

1362.

STATE HIGHWAY ROUTES—WHEN HIGHWAY DIRECTOR MAY DESIGNATE TWO ONE-WAY ROUTES AS CONTINUATION OF HIGHWAY THROUGH MUNICIPALITY—WHEN TWO TWO-WAY ROUTES—FORM OF RECORD OF DESIGNATIONS.

*SYLLABUS:*

1. *Under the provisions of Section 1189, General Code, as amended by the 88th General Assembly, 113 O. L. 600, the director of highways may designate two one-way routes as a continuation of a highway running through a municipality, if, in his judgment and discretion, the public needs require such action, and each of said routes shall be considered as a part of the state highway.*

2. *If, in the judgment of the director of highways, it is necessary in order to properly take care of the traffic, he may establish two two-way routes as a continuation of a highway to take care of the traffic in congested areas, and such designation will be considered as a part of the state highway system.*

3. *In keeping a record of such designations, the director of highways may use such instrumentalities as preserve a proper record of his action. An accurate map with sufficient explanatory notes as to indicate definitely the route so designated will be a sufficient compliance with the statute.*

COLUMBUS, OHIO, January 4, 1930.

HON. ROBERT N. WAID, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads:

“Section 1189 provides in part as follows:

‘The state highway routes into or through municipal corporations, as the same are now designated or indicated by state highway route markers erected thereon, or as the same may hereafter be designated or indicated as provided herein, are hereby declared to be state highways and a part of the state highway system. Any routes of the state highway system into or through municipal corporations not now designated by the erection of state highway route markers thereon shall be so designated prior to the first Monday of January, 1930. \* \* \* \* \* The director is hereby authorized to erect state highway route markers and such other signs directing traffic as he may think proper upon those portions of the state highway system lying within municipal corporations \* \* \* . \* \* \* \* \* The director shall place in the files of the department a record of the routes of all such state highways within municipal corporations, and shall from time to time cause the same to be corrected and revised to show all changes and additions to the date of such correction, and a copy of such record or any pertinent part thereof certified by the director to be a true and correct copy shall be admissible in evidence in any court of the state for the purpose of proving the existence and location of any state highway within a municipal corporation.’

All state highway routes into and through municipal corporations have been designated by the erection of route markers thereon. In some cases it has been found necessary because of local ordinances designating a certain street or streets traversed by a state highway route as ‘one way’ to mark different streets by the same route number, thus dividing the state highway routes into two one way routes traversing different routes through the mu-

nicipal corporation. In other cases the same plan has been followed not from necessity but to lessen traffic on congested streets by dividing the traffic.

Query: In the case of state highway routes divided into two one way routes for either of the reasons stated, may each one way route be considered as state highway within the meaning of Section 1189?

Traffic conditions in certain cities are such that it would facilitate the movement of through traffic to provide two two-way routes for certain state highway routes in such cities, one of which would by-pass traffic around the congested district.

Query: Has this department the authority to designate and mark such alternate routes? Must such alternate routes, if so designated, be considered as part of the state highway system?

Query: In what form shall the record of state highway routes in municipal corporations be left? Will maps suffice or shall the record consist of written descriptions, or both?

Your opinion on the above questions is respectfully requested."

The part of Section 1189, General Code, which you quote, was added to the original section in an amendment by the 88th General Assembly, 113 O. L. 600. The section in express terms authorizes the director of highways to designate routes through municipal corporations not theretofore designated prior to the time of the effective date of the act. Such designation by the terms of the act shall be made prior to the first Monday of January, 1930, and it is assumed that in your communication you refer to such designations as are made by you. There seems to be no limitations provided with reference to restricting such designation to one particular street.

The section further empowers the director to erect such signs and markers "as he may think proper." The latter provision implies power on the part of the director of highways to mark a route as a one-way traffic lane if he thinks it necessary. If the latter conclusion is correct, then, of course, it would be necessary to have a designation of two parallel lanes, in order to accommodate the traffic, for it would be ridiculous to have a highway continued as a state route in one direction without a similar action to take care of the traffic in the opposite direction. It would further appear that if the director has power to establish a one-way lane of traffic as the continuation of a highway, by the same logic, he would have power to establish two alternate lanes to properly take care of the traffic in the same direction, if the same is necessary.

In considering this section, it must be kept in mind that the enactment hereinbefore referred to was made in order to accommodate the traveling public and relieve traffic congestion within municipalities. Therefore, it is believed that the section must be liberally construed in order to accomplish the purpose for which it was intended.

Unless the conclusion I have hereinbefore reached can be supported, then the power of said section, which authorizes the director of highways to place signs upon such highways as he may deem proper, is limited. If, in his judgment, a one-way traffic sign is essential to the welfare of the traveling public, and he may not designate a parallel lane to take care of the traffic in the opposite direction, the result is that he may not designate a continuation of a highway as a one-way street which conclusion is inconsistent with the broad power of the section which authorize him to erect such signs directing traffic as he may think proper. The curtailment of the director's power in this respect is not in keeping with the trend of protecting the traveling public under modern conditions. Logically, it would seem that two or more lanes of traffic could be established within a municipality as well as two or more lanes of traffic could be established on a highway outside of a municipality. It is a matter of common knowledge that most main thoroughfares do not proceed through

municipalities upon the same street which originally was regarded as a part of said highway.

The second query which you present raises the additional question as to whether such marking must be designated as part of the state highway system. In this connection, it may be stated that I have noted no other section which authorizes the director of highways to mark routes within municipal corporations.

Your third query necessitates a construction of that part of Section 1189, General Code, as amended, which, for the purpose of convenience, will be again quoted here, and which reads:

“ \* \* \* The director shall place in the files of the department a record of the routes of all such state highways within municipal corporations, and shall from time to time cause the same to be corrected and revised to show all changes and additions to the date of such correction, and a copy of such record or any pertinent part thereof certified by the director to be a true and correct copy shall be admissible in evidence in any court of the state for the purpose of proving the existence and location of any state highway within a municipal corporation.”

It will be observed that the former part of the section relates to the keeping of maps showing the location of the state highway system in the following language:

“The director shall keep on file in his office and shall, from time to time, cause the same to be corrected and revised to show all changes and additions to the date of such correction. A copy of such map certified to by the director as a correct copy of the map on file in his office, shall be admissible as evidence in any court of the state to prove the existence and location of the several highways and roads of the state highway system.”

While the language with reference to the record of highways within municipal corporations uses the word “record” instead of the word “map,” it is believed that the same procedure is contemplated with reference to such marking that is followed in connection with the record of highways outside of municipalities. Generally speaking, “A map is a drawing upon a plane surface representing a part of the earth’s surface and the relative position of objects thereon \* \* \* .” Words and Phrases, Vol. 5, p. 4366; citing 70 Pac. 1114. “Record” has various meanings depending upon the subject matter which is involved in connection with its use.

Among other things, Webster has defined record as “an authentic official copy of a document entered in a book on deposit in the keeping of some officer designated by law.” While there are many other definitions given by Webster, it is believed that the foregoing will suffice for the purposes of this opinion. Under the terms of the section, the director of highways is required to make a record of such designation and it is believed that if a map is accurately drawn with sufficient explanatory notes so as to definitely establish the route which has been designated, the same will be a sufficient compliance with the law. It is a matter of common knowledge that streets must be accepted by action of council before they may be dedicated as such. It, therefore, follows that a dedicated street within a municipality is a fixed monument in itself. It is a customary practice in connection with the serving of notices upon persons to quit premises to describe the premises by designating the street and number upon which it is located. In conveyances, city lots are described as a rule with reference to the number of the lots as designated upon the recorded plat, which plats, of course, show the streets upon which the property abuts. Therefore, an accurate map showing a street designated as a continuation of a highway which the director adopts as his record of such action it is believed would be a sufficient compliance

with the statute. Of course, in addition to the map or as a part thereof, the director could use other descriptive terms as a part of the record.

Based upon the foregoing and in specific answer to your inquiries, it is my opinion that:

1. Under the provisions of Section 1189, General Code, as amended by the 88th General Assembly, 113 O. L. 600, the director of highways may designate two one-way routes as a continuation of a highway running through a municipality, if, in his judgment and discretion, the public needs require such action, and each of said routes shall be considered as a part of the state highway.

2. If, in the judgment of the director of highways, it is necessary in order to properly take care of the traffic, he may establish two two-way routes as a continuation of a highway to take care of the traffic in congested areas, and such designation will be considered as a part of the state highway system.

3. In keeping a record of such designations, the director of highways may use such instrumentalities as preserve a proper record of his action. An accurate map with sufficient explanatory notes as to indicate definitely the route so designated will be a sufficient compliance with the statute.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

1363.

ELECTION—RURAL SCHOOL BOARD—PERSONS DEPRIVED OF OPPORTUNITY TO VOTE—DUTY OF CANVASSING AUTHORITY—INVOKING QUO WARRANTO.

*SYLLABUS:*

1. *Where the voters of two of three townships constituting a rural school district were deprived of the right to vote for members of a board of education, the canvassing authority, possessing only ministerial power, must issue certificates of election to the persons who appear elected on the face of the returns, unless enjoined from so doing by a court of competent jurisdiction.*

2. *The general rule is that an election is invalid if enough persons were unlawfully deprived of an opportunity to vote to change the result.*

3. *There being no statutory provision for a recount or an election contest with respect to members of a board of education, quo warranto may be invoked.*

COLUMBUS, OHIO, January 4, 1930.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—You have requested an opinion on the validity of the November, 1929, school board election in the Lawshe Rural School District, Adams County, Ohio, based on the following letter to you:

“Lawshe Rural School District had an election November 5, 1929, to vote upon three members of the board of education. The district is divided into three voting places, Meigs, Oliver and Scott Townships. The county election board failed to send ballots to Scott and Oliver Townships and about thirty-five voters were denied the right to vote. I see in the Election Law Book, where any portion of the voters are denied their right to vote the election is invalid. (Opinion of Attorney General.)