

OPINION NO. 70-151**Syllabus:**

The rights in and to any township road are lost to the township if the road has been abandoned and not in use for a period of twenty-one years, and appropriate action may be taken by any abutting landowner under Section 5553.042, Revised Code, to effect passage in fee of the township road to that abutting landowner.

To: Forrest P. Moore, Hocking County Pros. Atty., Logan, Ohio
By: Paul W. Brown, Attorney General, November 5, 1970

I have before me your request for my opinion which reads as follows:

"Hocking County has a platted subdivision outside of any of the municipal corporations in the County. This subdivision was platted in about the year 1880. The plat was properly presented to the County Commissioners with a dedication of the township streets and alleys to public use. The dedication of the streets and alleys was accepted by the Commissioners and the plat has been on file since that time. Some of these streets and alleys have never been opened or used by the public. There is no record that the County Commissioners ever assigned any of these streets or alleys to the Township Trustees for maintenance. I have been asked to determine the status of these platted, but unopened township streets and alleys. I am particularly interested in knowing whether or not Revised Code Section 5553.042 would apply to these platted but unopened streets and alleys."

The statute in question, Section 5553.042, Revised Code, reads as follows:

"A township shall lose all rights in and to any public road, highway, street, or alley which has been abandoned and not used for a period of twenty-one years, formal proceedings for vacation as provided in section 5553.04 of the Revised Code not having been taken; and upon petition for vacation of such road, highway, street, or alley filed with the board of county commissioners by any abutting landowner, if the board finds that said public road, highway, street, or alley has been abandoned and not used for a period of twenty-one years as alleged in such petition, the board of county commissioners shall, by resolution, order the road, highway, street, or alley vacated and such road, highway, street, or alley shall

pass, in fee, to the abutting landowners thereof, as provided by law, subject to the preservation of any existing right of way in, over, or under such roadway by any public utility or rural electric co-operative service facilities, including any conduit, cable, wires, towers, poles, or other equipment or application of any public utility or rural electric co-operative located on, over, or under such roadway and for such period of time as such public utility or rural electric co-operative service facilities continue to be used to render service to the public and also subject to the right of ingress and egress for the purpose of servicing and maintaining the same."

Under the provisions of the above quoted statute, a township loses all rights to a township road if the township road has been abandoned and not used for a period of twenty-one years.

My predecessor in Opinion No. 1517, Opinions of the Attorney General for 1964, pages 2-412, paragraphs 1 and 2 of the syllabus, defined the terms "abandoned" and "not in use" as follows:

"1. A street is abandoned within the meaning of Section 5553.042, Revised Code, when the township fails to exercise control over it and otherwise manifest an intent to surrender its right to maintain it as a public way.

"2. A street is not in use as that term is used in Section 5553.042, Revised Code, when it is not used as a way which is open to the public at large for transportation or travel."

The statute also specifically mentions roads, highways and alleys as being subject to the same conditions as township roads. It is clear from the above two definitions that platted township streets and alleys which for the past ninety years have never been open to the public, have not been used by the public, and have not been maintained by the township, fall under the purview of this statute, Section 5553.042, Revised Code.

Therefore, it is my opinion and you are hereby advised as follows:

The rights in and to any township road are lost to the township if the road has been abandoned and not in use for a period of twenty-one years, and appropriate action may be taken by any abutting landowner under Section 5553.042, Revised Code, to effect passage in fee of the township road to that abutting landowner.