

whether or not a particular road was improved or unimproved. Ordinarily, the use of cinders is regarded as a more or less temporary expedient and the whole surface of the road is not so treated but occasional spots are cindered where, were it not for their use, the road would be impassable. Such use of cinders would scarcely result in the road being classified as improved, for it would still remain substantially a dirt road. On the other hand there are roads which throughout a substantial portion of their length have a complete surfacing of cinders, and in an instance of that kind, the cinders being materials foreign to the natural soil and constituting a traffic bearing surface in themselves, I believe that the road should be regarded as improved. As I have heretofore stated, this would be a question of fact to be determined in the first instance by the township trustees, whose judgment would not, in the absence of its abuse, be disturbed.

You further inquire whether township trustees, under the supervision of the county surveyor, may use these funds to repair dirt roads. From what I have heretofore said, the answer to your inquiry is obviously in the negative. Your doubt is, as you indicate, engendered by the use of the word "reconstruction". It is not my belief that the Legislature intended these funds to be used for maintenance work with respect to either dirt roads or improved roads. Nowhere is the word "maintenance" used, and it seems to me that the conclusion must be reached that these funds are to be used solely with reference to construction work where a road has theretofore been unimproved. Where, however, the roads of the secondary system are already improved and the money may accordingly be used upon township roads, such funds may be used for construction, widening or reconstruction. The predominant purpose of the Legislature apparently is that these funds shall be expended for improvements rather than mere maintenance.

For the purpose of clarity, my conclusion may be recapitulated as follows:

1. The proceeds of the gasoline tax distributed to townships under the provisions of Section 5541-8 of the Code, must be used upon the unimproved dirt roads of the secondary system, if any such exist. Such use must be by way of construction, reconstruction or widening, and must be of such character as not to constitute merely maintenance and repair, but the improvement made need not necessarily include a traffic bearing surface of materials other than the natural soil itself.

2. It is a question of fact whether or not a road upon which cinders have been used should be regarded as an unimproved dirt road. The determination of the question depends upon the extent of the improvement by the use of cinders, and this question must be determined by the township trustees whose judgment would not, in the absence of its abuse, be disturbed.

Respectfully,

GILBERT BETTMAN,
Attorney General.

1131.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND OF R. E. MILLER IN
THE VILLAGE OF CARROLLTON, CARROLL COUNTY, OHIO.

COLUMBUS, OHIO, October 30, 1929.

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

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, submitting for my examination and approval an abstract of title, warranty

deed form, encumbrance estimate No. 6287, and controlling board certificate relating to lots Nos. 92 and 93, in Roberts Second Addition to the Village of Carrollton, Ohio.

From an examination of the abstract of title submitted, which abstract is certified by the abstracter under date of September 23, 1929, it appears that R. E. Miller, the present owner of record of said lots, obtained title to the same by the deed of one W. E. Sanderson, as administrator of the estate of John Sanderson, deceased. From the recital contained in said deed, which was executed October 2, 1922, it appears that said deed was executed pursuant to an order of court confirming a sale of said lots made to said R. E. Miller, pursuant to a prior order of sale issued to the administrator by the court. Measured by the requirements of this department, the abstract of title is defective in that the same does not set out the names and ages of the heirs of John Sanderson at the time of his decease and in that said abstract does not sufficiently abstract the court proceedings on the petition of the administrator to sell this property to show that all of the heirs of John Sanderson, deceased, were made parties defendant in said proceeding, and that the court obtained jurisdiction of the persons of said defendants either by service of summons or entry of appearance. The abstract of title should be corrected so as to comply with the exceptions here noted.

The undetermined taxes for the year 1929 are the only lien and encumbrance against said property.

I have examined the warranty deed form of the deed to be executed by said R. E. Miller and Erma C. Miller, his wife, and find that the same is in proper form with the exception of the inclusion of the words "Division of Highways" after the words "The State of Ohio", after the recital of the consideration to be paid. The words "Division of Highways" should be stricken out of said deed. Said deed form has not yet been executed by said R. E. Miller and Erma C. Miller, his wife. You would see to it that said deed is correctly executed and acknowledged before the transaction relating to the purchase of this property is closed.

An examination of the encumbrance estimate, No. 6287, shows that there is a sufficient balance in a proper appropriation account to pay the purchase price of this property, and it further appears that the necessary money for the purchase of this property has been released by the controlling board.

I am herewith returning to you said abstract of title warranty deed form, encumbrance estimate and controlling board certificate.

Upon receipt of corrected abstract of title and warranty deed, you will submit the same to this department for its approval.

Respectfully,
GILBERT BETTMAN,
Attorney General.