

1209

1. ROADS OR STREETS IN PLATTED TERRITORY OUTSIDE OF MUNICIPALITIES—MAY BE DEDICATED PURSUANT TO EITHER SECTIONS 6886 OR 3580 ET SEQ., G. C.
2. DUTY OF MAINTENANCE OF IMPROVED ROADS OR STREETS IN PLATTED TERRITORY OUTSIDE OF MUNICIPALITIES—RESTS WITH TRUSTEES OF TOWNSHIP IN WHICH ROADS OR STREETS LOCATED.

## SYLLABUS:

1. Roads or streets in platted territory outside of municipalities may be dedicated pursuant to either Sections 6886 or 3580 et seq., General Code.
2. The duty of maintenance of improved roads or streets in platted territory outside of municipalities rests with the trustees of the township in which such roads or streets are located.

Columbus, Ohio, November 16, 1949

Hon. Mathias H. Heck, Prosecuting Attorney  
Montgomery County, Dayton, Ohio

Dear Sir:

I am in receipt of your communication which reads as follows:

“Who has the mandatory duty for the maintenance and upkeep of the constructed and improved roads in platted territory outside of municipalities?”

“This involves the question: When do these roads become public roads? When does the duty of the public authorities begin?”

“We have one instance in Montgomery County, where a plat was filed and approved by the Montgomery County Planning Commission. The roads on the plat were fully constructed, and drained, ready for public use and approved by the County Engineer. The township trustees refused to accept the responsibility for their upkeep for the following reasons:

1.

“That roads were not up to the standard of construction maintained for county roads. Sec. 7466. (Although having been built to the county engineers specifications.)

2.

“Insufficient funds in Township for their maintenance.

## 3.

"Will not assume at the present time the liability of township for negligence concerning use of said roads. Sec. 3298-17.

"Under Section 6973 et seq the County Commissioners have the power to maintain roads on platted lands without a municipality, but it is not a mandatory duty.

"Section 6906-1 authorizes the County Commissioners to maintain roads within three miles of the corporate limits of municipalities. This authority is only directory. Under AGO 1935 No. 4039 the Township Trustees have the authority to improve streets in platted areas outside municipalities.

"We have read AGO 1928, Vol. III No. 2681, page 2286; also AGO 1942 No. 4712 p 11, and Robinson -vs- Swing 34 ABS p 292, and Dayton -vs- Rhotshamel admr 90 OS page 175. These opinions do not seem to answer the question:

"Are public authorities compelled to accept the responsibility for maintenance of constructed roads in plats outside of municipalities, when the roads and their construction have been approved by the county Engineer, the County Planning Commission and County Commissioners."

Briefly stated, the questions propounded by your communication are as follows:

1. When do improved roads in platted territory outside of municipalities become public roads?
2. Who has the mandatory duty for the maintenance and upkeep of the constructed and improved roads in platted territory outside of municipalities?

In answer to your first question, your attention is invited to Section 6886. General Code, which reads in part as follows:

"Any person or persons may, with the approval of the county commissioners, dedicate lands for road purposes. A definite description of the lands to be dedicated with a plat of the same thereto attached and signed by the party dedicating the same, with the approval and acceptance of the commissioners endorsed thereon, shall be placed upon the proper road records of the county in which such road is situated. \* \* \* the proposal to dedicate land for road purposes together with the acceptance of the grant by the commissioners shall constitute the lands so dedicated a public road without any further proceedings thereon."

This statute is a codification of the common law rule pertaining to dedications which require not only the intent of the owner to give

the land to the public, but also require a legal acceptance of such grant by the proper authorities.

In addition thereto, provisions are made for a statutory dedication of roads or streets in platted territory outside of a municipality through Sections 3580 to 3583-1, inclusive, of the General Code. It should also be noted that in order to constitute a statutory dedication, the formalities required by these statutes demand strict compliance.

The statement of facts as contained in your communication does not say specifically what has been done with reference to the dedication so that I might determine whether the statutory requirements have been fulfilled, but the means of realizing a valid dedication are contained in the statutes cited supra.

Obviously, if there has been no dedication to the public of the streets and roads referred to in your letter, there is no duty upon any public authority to maintain them.

However, assuming these streets and roads have been duly dedicated, the answer to your second question turns to Section 7464, General Code, which reads as follows:

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

“(a) State roads shall include the roads and highways on the state highway system.

“(b) County roads shall include all roads which have been or may be established as a part of the county system of roads as provided for under sections 6965, 6966, 6967 and 6968 of the General Code, which shall be known as the county highway system, and all such roads shall be maintained by the county commissioners.

“(c) Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships; and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act.”

Since the streets or roads to which you refer were never incorporated into either the county or state system, that part of Section 7464 which reads as follows becomes relevant:

“(c) Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships; \* \* \*”

A similar problem arose in Opinion No. 2681, Opinions of the Attorney General for 1928, Volume III at page 2286, where the syllabus reads as follows:

“Township trustees are by virtue of the provisions of Section 7464, General Code, charged with the duty of maintaining roads and streets in platted territory outside the boundaries of any municipality, unless such roads or streets are, by action of the county commissioners of the state, incorporated in either the county or state system.”

I am accordingly of the opinion in specific answer to your second question that the duty to maintain streets and roads in a platted territory outside a municipality rests with the trustees of the township in which such streets and roads are located.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.