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## SYLLABUS:

1. The road mileage of county and township road extensions within or through incorporated municipalities are eligible for inclusion by the Director of Highways in determining the ratio per mile as provided in Section 4501.04, (D) and (E), Revised Code, if a determination is made by the Director of Highways from all available sources (including the certifications of the boards of county commissioners and the boards of township trustees as to the actual number of miles under their statutory jurisdiction) that said respective boards have the power to exercise authority, or that these boards, directly or by their actions pursuant to specific statutory authority, have carried out lawfully the obligations enumerated in division (C) of Section 4501.04, Revised Code, namely, to construct, reconstruct, improve, maintain or repair such roads.

2. The Director of Highways is the sole official authorized to make the determination of correct road mileage of the county and township roads under the jurisdiction of such boards, including said road mileage inside and outside of incorporated municipalities, and, the Director has full discretion to weigh, determine and apply all data and information furnished to him and to translate the same into the final county and township road mileage figures in arriving at the mathematical equation for the determination of the ratio for distribution of the revenues to the several counties and townships as provided in Section 4501.04, Revised Code.

3. The Director of Highways is authorized to accept the respective certifications of road mileage under the jurisdiction of each board of county commissioners and each board of township trustees, but is not compelled to use said certifications exclusively. If the certifications of said boards are found, by the Director of Highways, to be erroneous by clear and convincing evidence and in conflict with admitted competent road mileage data, the Director of Highways, may, in his sole discretion, disregard said certifications and make the necessary determination based upon all information presented to him.

Columbus, Ohio, June 26, 1963

Hon. P. E. Masheter  
Director  
Department of Highways  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“With reference to the responsibilities and duties of the Director of Highways in administering the provisions of Section 4501.04, paragraphs (B) and (D) of the Ohio General Code, your formal opinion is requested regarding the following questions:

"Is the road mileage of county and township road extensions within or through incorporated municipalities, eligible for inclusion by the Director in determining the ratio per mile as provided by Section 4501.04 (B) and (D) of the General Code, under any of the following conditions?

*"Condition No. 1*

"The County Commissioners or Township Trustees have not assumed responsibility or contracted for the construction, maintenance or traffic control of road extensions within or through incorporated municipalities.

*"Condition No. 2*

"The County Commissioners or Township Trustees have assumed responsibility by agreement or contract with the municipalities for the construction, maintenance or traffic control of the subject road extensions with no provisions for reimbursement from the municipality.

*"Condition No. 3*

"The County Commissioners or Township Trustees have assumed responsibility by agreement or contract with the municipalities to perform all or part of the construction, maintenance or traffic control of the subject road extensions with provisions for reimbursement by the municipality."

"In my letter of June 7, 1963, to you concerning the duties and responsibilities of the Director and pertaining to Section 4501.04, of the Revised Code, paragraphs "B" "D" were quoted in error.

"The correct paragraphs for which an Opinion is desired are paragraphs "D" and "E"."

The basic question presented by your request is in three parts. However, before answering the specific question as posed by you, reference must be made to the background concerning your authority under Section 4501.04, Revised Code, and any correlative duties of the recipient governmental units.

My predecessors in office heretofore, ruled in relation to divisions "D" and "E" of Section 4501.04, Revised Code, that you are authorized to determine the correct mileage of county and township roads in order to make a correct determination of the ratio provided in these divisions. While you are bound to give considerable weight to the certification of mileage by the boards of county

commissioners and boards of township trustees as provided in divisions "D" and "E" of Section 4501.04, as a matter of law, there is nothing to compel you to accept without further investigation on your part the said respective certifications, and, if you find they are erroneous by clear and convincing evidence the same may be disregarded by you. However, my immediate predecessor in office ruled in Opinion No. 3546, dated January 11, 1963, in part, that "while Section 4501.04, \* \* \* does not so specifically state it is implicit from its terms that the certification sent to the Director of Highways pursuant to the last section of division "D" thereof should be used by him in determining the ratio described in said paragraph." It is my opinion that in performing these statutory functions extreme caution should be exercised by you. While I cannot concur in the belief that you must use *only* the certification of the various boards of county commissioners and township trustees, it is my opinion, however, that you are authorized to accept the respective certifications of mileage if you so desire, but you are not compelled so to do. If you find that these certifications are in conflict with admitted competent mileage records and data and after you have had full consultation with the responsible county and township officials and you find that the differences cannot be reconciled, it is my opinion that you are still authorized to make the necessary determination based upon *all* the information you are able to obtain.

This, of necessity, involves a request by you to the boards of county commissioners and boards of township trustees to furnish you with the "actual number of miles under its statutory jurisdiction which are used by, and maintained for the public" and requiring them to furnish their specific statutory authority over these miles so certified as under their jurisdiction.

In the above stated Opinion No. 3546, it was also ruled in the syllabus:

"'County roads under the jurisdiction of each board of county commissioners,' as said language is used in division (D) of Section 4501.04, Revised Code, includes all roads within a county over which the board of county commissioners has the *power to exercise authority* in that it has, directly or by its actions pursuant to *specific statutory authority*, the obligation to construct, recon-

truct, improve, maintain or repair such roads at the time when the director of highways determines the ratio of the funds available for distribution under said paragraph.” (Emphasis Supplied)

Therefore, in answer to your specific question with three conditions, it is my opinion that the road mileage of county and township road extensions within or through incorporated municipalities *are eligible for inclusion* by the Director of Highways in determining the ratio per mile as provided in Section 4501.04, (D) and (E) of the Revised Code, if you, as Director of Highways, have determined from all available sources (including the certifications of the several boards of county commissioners and boards of township trustees) that these boards have the *power to exercise authority*, or that they have *directly or by their actions* pursuant to *specific statutory authority* granted them carried out lawfully, the obligations enumerated in division (C) of Section 4501.04, Revised Code, and as referred to specifically in divisions (D) and (E) thereof. In other words, you must find a specific grant by statute or statutes that the boards of county commissioners or boards of township trustees are granted the authority and can do and perform these obligations and are *specifically* authorized under these powers to act directly and independently thereunder, on a lawful basis, or, having the basic specific statutory authority may lawfully exercise that authority so granted by their actions in pursuance thereof. If any of the aforementioned factors are found, by you, to be missing by clear and convincing evidence, then the full power of determination of the bases, upon which the mathematical ratio is determined, remains in you, as Director of Highways, as well as the duty of ultimate determination of the ratio itself.

Summarizing, it is my opinion that the Director of Highways has the full discretion to determine the correct road mileage of the county roads under the jurisdiction of each board of county commissioners and the correct road mileage of the township roads under the jurisdiction of each board of township trustees based upon *all* information and data the Director of Highways is able to obtain from all sources, but not limited to the written certification of the actual number of miles of the statutory jurisdiction of each board of county commissioners and board of township

trustees furnished by these agencies; and, in addition, the Director may, in the exercise of such power collect all pertinent data and information concerning the statutory grants to said boards relative to public roads and highways, both inside and outside incorporated municipalities, and whether such powers to exercise authority are derived by the several boards of county commissioners and township trustees from specific statutes rather than by independent and separate contracts and agreements with such incorporated municipalities. Further, after collation of all data and information by the Director of Highways, it is my opinion that you as the Director of Highways have the full discretion to weigh, determine and apply such information and translate the same into the final county and township road mileage figures to complete the mathematical equation for the determination of the ratio for distribution of these revenues to the several counties and several townships as provided in Section 4501.04, Revised Code.

Applying my opinion to *Condition No. 1*, of your letter the answer would be *Yes*, conditioned upon your determination of the basic data and information called for in this ruling and finding the data true as to road mileage and *No*, if the tests are not met in full.

The same ruling applies to *Condition No. 2*, and *Condition No. 3*, except that such authority exists by specific statute and is so determined by the Director of Highways. Such mileage would be included and accepted by the Director and the contracts or agreements made by the boards with the municipalities under *Condition No. 2*, would be considered a lawful exercise of the statutory powers and authority.

Respectfully,  
WILLIAM B. SAXBE  
Attorney General