

and that said section 5678, General Code, as amended, provides that "the total of such amounts shall constitute the delinquent taxes and assessments on such real estate to be collected in the manner prescribed by law."

I am inclined to the view that the enactment of sections 5678 and 5679, General Code, in their present form fully meet the objection noted in the former opinion of the Attorney General above discussed and that, by way of specific answer to the question presented in your communication, lands may be certified as delinquent under the provisions of section 5712, General Code, and for foreclosure under the provisions of section 5718, General Code, for the non-payment of special assessments for such periods of time as bring the delinquencies in the payment of such special assessments within the conditions of said respective sections of the General Code, although the general taxes on the property against which such assessments have been levied, may have been paid.

The conclusions above stated on the question presented in your communication have been reached by me independently of any consideration of the decision of the Supreme Court of this state in the case of *State ex rel. Brown, Treas., v. Cooper, Treas.*, 123 O. S. 23. It is quite obvious, however, that the decision of the court in this case, holding as it does, that special assessments are a species of tax and that payment of assessments are required to be made at the same time general taxes are paid, supports the conclusion reached in this opinion with respect to the question presented by you.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3282.

TOWNSHIP TRUSTEES—RIGHT TO USE GAS TAX MONEY FOR COST
OF RECONSTRUCTING DRIVEWAY OF ABUTTING PROPERTY
OWNER DESTROYED BY IMPROVEMENT OF TOWNSHIP ROAD.

SYLLABUS:

When the township trustees in improving a township road destroy the approach or driveway of an abutting property owner, the gasoline tax may properly be used to cover the cost of the reconstruction of said approach or driveway.

COLUMBUS, OHIO, June 2, 1931.

HON. JOHN R. PIERCE, *Prosecuting Attorney, Celina, Ohio.*

DEAR SIR:—Your recent letter reads:

"Section 7212, General Code of Ohio, provides for the payment of damages to adjoining landowners who have approaches to roads newly constructed or in lieu of said damages said section requires that the authorities constructing said road shall reconstruct any approaches which may have been destroyed in the construction of said road.

It appears that said section was passed prior to the inauguration of the system of distributing and using gasoline tax funds by trustees in the construction of roads.

Where a township road is constructed by township trustees with

gasoline tax funds without any cost to the abutting landowners and in the construction of such a road an approach of an abutting landowner is destroyed, would Section 7212, General Code, control as to trustees liability?"

Section 7212, General Code, about which you inquire, provides:

"The owners of land shall construct and keep in repair all approaches or driveways from the public roads under the direction of the county surveyor, provided, however, that if, in the construction or improvement, maintenance and repair of any road the approach or driveway of an abutting property owner is destroyed, the authorities constructing, improving, maintaining or repairing such road shall compensate such abutting property owner of said lands for the destruction of such approach or driveway, or in lieu thereof authorize the county surveyor to reconstruct the same at public expense.

In the construction of a road improvement the state highway commissioner or county surveyor may in all cases where the approaches of the owners of abutting real estate are unsuitable to a projected improvement or so constructed as not to afford proper drainage after its completion, include in the plans for such improvement plans for proper approaches. The entire cost of constructing such approaches may be assessed against the lands along which they are constructed."

In view of the position of the section last quoted, in the General Code, the question might be raised as to whether the section has application to township roads. However, an examination of the history of the act completely dispels all doubt in this respect. It was originally a part of an act found in 106 O. L., 574, entitled:

"AN ACT To provide a system of highway laws for the state of Ohio, and to repeal all sections of the General Code, and acts inconsistent herewith."

Moreover, the sections as originally enacted mentioned both county commissioners and township trustees. When said section was last amended the reference to county commissioners and township trustees was omitted and the following substituted:

"* * The authorities constructing, improving, maintaining or repairing such road. * *"

It will therefore clearly appear that Section 7212, supra, includes a road being constructed by township trustees as well as one being constructed by county commissioners.

Section 5541-8, General Code, provides that the gasoline tax distributed to the townships "shall be expended by each township for the sole purpose of constructing, widening and reconstructing the public roads and highways within such township." The section further provides that the funds shall be first used on unimproved dirt roads of the secondary or county system and if there be no such roads unimproved they may use said funds for the improvement of such roads as they designate.

The only question now is whether or not the reconstruction of an approach to the highway may be regarded as a part of the improvement so as to come within the terms of the statute. Section 7212, *supra*, makes such a construction a burden upon the township and it is believed is clearly a necessary incident in connection with the improvement of a township road.

By way of specific answer to your inquiry, it is my opinion that when the township trustees in improving a township road destroy the approach or driveway of an abutting property owner, the gasoline tax may properly be used to cover the cost of the reconstruction of said approach or driveway.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3283.

CHILDREN'S HOME—TRUSTEES RESPONSIBLE FOR CHILDREN'S BOARD AND LODGING UNTIL THEY REACH TWENTY-ONE YEARS OF AGE.

SYLLABUS:

The trustees of a children's home are not authorized to dismiss from the home a child which has attained the age of eighteen years, but must permit that child to remain in the home until he is twenty-one years of age, even though he has not been placed out in a permanent home, and is not able for one reason or another to provide for his own maintenance.

COLUMBUS, OHIO, June 2, 1931.

HON. G. E. KALBFLEISCH, *Prosecuting Attorney, Mansfield, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Trustees of the children's home request me to get an opinion on this question. The law says the children's home is to be an asylum for the children until eighteen (18) years of age.

Is the home required to keep them until they are twenty-one (21)? Or can they be dismissed from the home at eighteen (18) years of age and the home be no longer responsible for their board or lodging?”

Prior to the amendment of Section 3089, General Code, in 1929 (113 O. L., 528-531) said section provided with reference to a county children's home, as follows:

“The home shall be an asylum for children under the age of eighteen years, of sound mind and not morally vicious and free from infectious or contagious diseases, who have resided in the county not less than one year, and for such other children under such age from other counties. * *”

As amended, this statute reads as follows:

“The board of trustees of the home shall receive for care and treatment children under the age of eighteen years, who have resided in the county not less than one year, and such other children under such age from other counties in the state where there is no home, as the trustees