

266.

ASSESSMENTS—BOARD OF COMMISSIONERS MAY ASSESS ALL COSTS AND EXPENSES OF ROAD IMPROVEMENT AGAINST REAL ESTATE ABUTTING UPON IMPROVEMENT—ASSESSMENTS SHALL NOT EXCEED BENEFITS TO REAL ESTATE.

SYLLABUS:

COLUMBUS, OHIO, April 26, 1923.

*A board of commissioners may assess any part or all the compensation, damages, costs and expenses of a road improvement against the real estate abutting upon such improvement. The only limitation upon such power is that the assessments against the real estate abutting upon the improvement shall not exceed the benefits which will result to such real estate.*

HON. FRED W. WARNER, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR:—YOU have submitted for my opinion the following:

“The Board of County Commissioners of Marion County, Ohio has before it for consideration a proposition for constructing a 950-ft. extension of Vernon Heights Boulevard, in Marion Township, Marion County, Ohio, the total estimated cost of the improvement, including intersections, is \$20,963.33, all of which, it is proposed, shall be especially assessed against abutting real estate on either side of the improvement.

“The real estate to be especially assessed consists of approximately one-sixth of a subdivision, which, although recently platted in lots, appears as yet on the tax duplicate as ‘Land’, and the entire subdivision, including buildings thereon, is on the duplicate for \$15,310.00. The portion of the subdivision to be specially assessed has a total frontage (both sides) of 1750.5 ft. and this portion adjoins the corporate limits of the City of Marion, and is the most valuable portion of the said subdivision, the owners reporting latest sales in this section at the rate of \$32.08 per front foot.

(a) Has the said Board of Commissioners power, legally, to specially assess the entire cost (\$20,963.33) of the improvement, including intersections, against the abutting real estate?

(b) If the Board should assess the entire cost (including that of intersections) against the abutting real estate, can any owner or owners of said real estate so assessed subsequently resist the collection of an assessment or assessments on the ground that the same is excessive, and thus throw a portion of the cost of this improvement on Marion County?”

Supplementing the facts given, I learn that the contemplated improvement lies entirely without the corporate limits of the City of Marion.

Section 6919 of the General Code, in part, reads:

"The compensation, damages, costs and expenses of the improvement shall be apportioned and paid in any one of the following methods, as set forth in petition:

\* \* \* \* \*

"4. All or any part thereof shall be assessed against the real estate abutting upon said improvement, or against the real estate situated within one-half mile of either side thereof, or against the real estate situated within one mile of either side thereof, or against the real estate situated within two miles of either side thereof, according to the benefits accruing to such real estate and the balance thereof, if any, shall be paid out of the proceeds of any levy or levies for road purposes upon the grand duplicate of all the taxable property in the county or from any funds in the county treasury available therefor."

Under the provisions of Section 6906 of the General Code, the board of commissioners are, among other things, empowered to improve any existing public road or part thereof.

The word "road" as used in the statute means highway, and as a generic term is no doubt broad enough to include streets, alleys, etc., yet when used in the chapter of which the above mentioned sections are a part, it has reference to highway outside of municipalities. It has been held that intersections were as much a part of a street as any other part thereof. (Dillon, Section 538). A road, or highway, is only limited by the bounds of the established highway, and the intersections thereof are as much a part of the road, or highway, as any other part thereof.

Said Section 6906 of the General Code, among other things, further provides that the board of commissioners shall have power to improve any existing public road or part thereof by grading, paving, etc., the same.

The character and extent of the improvement, including intersections or otherwise, is wholly within the discretion of the board of commissioners.

The only limits placed upon the board of commissioners in assessing the costs against the real estate abutting on the improvement are: (1) the assessments are, as a matter of course, limited to the actual compensations, damages, costs and expenses of the improvement, and (2) the fundamental rule that the assessments may not exceed the benefits, which rule is recognized in the statutes.

In said Section 6919 of the General Code it is provided that the part of the compensation, damages, costs and expenses determined by the board of commissioners to be assessed against the real estate abutting upon the improvement shall be assessed according to the benefits accruing to such real estate. Section 6922 of the General Code, which provides for estimated assessments by the county surveyor, specifically provides: "such estimated assessments shall be according to the benefit which will result to such real estate."

It is noted that you call attention to Sections 3820 and 3822 of the General Code, which relate to the portion of the costs of a municipal improvement which must be assumed and paid by the corporation, and the limitation of assessment which may be placed against property when a street is improved by repaving or repairing, and there is no change of grade of such street. These sections relate wholly to the powers and duties of the council in connection with municipal im-

provements, and have no application whatever to the improvement of roads by the board of commissioners.

It follows, from the foregoing discussion, that the board of commissioners may assess the entire costs of the improvement of a road, including the cost of intersections, against the real estate abutting upon such improvement. The only limitation upon this power being that the assessment against such real estate shall not exceed the benefits.

It would further follow that if the assessments were in conformity to the rule, and did not exceed the benefits, the collection of such assessments could not be successfully resisted.

Respectfully,

C. C. CRABBE,

*Attorney General.*

---

267.

APPROVAL, BONDS OF TIFFIN CITY SCHOOL DISTRICT, SENECA COUNTY, \$35,000.00, TO PROCURE A SITE AND ERECT THEREON SCHOOL BUILDING.

COLUMBUS, OHIO, April 26, 1923.

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

---

268.

APPROVAL, FINAL RESOLUTION, ROAD IMPROVEMENT IN ADAMS COUNTY.

COLUMBUS, OHIO, April 26, 1923.

*Department of Highways and Public Works, Division of Highways, Columbus, Ohio.*

---

269.

APPROVAL, BONDS OF CITY OF CIRCLEVILLE, PICKAWAY COUNTY, \$5,100.00, FOR CONSTRUCTION OF SEWERS.

COLUMBUS, OHIO, April 26, 1923.

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