

2148.

PUBLIC HIGHWAYS — COUNTY ROAD FUNDS — MAY NOT BE USED TO IMPROVE OR MAINTAIN DRIVEWAYS ON COUNTY OWNED GROUNDS WHERE SUCH DRIVEWAYS NOT ESTABLISHED OR DEDICATED AS PUBLIC HIGHWAY.

SYLLABUS:

County road funds may not properly be used to improve or maintain driveways located upon the grounds owned by the county, unless such driveways have been established or dedicated as public highways.

Columbus, Ohio, April 6, 1940.

Hon. Thomas J. O'Connor, Prosecuting Attorney,
Toledo, Ohio.

Dear Sir:

Acknowledgment is made of your recent inquiry requesting my opinion, which reads as follows:

“The Lucas County Engineer has requested a ruling from me as to whether or not county road funds may be used for the repair of driveways located on the grounds of county owned buildings.

This question was previously considered by me and I ruled that there is no authority for the expenditure of county funds for construction or repair of private driveways except under the conditions set forth in Section 7212 of the General Code. One authority we found for that ruling was the case of State of Ohio vs. Root, reported in 54 Ohio Appellate Reports, Page 412.”

Section 7212 of the General Code to which you refer provides that the owners of land “shall construct and keep in repair all approaches or driveways from the public roads under the direction of the county surveyor,” and further provides that in the event an improvement destroys such an approach, the abutting property owner shall be compensated, or in lieu thereof such approach shall be constructed at public expense. In other words, by the express provisions of Section 7212, General Code, the duty is incumbent upon the owner of land abutting upon a highway to construct and maintain the approaches thereto.

In the case of State v. Root to which you refer, it was held, as disclosed by the second branch of the headnotes:

"2. A driveway leading into, located solely upon the premises of, and controlled by, a state owned hospital within the limits of a municipality, which driveway has never been dedicated to public use, and with respect to which no responsibility has been assumed by the municipality (Sections 1189 and 1224, General Code), or permission granted by the General Assembly to lay out a public thoroughfare thereon (Section 23, General Code), does not fall within the purview of the phrase 'roads or highways' as used in

Section 12404-1, General Code."

It is believed that the foregoing decision by analogy applies to the situation which you present. Of course, it will be observed that in the Root case a criminal statute was being considered and such laws are strictly construed in favor of the defendant. However, statutes authorizing the expenditure of public funds are also construed rather strictly in favor of the public treasury, and funds may not be withdrawn therefrom except in pursuance to specific provisions of law. In view of this principle of law last mentioned, it is believed that the Root case, *supra*, is dispositive of the problem presented, especially in view of the express provision of Section 7212, General Code. In connection with this conclusion, it has been assumed that the approach to which reference is made in your inquiry has not been dedicated at any time as a public highway.

In reaching the conclusion hereinbefore stated, it has been noted that the definition of the terms "highway" and "public road," has been construed in various ways in view of the particular statute and circumstances under consideration.

In the case of *Morrow, et al., v. Wittler, et al.*, 25 O. N. P. (n.s.) 85, it was held as disclosed by the second branch of the headnotes:

"2. The authority conferred on county commissioners by Section 6860 to vacate a public road upon application of at least twelve freeholders of the county resident in the vicinity of the proposed improvement does not include authority to vacate an alley."

On the other hand, in the case of *Sullivan v. Columbus*, 12 O. D., 650, it was held that the term "highway" is the generic name for all kinds of public ways, streets and alleys and is a way open to all people. Moreover, in the case of *Elms v. Flick*, 100 O. S., 186, it was held that the term "road" should be construed to mean the improved portion of the road in connection with the interpretation of Section 6310, General Code. Also in the case of *Armour and Company v. Yoter*, 40 O. A., 225, the Court in construing Section 6310-27, General Code, which regulates the stopping of vehicles on

a road or highway, held that the term "road" referred to the improved portion of the highway. As hereinbefore suggested, there may be various interpretations that have been given to the terms "highway" and "public road" but in view of the express provisions of Section 7215, General Code, and the conclusion of the Court in the Root case hereinbefore referred to, it is believed that county road funds may not be used for the repair of driveways to county owned buildings, unless such driveways have been properly dedicated as public highways.

Based upon the foregoing, and in specific answer to the question presented, it is my opinion that county road funds may not properly be used to improve or maintain driveways located upon the grounds owned by the county, unless such driveways have been established or dedicated as public highways.

Respectfully,

THOMAS J. HERBERT,
Attorney General.