

I do not deem such an interpretation of the language of the section proper. It seems to me that the section fairly contemplates an individual computation for each piece of property. This being true, if any particular lot or parcel has for any reason whatsoever theretofore not been subjected to an assessment, the general authority remains to assess the entire cost upon such property within the general limitations prescribed in Section 3812 of the General Code. This interpretation is substantiated by the fact that in cases arising under this section, particularly *Page vs. Columbus*, 15 O. C. C., (N. S.) page 40 (Affirmed, 86 O. S., 33) evidence was adduced as to the individual assessment made upon the particular property and not as to the assessment as a whole.

It might possibly be argued that the prior assessment against the property of the school board was, in effect, paid, because the money evidently came either out of the general fund of the municipality or out of the municipality's portion of the improvement. Such a construction of the section however, appears to me to be strained. The legislature undoubtedly intended to permit the exemption only in case the particular property had already borne a previous assessment. Since this was not the fact, and the portion of the cost of the improvement properly chargeable against the property was borne by the general tax payers, the exemption provisions do not come into operation.

You are therefore advised that where assessments are levied for the reimprovement of streets, property owned by boards of education which have never paid any assessment for any previous improvement of such streets may be assessed for the full amount of such improvements within the general limitations prescribed by Section 3812 et seq., of the General Code.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

64.

TOWNSHIP ROAD—SECTION 7177 G. C. APPLIES TO ROAD ESTABLISHED AS LINE OR BOUNDARY OF TOWNSHIP OR MUNICIPAL CORPORATION—VILLAGE COUNCIL HAS NO AUTHORITY TO REPAIR SAID ROAD LYING WHOLLY WITHOUT CORPORATE LIMITS.

*SYLLABUS:*

1. *General Code Section 7177 does not apply to an existing township road lying entirely without the corporate limits of a village, such section relating only to a road established as part of the line or boundary of a township or municipal corporation.*

2. *There is no authority in law for a village council to repair, or assist the township trustees in repairing, a township road lying wholly without the corporate limits of such village, notwithstanding the fact that the boundary of said village has been extended by the annexation of territory to the boundary of such township road.*

COLUMBUS, OHIO, February 10, 1927.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Receipt is acknowledged of your letter of January 14, 1927, in which you quote a letter received from the solicitor of the village of Pataskala, Ohio.

In the letter quoted, the solicitor states that a road known as Vine street is, and has been for about fifty years, a township road; that in December, 1915, an addition, known as Bishop and Brown's Addition, was annexed to the village of Pataskala;

that the west boundary line of said addition was the east line of Vine street, thus leaving Vine street entirely without the corporate limits of said village.

His letter further states :

“The question has arisen as to whether the council of said village is legally bound or legally *authorized* to repair said Vine street road \* \* \* or are the township trustees legally bound or authorized to repair the same”,

and adds that council is desirous of assisting in the repair of this road in conjunction with the township trustees. He asks :

“Does the extension of the corporate boundaries, as above described, bring the manner of care of said road under General Code 7177, this not being a new established road?”

In addition to the question specifically propounded in the solicitor's letter, the following questions are presented for determination :

First: May the council of a village legally repair, or assist the township trustees in repairing, a street or road lying entirely beyond the corporate limits of said village; and

Second: Are the township trustees legally authorized or bound to repair a township road which has been such for about fifty years, and to which the limits of a village have been extended by the annexation of an addition to said village, leaving the road wholly without the corporate limits of such village?

In answer to the question contained in the solicitor's letter, your attention is invited to the language of Section 7177 of the General Code, which reads as follows :

“If a road is established as a part of the line or boundary of a township or municipal corporation, the trustees of such adjoining townships and council of such corporation, shall meet at a convenient place as soon after the first Monday of March as convenient, and apportion such road between the townships, or township and corporation, as justice and equity requires. The trustees of the respective townships, and council of the corporation, shall cause the road to be opened and improved accordingly, and shall thereafter cause their respective portions to be worked and kept in proper repair.”

An examination of the history of this section shows that it was first enacted in 1868, as Section 30 of the act providing for road supervisors and requiring all able bodied male persons, with certain exceptions, annually to do and perform two days labor on the highways. 65 V. 14 (21).

Section 30 reads as follows :

“That it shall be lawful for the supervisor of road districts, bordering on the state line between Ohio and any adjoining state, when a public highway has been located upon such state line in accordance with and under the provisions of the laws of the State of Ohio, to apply the labor of said district upon said roads in the same manner as on other roads located within the boundaries of this state; and in case any public road is or shall be established as a part of the line or boundary of any township, or incorporated village or city, the trustees in such adjoining township or townships and council of such incorporated village or city, as the case may be, shall meet at some convenient place as soon after the first Monday of March as convenient, and apportion such roads between the two townships, or township and village or city, as justice and equity may require, and the trustees in their respective

townships or village or city council, shall cause said road or roads to be opened and improved accordingly."

This act was amended in 1900 (94 V. 184), this section as amended reading substantially as originally passed, except that at the end thereof the words

"and shall thereafter cause their respective portions to be worked and kept in proper repair"

were added.

This section was again amended in 1906 (98 V. 327, 339) by changing the words in the first line "a supervisor of a road district" to "a road superintendent of a road district."

From the above it is apparent that as originally enacted the section under consideration had reference only to the apportionment of a road which was "a part of the line or boundary of any township or municipal corporation" to the township and municipal corporation for the purpose of having same kept in repair by the labor required of citizens, and did not apply to such improvement or repair as is contemplated in the letter from the solicitor above referred to.

It will be noted in the instant case that the road in question is not "established as a part of the line or boundary of a township or municipal corporation," but that on the contrary, the eastern boundary line of the road is the western boundary line of the village, i. e. the road is contiguous to the village but is not a part of the line or boundary thereof and no part of the road lies within the village.

An examination of the sections relating to the power of a municipal corporation to construct, improve, repair and maintain generally the streets of such municipal corporation, shows that all such sections have reference to streets lying within such corporation.

Section 3629, General Code, provides that a municipal corporation shall have the power

"To lay off, establish, \* \* \* grade, open, widen, narrow, straighten, extend, improve, keep in order and repair, \* \* \* streets, alleys, public grounds \* \* \*, *within the corporation* \* \* \* ." (Italics the writer's.)

And Section 3714 provides that

" \* \* \* the council shall have the care, supervision and control of public highways, streets, avenues, alleys \* \* \* *within the corporation*, and shall cause them to be kept open and repaired free from nuisance." (Italics the writer's.)

Section 7177 should be construed in the light of prior legislative policy and with the provisions of Sections 3629 and 3714, supra, and other pertinent sections in mind, and if possible the construction given to it should be consistent with the provisions of such sections. Such a construction is possible, if the conclusion be adopted that it was the purpose of Section 7177 to provide a method of apportioning the cost of improving and repairing a road lying partly within a municipal corporation and partly within a township, rather than the view that such section grants to municipal corporations the power to improve roads lying wholly without the corporate limits.

Moreover, it has been repeatedly held that a municipal corporation possesses those powers, and only those powers, expressly granted to it, and such others as are necessary to carry out the powers expressly granted; and that in any case where a

grant of power is uncertain or doubtful, the power should be denied. That Section 7177 grants the power here sought to be exercised is at least doubtful, and for this reason, as well as for the reasons above set forth, I am of the opinion that such section has no application to the road described in the solicitor's letter above referred to. And this conclusion is supported by the language of my predecessor in an opinion reported in the Opinions of the Attorney General for 1920, Vol. II, page 988, in which the following language was used:

"It cannot be heard, as against the plan outlined, that the municipality had no right to improve a township road. The fact remains that one-half of the highway is a street or public place within the confines of the village, and therefore subject to improvement by the village, even in the absence of such a statute as Section 7177."

And it might also be noted that in Ellis' Ohio Municipal Code, Section 7177 is placed under the paragraph heading "Township Roads partly in Municipality."

As to the power of the village council to repair, or assist the township trustees in repairing, a township road lying wholly without the corporate limits of a village, it is my opinion that there is no authority in law for the council of a municipal corporation to expend any funds upon a street or road not lying within the corporate limits of such municipal corporation.

As stated above, in the Improvement of streets or roads the council of a municipal corporation has only such powers as are expressly conferred by statute and such others as are necessary to carry out those expressly conferred. The sections relating to these powers in this respect are General Code Sections 3812 to 3911. I find no provision in these sections, or in any other sections, authorizing a village council to expend village funds in the repair of a township road, or for the purpose of assisting the township trustees to repair such a road, except where a road is established as a part of the line or boundary of a township or municipal corporation as provided in Section 7177, General Code. And since this section, in my opinion, does not apply to the facts in the instant case, it is my opinion that the village council cannot use the funds of the municipal corporation for the purposes specified in your letter.

For authority of the township trustees to repair the road in question, your attention is directed to Sections 3298-1 to 3298-15m, inclusive.

It is noted that the solicitor states that the village council is desirous of assisting in the repair of the road in question; and it is suggested that by the extension of the boundary line of the village so that a part of the township road herein involved would be included within the limits of the corporation, the village council would clearly have the right to expend village funds for the improvement and repair of such road.

In conclusion, it is my opinion that General Code Section 7177 does not apply to an existing township road lying entirely without the corporate limits of a village, such section relating only to a road established as part of the line or boundary of a township or municipal corporation. And I am further of the opinion that there is no authority in law for a village council to repair, or assist the township trustees in repairing, a township road lying wholly without the corporate limits of such village, notwithstanding the fact that the boundary of said village has been extended by the annexation of territory to the boundary of such township road.

Respectfully,

EDWARD C. TURNER,

*Attorney General.*