

OPINION NO. 74-053

Syllabus:

A board of township trustees is without authority to participate in the cost of installing a traffic control signal at the intersection of a state highway and a county road.

To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio
By: William J. Brown, Attorney General, June 20, 1974

Your request for my opinion reads as follows:

"My office has been contacted by the Swanton Township Board of Trustees in regard to whether or not they may legally participate with the Village of Swanton, Ohio for the installation of a traffic control signal at the intersection of Route No. 2, a State road, and Hallet Avenue, a County road.

"The Village of Swanton has applied for and received a permit to install a traffic signal at the above intersection and has requested that Swanton Township share the cost of installation, with the Village of Swanton to maintain the signal after installation.

"Hallet Avenue is also known as Fulton-Lucas Road, and the centerline is the boundary for Fulton

County on the West, and Lucas County on the East. The Village of Swanton is in Fulton County, while Swanton Township is in Lucas County.

"I request your opinion as to whether or not, under the above fact situation, the Swanton Township Board of Trustees may legally participate with the Village of Swanton in the installation of a traffic control signal at the above intersection. I bring to your attention Ohio Revised Code Section 4511.11 which may bear on this point." (Emphasis added.)

R.C. 4511.09, et seq., provide general authority for the placement of traffic control signals and other traffic control devices upon highways within this state. R.C. 4511.11 sets out the powers of "local authorities" with respect to the installation of such devices. In pertinent part that Section states that:

"(A) Local authorities in their respective jurisdictions shall place and maintain traffic control devices in accordance with the department of transportation manual and specifications for a uniform system of traffic control devices, adopted under section 4511.09 of the Revised Code upon highways under their jurisdiction as are necessary to indicate and to carry out sections 4511.01 to 4511.76 and 4511.99 of the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic.

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"(C) No village shall place or maintain any traffic control signal upon an extension of the state highway system within such village without first obtaining the permission of the director. The director may revoke such permission and may remove or require to be removed any traffic control signal which has been erected without his permission on an extension of a state highway within a village, or which, if erected under a permit granted by the director, does not conform to the state manual and specifications, or which is not operated in accordance with the terms of the permit." (Emphasis added.)

In Slicker v. Board of Education, 90 Ohio L. Abs. 108 (1961) (app. dism'd 173 Ohio St. 119), the court stated that a board of township trustees was a local authority for purposes of R.C. 4511.11. See also Opinion No. 858, Opinions of the Attorney General for 1959, p. 569, and Opinion No. 5437, Opinions of the Attorney General for 1955, p. 310, to the same effect.

It should be noted, however, that R.C. 4511.11 authorizes local authorities to place traffic control devices only on roads under their jurisdiction. R.C. 4511.10 specifically prohibits local authorities from placing such devices on roads under the jurisdiction of the Department of Transportation without the permission of the Director of Transportation.

It is, therefore, necessary to determine under what jurisdiction the intersection lies. Slicker v. Board of Education, supra, held that for purposes of R.C. 4511.11 the township trustees had jurisdiction over township roads. R.C. 5535.01 defines "township roads" as follows:

"The public highways of the state shall be divided into three classes: state roads, county roads, and township roads.

"(A) State roads include the roads and highways on the state highway system.

"(B) County roads include all roads which are or may be established as a part of the county system of roads as provided in sections 5541.01 to 5541.03, inclusive, of the Revised Code, which shall be known as the county highway system. Such roads shall be maintained by the board of county commissioners.

"(C) Township roads include all public highways other than state or county roads. The board of township trustees shall maintain all such roads within its township. The board of county commissioners may assist the board of township trustees in maintaining all such roads. This section does not prevent the board of township trustees from improving any road within its township." (Emphasis added.)

You have indicated in your letter that the intersection in question is of a state road and a county road. It follows that this intersection is not within the jurisdiction of the township trustees and the trustees are without authority under R.C. 4511.11 to install a traffic signal.

It is well established that townships, as creatures of statute, are limited to those powers specifically conferred by statute or necessarily implied from those expressly given. Yorkovitz v. Board of Township Trustees, 166 Ohio St. 349 (1957); State, ex rel. Schramm v. Ayres, 158 Ohio St. 30 (1952), Hopple v. Brown Township, 13 Ohio St. 311, 324 (1862). The board of township trustees has specific authority to place traffic signals on township roads, R.C. 4511.11 (A), over which the board has specific jurisdiction. R.C. 5535.01 (C). However, there appears to be no statutory authority for a board of township trustees to place, or participate in the cost of placing, a traffic signal at the intersection of a state highway and a county road. By way of comparison I refer you to R.C. 5555.02, which discusses the authority of a board of county commissioners, and which provides in pertinent part that:

"* * * The board may purchase or lease, erect, and maintain automatic traffic signals at such intersections of public highways outside municipal corporations as are necessary for the protection of the public traveling upon such highways. Automatic traffic signals shall not be placed at intersections of public highways on the state highway system unless the board first obtains the approval of the director of transportation.

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I find no similar provision with respect to a board of township trustees.

Nor does it appear that such authority may be inferred from R.C. 4511.10 subject only to the approval of the Director of Transportation. Rather, that Section applies to situations involving a local authority's power to install traffic control devices pursuant to a specific statutory provision. See, for example, R.C. 505.17 under which a board of township trustees may promulgate regulations for vehicle parking in the township. The Section provides in pertinent part that "such regulations and orders may be enforced where traffic control devices conforming to Section 4511.09 of the Revised Code have been prominently displayed", the necessary implication being that the board may direct the installation of such devices for the purpose of enforcing the regulations. This authority would then be subject to the provisions of R.C. 4511.10 when the traffic control devices are to be installed along roads under the jurisdiction of the Department of Transportation.

It is true that the board of township trustees has ample statutory authority to construct, repair or improve any public road within the township. R.C. 5571.01; see also R.C. 5535.01 (C) and R.C. 5535.08. But, as I have indicated, I find no statutory provision which either expressly provides or necessarily implies that the township has authority to place a traffic signal at the intersection of a state highway and a county road. The jurisdiction of the township with respect to traffic lights is confined to township roads. Over forty years ago, one of my predecessors drew a distinction between improvement of the road itself and the installation of traffic lights, and, while expressing some doubt on the matter, he concluded that, while the statutes contained authority for the former, there was none for the latter. Opinion No. 1370, Opinions of the Attorney General for 1930; Opinion No. 2210, Opinions of the Attorney General for 1930; cf. also Opinion No. 5750, Opinions of the Attorney General for 1936; Opinion No. 6827, Opinions of the Attorney General for 1944. In the second of the 1930 opinions the then Attorney General said (at p. 1288):

"It must be concluded that the distinction between expenditures for these purposes and for traffic lights is of considerable difficulty. I feel, however, that traffic lights are not such a part of street construction or maintenance as to warrant including their cost within the purposes of these taxes. They constitute, as was stated in my previous opinion, substantially a substitution for a police officer in the regulation of traffic and, until the Legislature has spoken, I do not feel warranted in extending the purposes of the taxes here in question to that point."

Despite this language the General Assembly has never thought it necessary to give township trustees the same authority over traffic lights which they have over road surfaces within the township.

Therefore, in answer to your question, it is my opinion and you are so advised that a board of township trustees is without

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authority to participate in the cost of installing a traffic control signal at the intersection of a state highway and a county road.