

2122.

COUNTY COMMISSIONERS—POWER TO LOCATE AND ESTABLISH  
PUBLIC ROAD LEADING TO HISTORIC SITE—CONSTRUCTION AND  
MAINTENANCE OF SUCH ROAD DISCUSSED.

**SYLLABUS:**

*Under the provisions of Section 6860, et seq., General Code, a board of county commissioners may locate or establish a public road leading to a historic site within their county, and after such road has been located or established as a public road, it may be constructed, improved and maintained by a board of trustees of the township in which such road lies, the board of county commissioners of the county in which such road is located, or the Department of Highways, depending upon whether such road is a township, county or state road.*

COLUMBUS, OHIO, July 22, 1930.

HON. MICHAEL B. UNDERWOOD, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

“Recently the organization, the Daughters of American Revolution, through their president requested that I advise them relative to a law which provides that the county commissioners should construct bridges and repair roads that were necessary for the public to approach any historic place of state or national importance.

The local chapter of the Daughters of American Revolution located at Kenton, Ohio, in Hardin County, have been endeavoring for some time past to preserve the site of Fort McArthur, which was the scene of some historic events that transpired during the War of 1812. This place is located a few miles west of Kenton, and in order to drive to the place it is necessary to traverse a short lane and cross a small stream. The local chapter is endeavoring to have this lane improved and the bridge repaired or replaced, and understand that there is a law that enables the county commissioners if they so desire, to expend some money for such work.

We would appreciate a report on this, and any information which you can give us.”

Section 6860, General Code, provides as follows:

“The county commissioners shall have power to locate, establish, alter, widen, straighten, vacate or change the direction of roads as hereinafter provided. This power extends to all roads within the county, except that as to roads on the state highway system the approval of the director of highways shall be had.”

The sections immediately following the foregoing set forth the detailed procedure for the location and establishment by the county commissioners of any road within the county. I assume that the lane leading to the property to which you refer has not been dedicated as a public road. It would, therefore, follow that under the

provisions of Sections 6860, et seq., General Code, the county commissioners may locate or establish a public road such as is desired.

After such road is located or established the question of who shall bear the chief responsibility as to construction and maintenance, will depend upon whether or not this road is a township, county or state road. Public highways of this state are classified in Section 7464, General Code, which provides 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."

Sections 6965, et seq., relate to the county system of highways. Under the provisions of Section 6966, General Code, a board of county commissioners "may from time to time make changes in the county system or addition thereto." Of course, in the event the county commissioners should not see fit to take the necessary steps after having established the road in question to include such a road in the county system, it follows under the provisions of Section 7464, supra, that such road will be a township road, providing, of course, such road is not designated by the Director of Highways as a state highway under the provisions of Section 1189, General Code, as amended by the 88th General Assembly.

I do not deem it necessary for the purposes of this opinion to outline the various methods of procedure and steps which must be taken for the construction or the improvement of the various roads of the State of Ohio by the board of township trustees, boards of county commissioners, and the Department of Highways. In the event proceedings should be taken by the township trustees, the provisions of Section 3298-1, et seq., would, of course, govern, and should proceedings be taken by the board of county commissioners, the provisions of Section 6906, et seq., would apply.

In view of the foregoing and in specific answer to your inquiry, it is my opinion that, under the provisions of Section 6860, et seq., General Code, a board of county commissioners may locate or establish a public road leading to a historic site within their county, and after such road has been located or established as a public road, it may be constructed, improved and maintained by a board of trustees of the township in which such road lies, the board of county commissioners of the county in which such road is located, or the Department of Highways, depending upon whether or not such road is a township, county or state road.

Respectfully,

GILBERT BETTMAN,

*Attorney General.*