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TOWNSHIP TRUSTEES—NO RESPONSIBILITY OR DUTY UNDER THE COUNTY AND TOWNSHIP DRAINAGE LAWS TO CLEAN OUT AND REPAIR PRIVATELY CONSTRUCTED UNDERGROUND DRAINS—SECTION 6442 ET SEQ., G. C.

SYLLABUS:

Township trustees have no responsibility or duty under the county and township drainage laws, Section 6442 et seq., General Code, with respect to the cleaning out and repairing of privately constructed underground drains.

Columbus, Ohio, May 14, 1945

Hon. D. Deane McLaughlin, Prosecuting Attorney
Canton, Ohio

Dear Sir:

This will acknowledge receipt of your letter inquiring if the township trustees have any responsibility or duty in assisting a property owner to require adjoining owners to clean out and repair a previously constructed private underground drain. Your letter reads as follows:

“Your opinion is requested in the matter outlined below. This office received the following communication from the Township Trustees of Lake Township:

‘Your opinion is desired as to the responsibility or duty of Township Trustees in assisting a property owner, who has underdrains, which are inoperative due to insufficient outlet, to require the lower or adjacent owners to clean out their underdrains, on an unestablished drain, and restore their usefulness. Drain in question put in and in use for 50-60 years.’

The question as framed above seems to be: Can the township trustees under General Code Section 6653 take any action to require the cleaning of a private underground drain.

You will note that General Code Section 6653 deals with the establishment and construction of underground drains in a situation where such a drain is required to be built. The code section referred to is silent on any question of the authority of the town-

ship trustees with or to the cleaning and the repairing of such private underground drains.

We request your opinion as to whether or not the township trustees have any responsibility or duty in assisting a property owner to require adjoining owners to clean out and repair a previously constructed private underground drain."

The county and township drainage laws are contained in Chapters 1, 2, 5, 6, and 8 of Title III, Part Second, Section 6442, et seq., General Code, and an examination of these laws will disclose that the authority of township trustees with respect to drains and ditches is confined to a very narrow compass. This situation was noted in Opinions of the Attorney General for 1927, No. 1362, page 2483, and my own examination discloses that the authority of the township trustees in such matters is confined to and limited by Sections 6603 to 6607, General Code, found in Chapter 5 under the heading "Township Ditches," and Section 6653, General Code, found in Chapter 6 under the heading "Underground Drains."

Sections 6603 to 6607, General Code, which, as above stated, are found in Chapter 5, apparently apply to the particular type of township drainage improvements described in and provided for by those sections, and have no application to the underground drains mentioned and specially provided for in Section 6653, General Code, found in Chapter 6.

The statute last referred to, Section 6653, appears to be the only one that confers any authority upon township trustees with respect to privately constructed underground drains, and since your letter indicates that you are familiar with its provisions, it will not be quoted in this opinion because of its length. Suffice it to say, this statute authorizes the township trustees to act under its provisions only in cases where the upper and lower landowners are unable to agree as to the location of the contemplated drain, the size of tile to be used, the approximate depth the tile are to be placed, and the sum to be paid the lower owner for the right to construct and maintain the drain, in which event the statute provides that the upper owner may file with the trustees a copy of his proposition, whereupon the trustees are required to fix a time to meet the owners and undertake to adjust the matter between them by agreement if possible. The statute then goes on to provide that if the owners will not agree, the trustees may fix and determine the location of the drain, the size and depth of the tile,

and the amount the lower owner is to be paid for the right to construct and maintain the drain, etc.

There is no provision in Section 6653 conferring any jurisdiction or authority upon the township trustees with respect to cleaning out and repairing any underground drain that has been voluntarily constructed by landowners under an agreement between them, or that may have been constructed under and pursuant to the award or other proceedings of the trustees.

I note the statement in your letter that the underground drain in question was constructed over fifty years ago. Present Section 6653, General Code, was enacted in 1923, and of course was not in existence when the drain was constructed. The law applicable to underground drains in force at or about the time the drain was constructed was House Bill No. 1094, passed April 23, 1891, 88 Ohio Laws, 350, but that Act, the same as present Section 6653, conferred no authority upon the township trustees with respect to the cleaning out and repairing of underground drains, but related only to their construction.

The cleaning and repair of drains has been made the subject of Chapter 8 of the drainage law, under the heading "Cleaning and Repair of Drains and Water Courses," Section 6691, et seq., General Code. The enforcement of this chapter with respect to the drainage improvements included in its provisions, is lodged with the county commissioners who act either through the county engineer or a ditch supervisor employed by them. It imposed no duty or responsibility upon the township trustees.

You are therefore advised that township trustees have no responsibility or duty under the county and township drainage laws, Section 6442, et seq., General Code, with respect to the cleaning out and repairing of privately constructed underground drains.

Respectfully,

HUGH S. JENKINS,

Attorney General