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TOWNSHIP TRUSTEES:

1. NO MANDATORY DUTY TO WIDEN TOWNSHIP HIGHWAY TO ACCOMMODATE MACHINERY OR EQUIPMENT HAVING WIDER TRACTION THAN ORDINARY VEHICLES.

2. DISCRETION — MAY WIDEN SUCH TOWNSHIP ROAD — SECTION 3298-1 ET SEQ., G. C.

SYLLABUS:

1. There is no mandatory duty requiring township trustees to widen a township highway so as to accommodate machinery or equipment having a wider traction than ordinary vehicles.

2. Township trustees may in their discretion under the provisions of Section 3298-1, et seq. widen a township road so as to accommodate machinery or equipment having a wider traction than ordinary vehicles.

Columbus, Ohio, June 3, 1944

Hon. W. Thurman Todd, Prosecuting Attorney
Mt. Vernon, Ohio

Dear Sir:

Acknowledgment is made of your communication which reads:

"I would like to have your opinion upon the following question. It is evident from General Code, Sections 3370, 7464, 7467, and from many Attorney Generals' opinions, that as a general proposition the township trustees are charged with the duty of maintaining, repairing and keeping passable for ordinary vehicular travel all township roads.

We have in this county a short dead end road serving two individuals. Are the trustees required by law to grade out and keep this road wide enough to permit its use by modern, wide, farm equipment such as drills, combines and the like, or does the requirement of keeping the road passable apply only to ordinary vehicles of travel?"

It is believed unnecessary to quote the sections to which you refer and sufficient to state that in so far as your question is concerned, the statutes you mention place the burden upon the township trustees to maintain and repair township roads.

One of my opinions reported in Opinions of the Attorney General for the year 1939, page 1208, contains a comprehensive discussion of the duties and responsibilities of township trustees in connection with township roads. I concluded as is disclosed by the syllabus:

"1. Township trustees have control of the township roads within their township.

2. In connection therewith, a board of township trustees may in the exercise of its sound discretion take whatever action it deems proper to keep such township roads in repair and safe for public travel.

3. If through negligence or carelessness a board of township trustees fails to discharge its duty to keep a township road in repair and safe for travel, under the provisions of section 3298-17, General Code, such board is liable in its official capacity to anyone proximately damaged thereby."

While it seems clear that it is a mandatory duty of the trustees to maintain and repair township roads, your letter gives rise to the inquiry as to whether the widening of a highway so as to accommodate vehicles with wider traction than ordinary vehicles can be said to be

maintenance or repair within the meaning of the statutes.

It is believed apropos to consider in connection with your inquiry, Sections 3298-1, et seq. Said Section 3298-1 provides in the opening paragraph that the trustees shall have the power:

“* * * to construct, reconstruct, resurface or improve any public road or roads, or part thereof, under their jurisdiction. * * *”

The concluding sentence of said section reads:

“* * * 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.”

The following sections authorize petitions to be presented and further authorize the trustees to improve a road without petition.

Section 3298-13 sets forth methods whereby all or any part of the cost of such improvement may be assessed against the real estate.

Section 3298-15 authorizes the trustees by unanimous vote and without a petition, to order all the compensation and damages, costs and expenses to be paid out of the proceeds of any levy or levies for road purposes or out of any road improvement fund.

From the foregoing, it seems to be clear that there are two distinct subjects: one is maintenance and repair and the other a road improvement project. The sections you mention authorize maintenance and repair but do not authorize a so-called road improvement as mentioned in Section 3298-1 and its related sections.

It is further evident that the widening of a highway is a major improvement, authorized under Section 3298-1, which undertaking is solely within the discretion of the township trustees, whereas, the maintenance or repair is a mandatory duty imposed upon them.

While in view of changing conditions as to type of farm equipment it may be wise to widen certain township roads, such action is solely within the discretion of the township trustees and the sections you mention apparently do not authorize such procedure. This conclusion by analogy is supported in a number of opinions of the Attorney Gen-

eral to the effect that gasoline taxes distributed to municipalities under Section 5541-8, General Code, could not be used for the purchase of additional right of way until the section was amended so as to specifically mention "widening" as one of the purposes for which such fund may be used. See Opinions Attorney General, 1929, page 1891.

In view of the foregoing, you are specifically advised that:

1. There is no mandatory duty requiring township trustees to widen a township highway so as to accommodate machinery or equipment having a wider traction than ordinary vehicles.

2. Township trustees may in their discretion under the provisions of Section 3298-1, et seq. widen a township road so as to accommodate machinery or equipment having a wider traction than ordinary vehicles.

Respectfully,

THOMAS J. HERBERT

Attorney General