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HIGHWAYS, TOWNSHIP—TOWNSHIP TRUSTEES AUTHORIZED TO MAINTAIN, IMPROVE, PUBLIC HIGHWAYS— §§5573.01 *et seq.*, 5535.01 R.C.—RIGHT TO IMPROVE NOR DUTY TO MAINTAIN IS CONDITION OF COMPLIANCE OF PLATTER, §711.10 R.C.—COUNTY PLANNING COMMISSION.

## SYLLABUS:

1. Township highways which township trustees are authorized by Section 5573.01, *et seq.*, Revised Code, to improve, or required by Section 5535.01, Revised Code, to maintain, must be public highways, duly dedicated, and accepted as such by the county commissioners.

2. Neither the right of township trustees to improve a public highway which is within their jurisdiction, nor the duty to maintain the same is conditioned upon compliance by a platter of a subdivision, with the specifications imposed by a county planning commission, pursuant to Section 711.10, Revised Code.

Columbus, Ohio, January 29, 1958

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

Dear Sir:

I have before me your request for my opinion reading as follows:

“Where prior to October 19, 1953, the county commissioners have approved a plat containing the dedication of public roads, some lots are sold and some houses are built in said subdivision, and the subdivider improves the roads to an extent that does not meet the specifications for township roads, do the township trustees have either the power or duty to maintain said substandard roads or to expend any public funds thereon?”

“Your attention is directed to 1956 O.A.G., No. 7136.

“In other words must such road be first improved, either by the trustees or the subdivider, to an extent meeting proper standards before the trustees have either the power or duty to maintain said roads in the condition they are found?”

Section 5535.01, Revised Code, divides the highways of the state into three classes: state roads, county roads and township roads. In the same section we find this provision as to the duties of township trustees:

“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.” (Emphasis added)

Section 5571.01, Revised Code, broadens the power of township trustees relative to public highways within its boundaries, which section reads as follows:

“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)

It will be noted that the provisions of both of the above quoted sections are limited to “public” highways. It becomes important, therefore, to determine when and how a parcel of land becomes a “public highway”.

In Opinion No. 1209, Opinions of the Attorney General for 1949, p. 35, it was held:

“Roads or streets in platted territory outside of municipalities may be dedicated pursuant to either Sections 6886 or 3580 et seq., General Code.”

That opinion recognized the proposition which I deem fundamental to your inquiry, that the township trustees have neither authority nor duty as to the improvement or maintenance of any highway unless and until it has become a public highway by due process of law.

In the transition to the Revised Code, Section 3580, *et seq.*, General Code, became Section 711.01, *et seq.*, Revised Code and Section 6886, General Code, became Section 5553.31, Revised Code.

In the process of extensive amendment of the statutes relating to platting, Section 3583, General Code, referred to in the foregoing opinion, having become Section 711.04, Revised Code, together with cognate sections relating to platting, underwent radical change. These amendments became effective October 19, 1953. Prior thereto said Section 711.04, Revised Code, provided:

“Upon the filing of any such plat for record the approval of the county commissioners endorsed thereon *shall operate as an acceptance and confirmation of the dedication of the public highways contained therein.*” (Emphasis added)

In the amending act, Section 711.04, *supra* was so changed as to eliminate any reference to the county commissioners, but a new section, Section 711.041, Revised Code, was added, providing that no plat of lands outside a municipal corporation should be *recorded by the county recorder until it had been approved by the county commissioners*, and the following language was added.

“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.” (Emphasis added)

In Opinion No. 7113, Opinions of the Attorney General for 1956, p. 679, this and other changes in the laws relating to platting and dedication of highways were considered, particularly Section 5553.31, Revised Code, and Section 711.041, *supra*. It was held:

“1. 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.”

Section 5553.31, Revised Code, referred to in that opinion as the only remaining provision whereby dedication for road purposes could be accepted and made effective by the county commissioners, provides in part as follows:

“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. \* \* \*

Your letter makes reference to "specifications for township roads" and asks specifically: "where prior to October 19, 1953, the county commissioners approved a plat containing the dedication of public roads, some lots are sold and some homes are built in said subdivision, and the subdivider improves the roads to an extent that does not meet the specifications for township roads, do the township trustees have either the power or duty to maintain said substandard roads, or to expend any money thereon."

I do not find in the statute any specification for township roads excepting in the provisions of Section 711.10, Revised Code, in which the county planning commission is authorized, with the approval of the county commissioners, to lay down certain specifications as to the improvements on roads shown on a plat of a subdivision outside of a municipality, which must be complied with as a condition precedent to the approval of such plat by the *planning commission*. Substantially the same provisions were in that statute prior to the amendments effective October 19, 1953, the principal difference being that prior to that date, as already pointed out, the approval of the plat by the county commissioners constituted an acceptance of the dedication of these roads, whereas subsequent to that date the approval of the plat by the county commissioners did not constitute such acceptance.

Bearing in mind that the power and duty of township trustees as to the improvement, repair and maintenance of township roads would only apply to those which had become highways by dedication and lawful acceptance, it appears to me that compliance or noncompliance with the requirements laid down by the county planning commission as conditions for the acceptance by them of a plat, could have nothing to do with the power or duties of the township trustees in reference to improvement or repair of township roads or streets, if as a matter of fact the dedication had been duly accepted and the highways had become public highways.

The provisions of the law above referred to as to the improvements that may be exacted as a condition for approval of the plat may be somewhat misleading; they are, however, in my opinion only for the use of the planning commission and later the county commissioners in their approval of the plat.

Since your question is directed to the period prior to the change in the law relative to the effective acceptance of a dedication of roads or streets, it appears to me that there is nothing for our consideration except the question whether the highways in question have been duly accepted as public highways. There is nothing in the language of the statutes which impose the *duty* upon the township trustees to *maintain* township roads, which would authorize the trustees to insist upon certain improvements having been made by the platter of a subdivision or anyone else, and there is nothing in the statutes which relate to the improvement by them of *such roads*, which is conditioned upon such previous improvement having been made.

The provisions for improvement by township trustees of a road or street are contained in Section 5573.01, *et seq.*, Revised Code, which authorize them to proceed either on their own initiative by unanimous vote, or pursuant to a petition of property owners. These provisions appear to me to apply as well to a road which has had no improvement as to one which has at some time had an improvement which requires renewal or repair.

I direct your attention to Opinion No. 7136, Opinions of the Attorney General for 1956, p. 691, where it was held:

“4. Prior to October 19, 1953, the effective date of Amended Substitute House Bill No. 629, One Hundredth General Assembly, amending Section 711.04, Revised Code, the approval by a board of county commissioners of a plat containing the dedication of a public road or street constituted an acceptance of such dedicated road or street and an establishment thereof, and under the terms of Section 5535.01, Revised Code, if such road or street was not made a part of the county highway system it became a township road, and the board of township trustees had the duty to maintain it and the power to improve it.”

Attention might further be called to that provision of Section 711.091, Revised Code, which provides that 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.*"

On the face of it, it might appear that this section gives the engineer power to consummate the dedication of the highway shown on the plat, but in Opinion No. 7113, *supra*, to which I have referred, it was pointed out that the engineer's approval could not have that effect. It was said in that opinion:

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

In specific answer to your question, it is my opinion:

1. Township highways which township trustees are authorized by Section 5573.01, *et seq.*, Revised Code, to improve, or required by Section 535.01, Revised Code, to maintain, must be public highways, duly dedicated, and accepted as such by the county commissioners.

2. Neither the right of township trustees to improve a public highway which is within their jurisdiction, nor the duty to maintain the same is conditioned upon compliance by a plat of a subdivision, with the specifications imposed by a county planning commission, pursuant to Section 711.10, Revised Code.

Respectfully,  
WILLIAM SAXBE  
Attorney General