairing of roads in the county system of roads becomes apparent.

In answer to your second question, for the reasons stated, I am of the opinion that the term "the county system of public roads and highways" as used in Section 5537, General Code, refers to the system of county highways created under the provisions of Section 6966, General Code, and related sections, and that county commissioners may use that part of the gasoline tax funds apportioned to the county for the sole and only purpose of maintaining and repairing roads in the county system of roads provided for in Section 6966, supra, and related sections.

Respectfully,

EDWARD C. TURNER,
Attorney General.

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APPROVAL, BONDS OF VILLAGE OF DEER PARK, HAMILTON COUNTY, OHIO—\$10,222.09.

COLUMBUS, OHIO, March 12, 1927.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.