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PLAT, SUBDIVISION — ACCEPTANCE AND APPROVAL, COUNTY COMMISSIONERS — §711.101 R.C. — ROADS AND STREETS; DEDICATION, ACCEPTANCE — MAINTENANCE, §§5535.01, 5571.02 R.C.—DUTY TO MAINTAIN, TOWNSHIP TRUSTEES, §5541.01 R.C.—FUNDS FOR MAINTENANCE §§5575.10, 5735.27 R.C.

SYLLABUS:

1. (a) In a county where there is no regional planning commission and no county planning commission, and the county commissioners have not adopted rules and regulations for the improvement of roads and streets proposed to be dedicated, as authorized by Section 711.101, Revised Code, the acceptance and approval by the county commissioners of a plat of a subdivision on which streets or roads are dedicated to public use, constitutes an acceptance of the dedication, and such streets or roads therefore become public highways.

(b) The action of the county auditor in allocating to the lots shown on the plat of a subdivision their power valuation, as authorized by Section 5713.18, Revised Code, does not constitute or in any way contribute to the dedication to public use of the streets or highways shown on such plat.

2. Upon such dedication and acceptance the responsibility for the maintenance of such highways, devolves, under the provisions of Sections 5535.01 and 5571.02, Revised Code, upon the township trustees of the township in which the same are located.

3. Under the provision of Section 5541.01, Revised Code, it is the duty of the township trustees when requested by the county commissioners to report the total mileage of all public highways within their respective townships.

4. The funds available to township trustees for maintenance of township roads and highways arise from the levy for maintenance authorized by Section 5575.10, Revised Code, and the distribution of motor vehicle taxes authorized by Section 5735.27, Revised Code.

Columbus, Ohio, June 23, 1958

Hon. Joseph B. Yanity, Jr., Prosecuting Attorney
Athens County, Athens, Ohio

Dear Sir:

I have before me your communication requesting my opinion and reading as follows:

“Would you be so kind as to render your opinion for the benefit of this office concerning the following problems?

Revised Code 711.041 in part is as follows:

‘* * * 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.’

“It is believed that your Opinion No. 7136 of 1956 is the most pertinent to the problem hereinafter stated, although it does not meet the factual situation I state.

1. What is the legal effect

(a) When the Board of County Commissioners in acting on a plat submitted, both on the plat which they signed and in the minutes of the meeting at which such plat is presented, include the following language: ‘Accepted and approved by the Athens County Commissioners.’

(b) When immediately following the action of the Board of County Commissioners, the County Auditor transfers said Subdivision on the tax records by allocating to the lots designated a sufficient valuation to counteract the loss in valuation due to the dedication of streets from the acreage. In other words, the Auditor eliminated the acreage occupied by streets from the tax duplicate and increased the valuation of the various lots in sufficient amounts to maintain the overall tax value.

A copy of the approved plat is submitted for your consideration. Will you please return it after your office has completed its action?

2. Assuming that the foregoing language is sufficient to constitute acceptance of the duly dedicated streets by the County Commissioners, who has the responsibility for maintaining and improving the streets delineated in said plat?

3. Who is responsible for including said streets as a part of the total county road mileage, and are the township trustees of the township in which the subdivision is situate, entitled to additional road maintenance funds?"

Section 3583, General Code, Section 711.04, Revised Code, effective prior to its amendment in 1953, provided that the filing of a plat of subdivision of lands, outside of a municipal corporation, with the county commissioners and the approval of the same by the commissioners, should operate as an acceptance and confirmation of the dedication of the public highways contained therein.

By an amendment of said Section 711.04, Revised Code, effective October 10, 1953, it was provided that "the approval of a plat by a 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."

In an act of the General Assembly, which became effective October 6, 1955, many of the statutes relative to the subdivision of lands and filing of plats were amended. Section 711.04, Revised Code, was made to read as follows:

"After a plat of a subdivision is completed, it shall be certified by the surveyor and acknowledged by the owner before an officer authorized to take the acknowledgment of deeds, which officer shall certify his official act on the plat. If any owner is a nonresident of the state, his agent, authorized by writing, may make such acknowledgment. *Such plat*, and if the execution is by agent, his written authority, *shall thereupon be recorded in the office of the county recorder.*" (Emphasis added)

By the same act, Section 711.041, Revised Code, was enacted, reading as follows:

"No plat certifying lands outside a municipal corporation may be recorded without the approval thereon of the board of county commissioners of the county wherein such lands are situated.

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.

This section does not apply to such plats as are required by section 711.09 or 711.10 of the Revised Code to be approved by a planning commission."

The concluding paragraph of the section last quoted might lead to the assumption that the approval by the county commissioners of a plat mentioned in Section 711.10, Revised Code, would amount to an acceptance of the proposed dedication of streets therein. An examination of that section shows a proposed plat, before being recorded, must be approved by the *planning commission*. It does not provide for any approval by the county commissioners. It is provided:

"* * * After a county or regional street or highway plan has been adopted as provided in this section, the approval of plats and subdivisions provided for in this section shall be in lieu of any approvals provided for in other sections of the Revised Code, so far as the territory within the approving jurisdiction of the county or regional planning commission, as provided in this section, is concerned. Approval of a plat shall not be an acceptance by the public of the dedication of any street, highway, or other way or open space shown upon the plat. * * *"

Up to this point we have found no authority vested in the county commissioners or any other body to consummate an offer of dedication so as to make it an actual dedication of property to public highway uses.

It was a discussion of these legislative changes which led to the opinion of my immediate predecessor, Opinion No. 7136, Opinions of the Attorney General for 1956, p. 690, wherein it was held:

"3. Under statutes effective since October 19, 1953 (Section 711.04, Revised Code, as amended effective October 19, 1953, and Section 711.041, Revised Code, effective October 6, 1955), the approval by a board of county commissioners of a plat containing the dedication of a public road or street, together with the acceptance of such dedication and approval of the improvement of such road or street by a board of township trustees, does not constitute an establishment of such road or street so as to impose upon such board of township trustees the duty of maintaining such road or street nor to empower such board to undertake the improvement thereof.

4. Prior to October 19, 1953, the effective date of Amended Substitute House Bill No. 629, One Hundredth General Assem-

bly, 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.”

In Opinion No. 7113, Opinions of the Attorney General for 1956, p. 679, 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.

2. A county or regional planning commission may, under the terms of Section 711.10, Revised Code, require, within the limits of its territorial jurisdiction, as a condition precedent to its approval of a plat, compliance with rules reasonably regulating the size of lots or requiring the dedication of a reasonable amount of land for park purposes.”

Section 5553.31, Revised Code, referred to in that opinion, reads 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. If the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the board by proper resolution approves and accepts the lands for such purpose, as are provided in cases where the board by unanimous vote declares its intention to locate, establish, widen, straighten, vacate, or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the lands so dedicated a public road without any further proceedings thereon.” (Emphasis added)

You will note in the concluding paragraph of Section 711.041, Revised Code, the provision “this section does not apply to such plats as are re-

quired by Sections 711.09 or 711.10 of the Revised Code, to be approved by a planning commission.”

A second letter from you informs me that “there is not now and never has been within Athens County either a Regional Planning Commission or a County Planning Commission.” Accordingly, it will not be necessary to refer to Sections 711.09 and 711.10, *supra*, except to note that they provide that where such commissions have adopted a general plan for the major highways, no plat of lands within the *jurisdiction of such commissions may be filed until approved by them.*

I call your attention to Section 711.101, Revised Code, which authorizes the county commissioners to adopt regulations making the construction of state and other improvements a condition precedent to the approval of a plat or the sale of lots shown thereon.

If your county commissioners have taken advantage of this section, then no plat of a proposed subdivision would receive their approval unless compliance had been had with their requirements as to improvement by the platter of proposed highways. If the commissioners have not adopted any such regulations, then it appears that they may proceed to accept and approve a plat which contains a dedication of highways, and their action, based on Section 5553.31, *supra*, would constitute an acceptance of such highways for public use.

If the highway so dedicated was not made a part of a county highway system, it would, as stated in Opinion No. 7136, *supra*, become a township road and the township trustees would have the duty to maintain it and the power to improve it. See Sections 5535.01, and 5571.02, Revised Code.

On the plat which you present, there appears a statement signed by the platters that they “do hereby dedicate the streets to the public use forever.”

The endorsement signed by two of the county commissioners reads, “Accepted and approved by the County Commissioners.” There is also an approval by the county engineer.

This “acceptance and approval” by the commissioners shown on the plat which accompanies your letter, in my opinion constitutes an acceptance of the dedication under the provision of Section 5553.31, *supra*.

Coming to division (b) of your first question, relating to the action of the county auditor in transferring said subdivision on the tax records,

and allocating to the lots delineated their proper valuation, your attention is directed to Section 5713.18, Revised Code, which reads as follows:

“When any person lays out a municipal corporation, any addition thereto, or any subdivision of any lot or tract of land before the plat thereof is recorded, he shall present it to the county auditor, who, shall assess and return the taxable valuation of each lot or parcel of land described in such plat in the same manner as new structures are valued. Thereupon such lots or parcels shall be entered on the tax list in lieu of the land included therein.”
(Emphasis added)

It will be noted that the plat of the proposed subdivision is presented to the county auditor before it is recorded and it becomes his duty to assess the taxable valuation of each lot or parcel of land shown on the plat and thereupon said lots or parcels shall be entered on the tax list in lieu of the land included therein.

Certainly the auditor’s action does not in itself give the proposed highways the status of accepted public highways. The auditor has no part in bringing about the acceptance which is necessary to make a proposed highway an actual public highway. In my opinion the auditor would have no right to make this allocation until the plat and dedication have been accepted and approved by the county commissioners.

What has been said above appears to be a sufficient answer to your second question. When a proposed highway outside a municipality becomes a public highway, the duty of maintenance falls on the body to which it is committed by the law. Section 5535.01, *supra*, after defining “state roads” and “county roads”, contains this provision:

“(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.”

Section 5571.02, Revised Code, reads in part as follows:

*“The board of township trustees shall have control of the township roads of its township and shall keep them in good repair.
* * *”*

Your third question presents two problems: (a) as to the responsibility for including such roads or streets as a part of the total county road mileage, and (b) as to the right of the township to receive additional road maintenance funds.

(A) Section 5541.01, Revised Code, provides in part :

“The board of township trustees shall, upon request and under the direction of the board of county commissioners of the county within which such township is located and upon such forms as are prescribed by the board of county commissioners, make a report to the board of 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 board of county commissioners. * * *” (Emphasis added)

It seems clear that this provision would require the township trustees to ascertain and report the total mileage of all public highways within the township.

(B) As to funds for maintenance of township highways, I know of no other source of income except from the regular levy for maintenance authorized by Section 5575.10, Revised Code, and the distribution of the motor fuel tax authorized by Section 5735.27, Revised Code.

In specific answer to your question it is my opinion and you are advised :

1. (a) In a county where there is no regional planning commission and no county planning commission, and the county commissioners have not adopted rules and regulations for the improvement of roads and streets proposed to be dedicated, as authorized by Section 711.101, Revised Code, the acceptance and approval by the county commissioners of a plat of a subdivision on which streets or roads are dedicated to public use, constitutes an acceptance of the dedication, and such streets or roads therefore become public highways.

(b) The action of the county auditor in allocating to the lots shown on the plat of a subdivision their proper valuation, as authorized by Section 5713.15, Revised Code, does not constitute or in any way contribute to the dedication to public use of the streets or highways shown on such plat.

2. Upon such dedication and acceptance the responsibility for the maintenance of such highways, devolves, under the provisions of Sections 5535.01 and 5571.02, Revised Code, upon the township trustees of the township in which the same are located.

3. Under the provision of Section 5541.01, Revised Code, it is the duty of the township trustees when requested by the county commissioners to report the total mileage of all public highways within their respective townships.

4. The funds available to township trustees for maintenance of township roads and highways, arise from the levy for maintenance authorized by Section 5575.10, Revised Code, and the distribution of motor vehicle taxes authorized by Section 5735.27, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General