1521

SIDEWALK—CONSTRUCTED BY AUTHORITY OF SECTION 3857 G. C.—OWNER OF ABUTTING PROPERTY LIABLE FOR COST OF CONSTRUCTION—LEASE AGREEMENT—LESSEE TO BE LIABLE FOR LIENS, CLAIMS AND DAMAGES CAUSED BY IMPROVEMENTS—MADE BY LESSEE—OWNER NOT RELIEVED OF LIABILITY FOR COST OF CONSTRUCTION OF SIDEWALKS BUILT BY FORCE ACCOUNT.

SYLLABUS:

When a sidewalk is constructed by authority of Section 3857, General Code, the owner of the abutting property is liable for the cost of construction. A lease agreement which provides that the lessee is to be liable for liens, claims and damages caused by improvements made by the lessee does not relieve the owner of liability for the cost of construction of sidewalks which were built by force account.

Columbus, Ohio, March 1, 1950

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"In 1947, the County Commissioners of Montgomery County purchased certain property. In the deed to the county commissioners is contained the following:

" 'That the said premises are free and clear from all en-

> cumbrances whatsoever excepting all taxes and assessments due and payable after December 19, 1947, excepting also all assessments which now have or may hereafter be reassessed against the said real estate; all of which the grantees (county commissioners) herein assume and agree to pay as a part of the consideration for this conveyance.'
>
> "Subsequently, the county commissioners leased this same property to the person from whom they purchased it, and in the lease executed by the commissioners is the following:
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> " 'The lessee will make all repairs to the building or grounds and will indemnify and save harmless the lessor from and against all liens, claims or damages by reason of any repair or improvement that may be made by said lessee on said premises.'
>
> "The City of Dayton required that sidewalks be laid abutting the property involved, and proceeded to construct such sidewalks by force account.
>
> "QUESTION: Who is responsible for payment of the bill for the construction of said sidewalks, the county commissioners or the lessee?"

Section 3854, General Code, provides for notice to be given to the owner of land abutting that upon which sidewalks are to be built. Section 3857, General Code, reads in part as follows:

> "If such sidewalks, curbing or gutters are not constructed within fifteen days, or not repaired within five days from the service of notice, or completion of the publication, the director of public service in cities may do or have it done at the expense of the owner, and all such expenses shall be assessed on all the property abounding or abutting thereon * * *"

Section 3864, General Code, states as follows:

> "In municipal corporations, when sidewalks, curbing or gutters are to be constructed pursuant to a resolution of council, the director of public service in cities and council in villages, may construct such sidewalk or parts thereof, or curbing or gutters or parts thereof, and assess the cost and expense thereof upon the abutting, adjacent and contiguous or other specially benefited property according to the rule heretofore provided for street improvements."

It is apparent from the above that the expense of building these sidewalks is to be born by the owner thereof.

The lease executed between the county commissioners and the lessee provided that the lessor should be indemnified against all liens, claims, or damages by reason of any improvement that may be made by the lessee on said premises. It cannot be said here that the lessee made the improvement. From the very nature and intent of the above quoted statutes, the improvements are to be charged to the owners of the property. It was certainly not the intention of the legislature to charge the expenses of permanent improvements against one who might use the property for only a short period of time. If it could be argued that anyone other than the city made these improvements, it still could not be said that the lessee rather than the owner made them. The statute provides for notice to be given to the owner to make these improvements. If the owner does not do so, the city may do it and charge it to the owner. I do not believe that the lessee should pay under these circumstances. Furthermore, it is quite clear that the statute provides that the owner of the property is the one to whom the city looks for the actual payment of such costs.

In conclusion, therefore, it is my opinion that the county commissioners are liable to the City of Dayton for the cost of construction of the sidewalks. I further believe that the lease agreement does not relieve the county commissioners of this responsibility.

Respectfully,

HERBERT S. DUFFY,
Attorney General.