

OPINION NO. 66-065**Syllabus:**

1. Under the provisions of Section 5553.042, Revised Code, notice to the public and a hearing are not required.
2. All abutting landowners are not required to sign the petition mentioned in Section 5553.042, Revised Code.
3. Section 5553.042, Revised Code, is applicable both to platted and unplatted areas.

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To: Everett Burton, Scioto County Pros. Atty., Portsmouth, Ohio
By: William B. Saxbe, Attorney General, March 25, 1966

Your request for my opinion reads as follows:

"We have received a request from the Board of County Commissioners of Scioto County, Ohio, with respect to the procedures to be followed under Section 5553.04.2 of the Ohio Revised Code in vacating streets and alleys in townships. The question is specifically whether or not notice is required under this section, or whether or not all of the abutting land owners have to join in the Petition. Also, whether or not a hearing must be had with some kind of notice to the public in order for the Board to make a proper determination of whether or not the street or alley in question has been abandoned and not used for the necessary 21 years, pursuant to the statute.

"The other question that was posed is whether or not the above Section applies to both platted and unplatted areas, in view of the fact that there are specific statutes with respect to platted areas and it is not clear whether or not these sections are exclusive, or whether 5553.04.2 also apply to platted areas.

"We will appreciate your opinion with respect to these matters."

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 appliances 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 continued 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."

You ask whether or not notice is required to be given. It becomes necessary to examine the nature of the action required of a board of county commissioners pursuant to Section 5553.042, supra. The basic concern of the board was stated in Opinion No. 1517, Opinions of the Attorney General for 1964, page 2-412, paragraph 4 of the syllabus, which reads as follows:

"4. If a board of county commissioners acting pursuant to Section 5553.042, Revised Code, finds that a public road, highway, street, or alley has been abandoned and not used for a period of twenty-one years, it must, by resolution, order such road, highway, street, or alley vacated."

I stated at page 2-414, in part, as follows:

"When a board of county commissioners is seeking to determine whether or not a township has 'abandoned' a particular road, highway, street, or alley, it must examine

the actions of the board of trustees of the township with respect to such road, highway, street, or alley. If the board finds, upon consideration of the facts involved, that the board of trustees of the township has acted in a manner consistent with the definitions set out above in its treatment of such road, it should determine that such road, highway, street, or alley has been 'abandoned,' as that term is used in Section 5553.042, Revised Code."

Section 5553.042, supra, does not specifically provide for notice. Furthermore, since the board's primary task is the determination of the relationship of a township to the public road, highway, street, or alley, it would not appear that a notice to the public requirement would be, by inference or operation of other rules of law, necessary to the procedure of vacation. This is not to say that the board of county commissioners in their discretion could not provide notice to the public.

You then ask whether or not all of the abutting landowners have to join in the petition. I conclude that they do not. Section 5553.042, supra, states, in part, as follows:

"* * * upon petition * * * filed * * *
by any abutting landowner, * * *"
(Emphasis added)

Inasmuch as the statute does not provide for a hearing on this matter, I do not believe that a special hearing on this matter is mandatory. The fact that the statute does not provide for a hearing, in my opinion, is not violative of due process of law.

Your last question concerns whether or not Section 5553-.042, supra, applies to both platted and unplatted areas. The section provides in part as follows:

"A township shall lose all rights in
and to any public road, highway, street, or
alley * * *"
(Emphasis added)

Since the statute provides no limitation as to the matter of platting, I find it logical to conclude that no such restriction was intended. An examination of other provisions of law relating to plats does not reveal logical purposes for any different interpretations.

Therefore, you are advised as follows:

1. Under the provisions of Section 5553.042, Revised Code, notice to the public and a hearing are not required.
2. All abutting landowners are not required to sign the petition mentioned in Section 5553.042, Revised Code.
3. Section 5553.042, Revised Code, is applicable both to platted and unplatted areas.