

3995.

COUNTY COMMISSIONERS—UNANIMOUS VOTE REQUIRED UNDER SECTION 6911, G. C., WHERE COUNTY ROAD TO BE RESURFACED WITH TARVIA.

SYLLABUS:

*Where a county road is to be improved by resurfacing with tarvia, the provisions of Section 6911, General Code, with respect to a unanimous vote of the county commissioners, must be complied with.*

COLUMBUS, OHIO, March 4, 1935.

HON. VERNON L. MARCHAL, *Prosecuting Attorney, Greenville, Ohio.*

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

"I would appreciate your rendering this office an opinion relative to the construction of Section 6911 of the General Code of Ohio, which provides as follows:

'The board of county commissioners may by resolution, which said resolution shall be adopted by unanimous vote, find that the public convenience and welfare require the improving of any public road or part thereof by grading, draining, paving, straightening and widening the same, and constructing or re-constructing any bridges and culverts necessary for such improvement, and in said resolution shall fix the route and termini of such improvement, and shall apportion the cost thereof,' etc.

My question is: Where it is the desire of the board of county commissioners to improve a county road by applying tarvia to it, that being the only improvement to be made to said road, whether or not it would be necessary to have a unanimous vote of the board of county commissioners, or if a majority vote on such resolution would be sufficient.

In this case, it is the intention of the county commissioners to pay the entire cost of the improvement out of the county funds and the work to be done under the direction of the surveyor, with county equipment and county employes."

Section 6911, General Code, to which you refer, was under consideration in an opinion of this office appearing in Opinions of the Attorney General for 1928, Vol. III, page 1631, the syllabus of which is as follows:

"A board of county commissioners may, under the provisions of Section 6911, General Code, as amended by the 87th General Assembly (112 v. 488) proceed by resolution adopted by unanimous vote without the filing of a petition, as authorized by Sections 6907, 6908 and 6909 of the General Code, to grade, drain, pave, straighten or widen roads under their jurisdiction, and to construct or reconstruct any bridges and culverts necessary for such an improvement."

Although Section 6911, General Code, was amended by the 88th General Assembly in the year 1929, since the rendition of the foregoing opinion, in so far as your question is concerned no change was made in its provisions.

Your question is one of whether or not the resurfacing of a road with tarvia constitutes "paving" within the meaning of the term as used in the portion of Section

6911, General Code, quoted in your letter. You state that the road is to be improved by applying tarvia to it and I assume that it is proposed to resurface the road with tarvia rather than to patch a tarvia road by applying tarvia in worn places.

It is observed that the unanimous vote required by Section 6911, General Code, is necessary, even though only a part of a road is to be improved by grading or draining. The grading or draining of a part of a road in many instances would constitute a minor improvement compared to the surfacing of such road with a paving material such as tarvia. It is my opinion that this requirement as to unanimous vote where a road or part thereof is to be improved by paving would be applicable to cases where the road is to be resurfaced with tarvia.

Respectfully,  
 JOHN W. BRICKER,  
*Attorney General.*

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3996.

APPROVAL, CERTIFICATE OF TITLE, ETC., TO LAND IN FRANKLIN TOWNSHIP, TUSCARAWAS COUNTY, OHIO, IN CONNECTION WITH MUSKINGUM WATERSHED CONSERVANCY DISTRICT.

COLUMBUS, OHIO, March 4, 1935.

*The Board of Directors of the Muskingum Watershed Conservancy District, New Philadelphia, Ohio.*

GENTLEMEN:—You have submitted for my examination and approval a certificate of title, certificate of items not of record warranty deed form, owner's description, surveyor's certificate, engineer's certificate re. gravel pit, contract encumbrance record No. 56 and Controlling Board certificate, relating to the proposed purchase by the Muskingum Watershed Conservancy District of three tracts or parcels of land which are owned of record by Austin H. Bash and Anna Bash, in Franklin Township, Tuscarawas County, Ohio, which parcels of land are more particularly described by metes and bounds as follows:

*First Parcel:*

A part of Lot Twenty-three (23) in the First Quarter of Township Ten (10) North, Range Three (3) West of the United States Military Survey; and being included within the lines described as follows, to wit:

Beginning at the southeast corner of said Lot Twenty-three (23); thence along the south line of said Lot 23, North eighty-three degrees and fifteen minutes West (N 83° 15' W) one thousand six hundred and seventy-three and one-tenth (1673.1) feet; thence North six degrees and fourteen minutes East (N 6° 14' E) one thousand three hundred and eighty-six (1386) feet; thence North seven degrees and fourteen minutes East (N 7° 14' E) two hundred and eighty-four and five tenths (284.5) feet, more or less, to a point on the north line of said Lot 23; thence along the said north line of Lot 23, South eighty-three degrees and fifteen minutes East (S 83° 15' E) one thousand and fifty-two and four tenths (1052.4) feet, more or less, to the intersection of the said north line of Lot 23 with the west right-of-way line of the Cleveland, Lorain and Wheeling Railway; thence along the said west right-of-way line of the