

the former. But it is equally well settled that repeals by implication are not favored, and, where two affirmative statutes exist, one is not to be construed to repeal the other by implication unless they can be reconciled by no mode of interpretation. The fact that a later act is different from a former one is not sufficient to effect a repeal. It must further appear that the later act is contrary to or inconsistent with the former. The question is one of legislative intent. It must clearly appear that the legislature intended not only to enact a new law but to enact it in place of the old one."

In view of the foregoing and for the reasons given, it is my opinion that that part of Section 2131-1, General Code, relating to the parole of juvenile prisoners from the Ohio State Reformatory and the supervision and recommitment of such parolees, was repealed by the Pardon and Parole Code (Sections 2209 and 2209-23, inclusive, General Code), and that the Pardon and Parole Commission has full, complete and exclusive jurisdiction over the parole of all prisoners confined in the Ohio State Reformatory, and the supervision and recommitment of such parolees, including those committed by the juvenile court.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1545.

TOWNSHIP HIGHWAY—NO AUTHORITY IN BOARDS OF TOWNSHIP TRUSTEES TO CONSTRUCT OR RESURFACE BY FORCE ACCOUNT—NO AUTHORITY TO PURCHASE HIGHWAY MATERIALS AT A COST IN EXCESS OF \$500.00 WITHOUT COMPETITIVE BIDDING.

SYLLABUS:

1. *Boards of township trustees are granted no authority to construct or resurface a township highway by force account. Section 3373, General Code, grants authority only to repair or maintain a township highway as therein prescribed.*

2. *A board of township trustees has no authority to make a purchase of highway materials at a cost in excess of \$500.00, without competitive bidding.*

COLUMBUS, OHIO, December 8, 1939.

HON. PAUL D. MICHEL, *Prosecuting Attorney, Marion, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion which reads as follows:

“Will you kindly render to me an opinion on the following questions:

1. Can the township trustees of a township construct a new road by force account?
2. Can the township trustees of a township resurface a road by force account?
3. Can the township trustees of a township purchase material of a value over \$200.00 for the repair of a road by force account without receiving bids for the same?
4. In many townships throughout the State material is purchased by the township trustees for constructing and resurfacing roads by force account, which cost more than \$200.00, without receiving bids for the same.

In order to circumvent Section 3373, General Code, they have made their purchases of materials to be used on one road in small quantities from the same material man which cost less than \$200.00. In other words, if the material for the construction of a certain road cost \$1,000.00 they would issue to the material man six checks of \$166.66.

Question:

Is the above method of buying material legal?”

It must be borne in mind that a board of township trustees is a public body which has such powers and such only as have been granted to it by the statutes creating such board. *Elder vs. Smith*, 103 O. S., 369; *Jones vs. Commissioners*, 57 O. S., 189.

It is therefore evident that unless the power to construct or repair a highway is found in the statutes such board has no such power. In Section 3298-1, General Code, we find a grant of power to construct, reconstruct, resurface or improve highways. Such section reads as follows:

“The board of trustees of any township shall have power, *as hereinafter provided*, to construct, reconstruct, resurface or improve any public road or roads, or part thereof, under their jurisdiction. Such trustees shall also have the power to construct, reconstruct, resurface or improve any county road or inter-county highway or main market road within their town-

ship; provided, however, that in the case of a county road the plans and specifications for the proposed improvement shall first be submitted to the county commissioners of the county and shall receive their approval and in the case of an inter-county highway or main market road such plans and specifications shall first be submitted to the state highway commissioner and shall receive his approval. The township trustees shall have power to widen, straighten or change the direction of any part of a road in connection with the proceedings for its improvement.” (Italics mine.)

Such section was part of an act which contained what are now designated as Sections 3298-1 to 3298-15, General Code, both inclusive. Such act was later supplemented by the enactment of Sections 3298-15a to 3298-15n, and 3298-16 to 3298-53a, General Code, both inclusive. Sections 3298-15f and 3298-15g, General Code, read as follows:

Sec. 3298-15f. “After the trustees have decided to proceed with said improvement, they shall advertise for bids once not later than two weeks prior to the date fixed for the letting of contracts in a newspaper published in the county and of general circulation within such township, if there be any such paper published in the county, but if there be no such paper published in the county then in a newspaper having general circulation in said township. Such notice shall state that copies of the surveys, plans, profiles, cross-sections, estimates and specifications for such improvement are on file with the township trustees, and the time within which bids will be received. The township trustees may let the work as a whole or in convenient sections as they may determine. They shall award the contract to the lowest and best bidder. The contract shall be let upon the basis of lump sum bids, unless the trustees order that the same be let upon the basis of unit price bids, in which event it shall be let upon such basis.”

Sec. 3298-15g. “No contract for any improvement shall be awarded at a greater sum than the estimated cost thereof. The bids received shall be opened at the time stated in the notice. If no bids are made within the estimate, the township trustees shall either readvertise at the original estimate, or amend the estimate and proceed to advertise at the amended estimate. The township trustees shall have the right to reject all bids.”

I am unable to find any statute granting authority to a board of township trustees acting alone, to construct, reconstruct, resurface or improve a township highway except by means of a contract entered into

by competitive bidding. It is a well established rule that when the legislature grants to a public officer or board the power to perform an act in a specified manner the specification of the manner is also the limit of the power granted and it may be done in no other manner. *Anderson vs. Madsen Inv. Co.*, 72 Fed. 2d, 768; *Frisbee Co. vs. East Cleveland*, 98 O. S., 266.

After the township highway has been constructed the legislature has made provision for its maintenance and repair. In Section 3370, General Code, the following language is contained:

“1. They may designate one of their number to have charge of the maintenance and repair of roads within the township, or

2. They may divide the township into three road districts, in which event each trustee shall have charge of the maintenance and repair of roads within one of such districts, or

3. They may appoint some competent person, not a member of the board of trustees, to have charge of the maintenance and repair of roads within the township which person shall be known as township highway superintendent, and shall serve at the pleasure of the township trustees. The method to be followed in each township shall be determined by the township trustees by resolution duly entered on their records.”

In Section 3373, General Code, the following language is contained:

“In the maintenance and repair of roads the township trustees may proceed either by contract or force account. When they proceed by contract, the contract shall, in case the amount involved exceeds two hundred dollars, be let by the township trustees to the lowest responsible bidder after advertisement for bids once not later than two weeks prior to the date fixed for the letting of such contract, in a newspaper published in the county and of general circulation within such township, if there be any such paper published in the county, but if there be no such paper published in the county, then in a newspaper having general circulation in said township. If the amount involved is two hundred dollars or less the contract may be let without competitive bidding. Such contract shall be performed under the supervision of a member of the board of township trustees or the township highway superintendent. Township trustees are hereby authorized to purchase or lease such machinery and tools as may be deemed necessary for use in maintaining and repairing roads and culverts within the township. The township trustees shall provide suitable places for housing and storing machinery and tools owned by the township. They shall have the

power to purchase such material and to employ such labor and teams as may be necessary for carrying into effect the provisions of this section, or they may authorize the purchase or employment of the same by one of their number or by the township highway superintendent at a price to be fixed by the township trustees.

All payments on account of machinery, tools, materials, labor and teams shall be made from the township road fund as provided by law. All purchases of materials, machinery and tools shall, where the amount involved exceeds five hundred dollars, be made from the lowest responsible bidder after advertisement made in the manner hereinbefore provided. All force account work shall be done under the direction of a member of the board of township trustees or of the township highway superintendent."

Preceding Attorneys General have had occasion to construe Section 3373, General Code. In Opinions of the Attorney General for 1927, Volume 4, page 2466, it was held that:

"Where the improvement of a township road is of such a nature as to constitute 'new construction', it is unlawful for township trustees to follow the method of force account as provided in Section 3373, General Code."

In Opinions of the Attorney General for 1919, Volume 2, page 1281, the then Attorney General ruled that:

"Maintenance and repair by township trustees as mentioned in Section 3373, General Code, does not include 'improving' and 'resurfacing' as those terms are used in Section 3298-5, General Code."

In view of the language of the statute which grants to a board of township trustees the right to construct or resurface highways in the manner provided in Sections 3298-1 et seq., General Code, which language does not include construction by means of force account, I am of the opinion that my predecessors were correct in their holdings, and that your first and second inquiries should be answered in the negative.

From the foregoing, it is evident that if the materials spoken of in your inquiry are to be purchased for use other than the maintenance or repair of township highways, they may not be purchased under authority of Section 3373, General Code. If, however, such materials are for the purpose of maintenance and repair of township highways, the language of Section 3373, General Code, is specific in its provision that when the

amount of the purchase exceeds the sum of five hundred dollars such purchase must be made by competitive bidding. It is elemental that a public official may not do indirectly that which he may not do directly. The limitation of two hundred dollars contained in such section is applicable only when it is determined to make the repairs by contract. If the contract price is more than two hundred dollars the contract must be let by competitive bidding.

In specific answer to your inquiry, it is my opinion that:

1. Boards of township trustees are granted no authority to construct or resurface a township highway by force account. Section 3373, General Code, grants authority only to repair or maintain a township highway as therein prescribed.

2. A board of township trustees has no authority to make a purchase of highway materials at a cost in excess of \$500.00, without competitive bidding.

Respectfully,

THOMAS J. HERBERT,
Attorney General.

1546.

BOARD OF EDUCATION—LOCAL SCHOOL DISTRICT—MAY BY RESOLUTION FIX NAME OF DISTRICT—DESIGNATION UNDER WHICH BUSINESS OF DISTRICT IS TO BE CONDUCTED—CORPORATE NAME—SHOULD REFLECT CLASS OF SCHOOL DISTRICT—NOT ABSOLUTELY NECESSARY SUCH BE THE CASE.

SYLLABUS:

1. *A board of education of a local school district under its general power as extended by statute to manage and control the affairs of its district, may by resolution fix the name by which the district shall be known and under which designation the business of the district is to be conducted.*

2. *Although the corporate name fixed or used by a board of education under which its official corporate business is conducted for practical reasons should reflect the class of school district as provided by law for which the board acts, it is not absolutely necessary that such be the case.*

3. *A variation from the strict legal designation of a school district as to whether it is a city, village, exempted village or rural district as provided by law, in the transaction of official business for the district, will not render invalid the business so conducted.*

4. *The misnomer of a school district in contracts made on behalf of the district is not fatal or effectual to avoid such contracts, if the identity of the district so contracting may otherwise be established.*