

1063.

HIGHWAYS—WITHIN MUNICIPALITIES—WHEN PART OF STATE HIGHWAY SYSTEM—DUTY OF MUNICIPALITY TO REPAIR—TRAFFIC AND POLICE REGULATIONS.

SYLLABUS:

(1) *Public highways, located within municipalities, that have been designated as extensions or continuations of inter-county highways or main market roads by the Director of Highways and Public Works, as provided in Section 1189, General Code, are, in a limited sense, a part of the state highway system.*

(2) *There is no obligation or mandatory duty on the part of the Director of Highways and Public Works to keep in repair or maintain extensions or continuations of intercounty highways or main market roads, located within cities or villages, but the Director of Highways and Public Works, under the provisions of Section 1224-2, General Code, upon the application of the county commissioners or township trustees, and with the consent of the council of such municipal corporation, may maintain and repair such highways. Likewise, the Director of Highways and Public Works, when acting without the cooperation of the county commissioners or township trustees, but subject to the obtaining of the consent of the council of a municipal corporation, may maintain and repair such highways and pay the entire cost thereof out of funds available to the state for such purposes.*

(3) *Under the provisions of Section 3 of Article XVIII of the Constitution of Ohio, a municipal corporation may establish such police regulations pertaining to traffic and otherwise upon state highways, located within such municipalities, as are not inconsistent with general laws. A municipal corporation may not determine which of two state highways, located within such municipality, is a main thoroughfare, for the reason that under the provisions of Section 6310-30, General Code, all main market and inter-county highways, located within the state, are main thoroughfares. Under Section 6310-32, General Code, local authorities, however, may designate, by ordinance, what vehicles shall have the right of way at the intersection of main thoroughfares.*

COLUMBUS, OHIO, September 27, 1927.

HON. ROBERT M. BROOKES, *Prosecuting Attorney, Lisbon, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

“I would like to have the opinion of your office upon the following questions:

Are public highways within the limit of incorporated cities and villages a part of the state highway system? Is there an obligation upon the part of the state to pay part of the expense of paving or resurfacing the part of the highway that is within the city limits? Does the city have such control over the part within the city limits so as to regulate traffic, determine which of two state highways in said town are main thoroughfares and otherwise control said highways?

I would appreciate your forwarding me your opinion upon the above questions.”

Your inquiry embraces three questions, which will be considered in the order which they appear in your letter.

You first inquire whether public highways, located within the limits of incorporated cities and village, are a part of the state highway system. Section 1189, General Code, provides, in part, as follows:

"The inter-county highways and main market roads heretofore established by law, shall continue to be and remain a part of the system of inter-county highways and main market roads of the state unless changed in the manner hereinafter provided.

In addition to the inter-county highways and main market roads heretofore established under authority of law, the director of highways and public works shall have authority to designate additional inter-county highways or main market roads, or change existing inter-county highways or main market roads after notice and hearing as hereinafter provided.

Provided, however, the authority granted herein to the Director of Highways and Public Works to abandon all or any part of such inter-county highway or main market road shall not apply to any section of such highway previously constructed by the state co-operatively and taken over by the state for maintenance.

Before establishing any additional main market roads or inter-county highways, or making any changes in existing inter-county highways or main market roads, the Director of Highways and Public Works shall give notice by publication in two newspapers of general circulation in each of the counties in which the proposed road or highway to be established is located or in which it is proposed to make such changes, (by publication), once each week for two successive weeks. Such notice shall state the time and place of hearing, which hearing shall be held in the county, or one of the counties, in which said proposed road or some part thereof is situated, or in which it is proposed to make such changes, and which hearing shall be open to the public, and which notice shall further state the route of the proposed inter-county highway or main market road or the change proposed to be made in an existing inter-county highway or main market road. The Director of Highways or an engineer designated by him shall attend such hearing and hear any proof offered on such matter. Any changes made in existing inter-county highways or main market roads by the Director of Highways or any additional inter-county highways or main market roads established by him following such hearing, shall be certified to the counties interested therein, and a report of such change or addition filed in the office of the governor, and the report of the Director of Highways making such change or establishing such road shall be placed on file in the office of the department.

* * * * *

Within one hundred and twenty days after the taking effect of this act the Director of Highways and Public Works shall make, or cause to be made a map showing thereon, by appropriate numbering or other designations, all the inter-county highways and main market roads within the state, *together with the continuations of such inter-county highways and main market roads over the streets into or through the municipalities which are on the lines of such inter-county highways and main market roads.* Said map shall also show or designate such part or parts of the inter-county highways and main market roads as are "state highways" within the meaning of Section 1226 of the General Code of Ohio.

When any street into or through a municipality is designated on such map as a continuation of any inter-county or main market road, it shall thereafter be deemed to be a state road within the meaning and for the purposes of Section 7557 of the General Code.

The director shall keep such map on file in his office and shall, from time to time, cause the same to be corrected and revised to show all changes and additions to the date of such correction. A copy of such map, certified to by the director as a correct copy of the map on file in his office, shall be admissible as evidence in any court of the state to prove the existence and location of the several inter-county highways and main market roads of the state."

It will be observed from a reading of the statute above quoted that the Director of Highways and Public Works selects the streets within a municipality which are to be designated as extensions and continuations of inter-county highways and main market roads, and that when the same are selected and properly designated upon the map which he prepares, as provided therein, that the same become *state highways* within the meaning of Section 7557, General Code of Ohio.

Section 7557 need not be quoted here. It merely provides for the construction and repair of bridges by the county commissioners, upon state and county roads, within villages and cities. To this extent at least, therefore, the extensions and continuations of inter-county highways and main market roads are to be regarded as state highways. Section 1189, General Code, *supra*, and other sections of the Code, clearly indicate that such extensions and continuations are, in a limited sense, a part of the highway system, but the construction, maintenance and repair of such extensions and continuations are governed by different rules than those applicable to inter-county highways and main market roads outside of municipalities, as will be hereinafter pointed out.

You next inquire whether there is an obligation upon the part of the state to pay part of the expense of paving or resurfacing that part of the state highway which lies within the limits of such municipality. I am assuming that in the use of the word "city" as it appears in your communication, you are referring to villages as well as to cities.

General authority to maintain and repair, as well as to resurface and reconstruct inter-county highways and main market roads, is given to the Director of Highways and Public Works, under the provisions of Section 1224, General Code. Said section provides as follows:

"The Director of Highways and Public Works shall maintain and repair to the required standard, and when in his judgment necessary, shall resurface, reconstruct or widen all inter-county highways, main market roads and bridges and culverts constructed by the state, by aid of state money or *taken over by the state after being constructed*. In repairing inter-county highways and main market roads the director shall not be limited to the use of the material with which such inter-county highways or main market roads were originally constructed, but may repair such inter-county highways or main market roads by the use of any material which he deems proper. When in the repair of an inter-county highway or main market road the director changes the type of such road and uses, as the principal material in making such repair, a material different from that which the road was originally constructed, not more than ten per cent of the cost and expense of such repair may be assessed against the property abutting on said road, or within one-half mile on either side thereof or within one mile on either side thereof in the manner hereinbefore provided in the cause of the construction of a road under the supervision

of the Department of Highways and Public Works. Nothing in this chapter shall be construed so as to prohibit a county, township or municipality or the federal government, or any individual or corporation from contributing a portion of the cost of the construction, maintenance and repair of said state highways. When a bridge or a culvert on a state highway shall require renewing, it shall be constructed and the cost apportioned as herein provided for the construction and improvement of bridges and culverts on inter-county highways. The director may enter into a contract with any individual, firm or corporation which gives sufficient bond for the faithful performance of said contract, or which the county commissioners of any county or the township trustees of any township in which such highway is situated for the repair and maintenance of such highway, or any part thereof, according to the plans and specifications provided by the director, or for the furnishing of the material and labor for such repair and maintenance, or the director may furnish the material or labor or both and supervise the repair and maintenance. Inter-county highways and main market roads on which no state aid money has been expended, if improved with construction equal to that specified by the director, shall be taken over by the state and shall thenceforth be maintained as prescribed herein for inter-county highways and main market roads. Upon the application of the county commissioners or township trustees the state highway engineer shall, within sixty days, specify what changes are required in any portion of any existing inter-county highway or main market road to bring it up to the standard required by the state, and on application, the state highway engineer shall furnish specifications for the construction of such road up to the standard required by the state. The director shall also be authorized to maintain, repair, resurface or reconstruct any inter-county highway or main market road not originally constructed by the state by the aid of state money or taken over by the state after being constructed. Any such inter-county highway or main market road so maintained, repaired, resurfaced or reconstructed shall not by reason or such operation become a state road unless the work done thereon is of such a character as in the judgment of the director produces an improvement which fully meets the standard prescribed by the state for state roads.

In maintaining, repairing, resurfacing, reconstructing or widening inter-county highways or main market roads, the Director of Highways and Public Works shall proceed by contract let to the lowest and best bidder, after advertisement as provided in Section 1206 of the General Code. The director may, however, proceed by employing labor, purchasing materials and furnishing equipment, where the total expenditure per mile of road does not exceed three thousand dollars."

Funds are received by the Department of Highways and Public Works for the purpose of maintaining and repairing inter-county highways and main market roads from the automobile license fees (Section 6309-2, General Code) and the gasoline excise tax fund (Section 5537, General Code).

Paragraph 2 of Section 6309-2 provides:

" * * * Fifty per centum of all taxes collected under the provisions of this chapter shall be paid by the county auditor, monthly to the commissioner of motor vehicles who shall pay the same into the state treasury to the credit of the '*state maintenance and repair fund*.'

The 'state maintenance and repair fund' provided for herein shall be available for the use of the commissioner of motor vehicles in defraying the expenses incident to carrying out and enforcing the provisions of this chapter and for the use of the Director of Highways and Public Works in the manner provided by law. The general assembly shall make appropriations therefrom for such purpose."

Section 5537, General Code, provides, in part, as follows:

" * * * Forty-five per cent of such gasoline tax excise fund shall be apportioned to and expended by the Department of Highways and Public Works of the State of Ohio for the purpose of maintaining, repairing, and keeping in passable condition for travel the roads and highways of the state now or hereafter required by law to be maintained by the Department of Highways and Public Works of this state. * * * "

Your attention is directed to the fact that out of the money received by a municipal corporation, as provided in Section 5537, of the General Code, one-sixth of this amount must be expended for the maintenance and repair of inter-county highways and main market roads that have been designated by the Director of Highways and Public Works as extensions or continuations thereof, within such municipalities.

Section 1224-2, General Code, provides:

"The Director of Highways and Public Works shall not be required to maintain or repair any continuation of an inter-county highway or main market road within the limits of any village, whether constructed by the state by the aid of state money or otherwise. The duty of maintaining and repairing all continuations of inter-county highways and main market roads within municipal corporations shall vest in such municipal corporations. Upon the application of the proper board of county commissioners or township trustees, and with the consent of the council of any village the Director of Highways and Public Works shall be authorized, however, if he deems it for the best interest of the public, to cooperate with such commissioners or trustees in the maintenance or repair of any such continuation of such road or highway within such village, and to pay from state funds such portion of the cost of such work as may be agreed upon between him and such commissioners or trustees. He may also, if he deems it for the best interest of the public, and upon obtaining the consent of the council of any village, maintain or repair any continuation of such road or highway within such village, and pay the entire expense of such work from state funds." (Italics the writer's.)

Although it may be stated that the Director of Highways and Public Works may, in his discretion, maintain and repair extensions or continuations of inter-county highways and main market roads, located within municipalities, it does not follow that there is an obligation or mandatory duty placed upon him to maintain and repair state highways located within municipalities.

It is obvious, under the provisions of the statute just above quoted, that the primary duty of maintaining or repairing extensions of inter-county highways or main market roads, located within municipalities, is placed upon the municipal corporations in which such highways are located, and that it is altogether discretionary with the Director of Highways and Public Works whether he elects to cooperate with the county commissioners or township trustees in the maintenance and repair of such

highways. If the Director, in his discretion, so determines, he may also pay the entire cost of such maintenance and repair without the cooperation of the county commissioners and township trustees.

In view of the fact that control over the streets of a municipality, under the provisions of Section 3714, General Code, is vested in the council of a municipality, and further, that under the provisions of Section 1224-2, supra, the consent of the council of such municipality must be obtained previous to the undertaking of the maintenance and repair of an inter-county highway or main market road, located within a municipality, the Director of Highways and Public Works cannot, of his own initiative, or by cooperating with the county commissioners or township trustees, undertake the maintenance and repair of such highways, unless such consent is given.

Coming now to a consideration of your third question, you inquire whether a city has such control of an extension or continuation of an inter-county highway or main market road, located within such city, that it may regulate traffic thereon and determine which of the two state highways in said city are main thoroughfares. I find no provisions in the statutes which vest in the Director of Highways and Public Works the authority to regulate traffic or to designate main thoroughfares within a city. Such matters are in the nature of police regulations and must be established by the state legislature or by proper legislative authority of the municipality. The legislature of Ohio has seen fit to enact statutes pertaining to main thoroughfares located within cities. Your attention is directed to Section 6310-30, General Code, which provides as follows:

“For the purpose of enforcing the road regulations referred to in this chapter, the main thoroughfare shall be understood to mean all sections of public roads and highways on which street cars or electric cars run and *also all main market and inter-county highways within the state.*” (Italics the writer’s.)

Also to Section 6310-32, General Code, which reads:

“Local authorities shall have the right to designate by ordinance or resolution additional main thoroughfares and to designate what vehicles shall have the right of way at intersections of main thoroughfares; provided, however, that legible and appropriate signs be erected not nearer than 100 feet from the intersection along all road and highways intersecting such main thoroughfares.”

Section 3 of Article XVIII of the Constitution of Ohio provides:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

Therefore, it follows that a municipal corporation, acting through its proper legislative body, may enact such police regulations, in reference to traffic and other safety measures, as are not in conflict with general laws:

Answering your questions specifically, it is my opinion that,

(1) Public highways, located within municipalities, that have been designated as extensions or continuations of inter-county highways or main market roads by the Director of Highways and Public Works, as provided in Section 1189, General Code, are, in a limited sense, a part of the state highway system.

(2) There is no obligation or mandatory duty on the part of the Director of Highways and Public Works to keep in repair or maintain extensions or continuations of inter-county highways or main market roads, located within cities or villages, but the Director of Highways and Public Works, under the provisions of Section 1224-2, supra, upon the application of the county commissioners or township trustees, and with the consent of the council of such municipal corporation, may maintain and repair such highways. Likewise, the Director of Highways and Public Works, when acting without the cooperation of the county commissioners or township trustees, but subject to the obtaining of the consent of the council of a municipal corporation, may maintain and repair such highways and pay the entire cost thereof out of funds available to the state for such purposes.

(3) Under the provisions of Section 3 of Article XVIII of the Constitution of Ohio, a municipal corporation may establish such police regulations pertaining to traffic and otherwise upon state highways, located within such municipalities, as are not inconsistent with general laws.

A municipal corporation may not determine which of two state highways, located within such municipality, is a main thoroughfare, for the reason that under the provisions of Section 6310-30, General Code, all main market and inter-county highways, located within the state, are main thoroughfares.

Under Section 6310-32, General Code, local authorities, however, may designate, by ordinance, what vehicles shall have the right of way at the intersection of main thoroughfares.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1064.

LIBRARIAN—SCHOOL DISTRICT PUBLIC LIBRARY—MEMBER OF BOARD OF EDUCATION WHO HELPED APPOINT LIBRARY TRUSTEES MAY NOT SERVE.

SYLLABUS:

A member of a board of education which has appointed a board of library trustees under authority of Section 7635, General Code, cannot legally be employed by such board of trustees as librarian for the school district public library.

COLUMBUS, OHIO, September 27, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—This will acknowledge receipt of your communication requesting my opinion, which reads as follows:

“Under the provisions of Section 7635 of the General Code, the board of education of any city, village or rural school district may provide for the establishment, control and maintenance in such district of a public library, free to all the inhabitants thereof, and appoint a board of trustees to manage and control such library. Section 7637, G. C., empowers the board of library trustees to employ a librarian and assistants.