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1. ROAD—WHERE TOWNSHIP ROAD PASSES FARM RESIDENCE OF COUNTY COMMISSIONER, IT DOES NOT DISQUALIFY HIM FROM VOTING IN FAVOR OF RESOLUTION TO ADD ROAD TO COUNTY HIGHWAY SYSTEM.
2. FAILURE OR REFUSAL OF A COMMISSIONER TO SIGN RECORD OF PROCEEDINGS OF BOARD OF COUNTY COMMISSIONERS WILL NOT AFFECT VALIDITY OF ANY RESOLUTION ADOPTED BY BOARD—PROVISION, SECTION 2407 G. C. AS TO SIGNATURE IS DIRECTORY.
3. SECTIONS 6965, 6966 G. C. PRESCRIBE PROCEDURE TO CREATE COUNTY HIGHWAY SYSTEM—COUNTY COMMISSIONERS SHOULD SUBSTANTIALLY FOLLOW SUCH PROVISIONS TO ADD TOWNSHIP ROAD TO SYSTEM.

SYLLABUS:

1. The fact that a township road passes the farm residence of a county commissioner does not of itself disqualify him from voting in favor of a resolution to add the road to the county highway system.
2. The provision of Section 2407, General Code, that the record of the proceedings of the board of county commissioners shall be signed by the commissioners, is directory, and the failure or refusal of a commissioner to sign the record will not affect the validity of any resolution adopted by the board.
3. The procedure prescribed by Sections 6965 and 6966, General Code, for creating a county highway system, should be substantially followed by the county commissioners in a proceeding to add a township road to the system.

Columbus, Ohio, March 31, 1945

Hon. Richard E. Hole, Prosecuting Attorney
Greenville, Ohio

Dear sir:

Your letter of March 9, 1945, relating to the action taken by your county commissioners at their meeting on December 30, 1944, designating Butler township road No. 107 as a county road, reads as follows:

"I have been requested to ask your office for an opinion on the following fact situation.

The Darke County Board of Commissioners at the last meeting held on Saturday, December 30, 1944, designated a certain township road as a county road. This particular road passed by the farm residence of the commissioner who made the motion to designate the road as a county road.

Of the two remaining commissioners, one voted in favor of the motion and the other voted against the motion. The one favoring the motion finished his term December 31, 1944, and as the record now stands only the commissioner who made the motion has approved the minutes of the meeting of December 30th.

It appears that the trustees of the township wherein this road is located did not submit any report to the county commissioners, and, as a matter of fact had other roads which they would have preferred taken into the county system of roads. Also, the county surveyor did not submit any report to the county commissioners.

I mention these facts in connection with Section 6965 et seq., of the General Code of Ohio which sections would apparently control the action of the county commissioners in the instant situation."

In response to my letter of March 14, 1945, in which I requested that you furnish me a copy of the minutes of the December 30, 1944, meeting, and also state the specific questions you desire answered, you replied as follows:

"In response to your request, I am enclosing herewith a copy of the minutes of the Board of County Commissioners covering the designation of this particular township road.

I would specifically like your opinion as to whether the action taken by the Board of County Commissioners is legal."

The minutes of the meeting of the board of county commissioners referred to in your letter, read as follows:

"Mr. Valentine made a motion that Butler Township Road No. 107 commencing at the southwest corner of Sec. 9, Town 10 North, Range 2 East, Butler Township, Darke County, Ohio, thence east on and along the south line of Sections 9, 10, 11, and 12, Town and Range aforesaid to the southeast corner of the southwest quarter of said Section 12; thence northeast on and

along the center of the present road, through the southeast quarter of the said Section 12 to State Route No. 503 and there to terminate, be placed on the County System and surface treated as soon as possible. The above road is approximately 3.80 miles in length and the recorded width is 40 feet. Mr. Denniston seconded the motion. Roll call on the above motion resulted in the following vote: Valentine, yea; Denniston, yea; Bookwalter, nay. Motion carried.

The minutes of the meetings of Dec. 16, 18, 23, 26 and 29 read and approved.

The meeting then adjourned to meet Jan. 2, 1945.

Elmer Valentine

Harry F. Mikesell, Clerk."

I note the statement in your first letter that "This particular road passed by the farm residence of the commissioner who made the motion to designate the road as a county road." In this connection, it further appears from the minutes that Commissioner Valentine, who made the motion, also voted "yea" in the roll call, and is the only commissioner who has signed the minutes. The term of Commissioner Denniston, who also voted "yea", has expired, and Commissioner Bookwalter, who voted "nay", for some reason, has failed to sign the minutes.

The mere fact that the township road in question passed by the farm residence of Commissioner Valentine, did not of itself disqualify him from acting as a commissioner in the proceedings pending before the county commissioners. This particular point is settled, on principle, by the case of Hamilton vs. Board of County Commissioners, 108 O. S. 566, wherein it was held that the fact that a county commissioner owns real estate within the assessable area of an improvement to be financed by a special assessment levied by the county commissioners, does not of itself disqualify him to act in the proceeding, especially in the absence of evidence that he cast his vote adversely to the public interest, or where there is no charge or evidence of fraud or bad faith in the casting of his vote.

With respect to the point that the minutes of the meeting were approved only by the signature of Commissioner Valentine, your attention is

respectfully directed to Opinion No. 3509, reported in Opinions of the Attorney General for 1941, page 105, in which my immediate predecessor in office held that Section 2407, General Code, relating to the authentication of the minutes by the signatures of the county commissioners, is merely directory, and that the fact that the minutes are authenticated by the signature of but one commissioner, does not affect the force or validity of resolutions actually adopted.

It also appears from your letters that the county commissioners acted on their own initiative when they adopted the resolution adding the Butler township road to the county highway system, and without having received or considered any report under Sections 6965 and 6966, General Code, from the township trustees or county engineer with respect to the road in question, and apparently this is borne out by the minutes of the meeting.

The public highways of the state are divided into three classes by Section 7464, General Code. That section 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.”

The county highway system in each county of the state was created in 1923, under and pursuant to the provisions of Section 6965, et seq. of the General Code. Two of these sections which relate to the original

creation of the system, and also to the authority of the county commissioners to make changes in and additions thereto from time to time, read as follows:

Section 6965. "There shall be created in each county within the state a system of county highways, which system shall be selected and determined in the following manner, to-wit:

Within sixty days after the taking effect of this act (G. C. §§6965 to 6972), the township trustees of each township within the state shall, upon request and under the direction of the county commissioners of the county within which such township is located and upon such forms as shall be prescribed by the said county commissioners, make a report to the county commissioners setting forth the relative value of each road in the township in consecutive order as a used highway, the kind of traffic over such road, its length and present condition, together with such other information as may be desired and requested by the county commissioners. The county commissioners may request the aid and assistance of the county surveyor in preparing blank forms and reports for the use of the township trustees together with any maps which in their judgment may be needed by the trustees in making their report. It shall be the duty of all boards of county commissioners to request the report herein provided for from each board of township trustees to promptly make the reports herein provided for, it being the intent and purpose of this section that all of the duties herein required to be performed by county commissioners and township trustees shall be completed within sixty days after the taking effect of this act (G. C. §§6965 to 6972)."

Section 6966. "It shall be the duty of the county commissioners of each county to determine from the statistics and information furnished by the several boards of township trustees within such county the relative importance and value for traffic of the various public highways of the entire county. They shall begin work as soon as the necessary information is furnished by the several boards of township trustees within the county, and after a careful review and consideration of the information furnished by such trustees shall select and designate a connected system of county highways of such mileage as they may deem proper and expedient, connecting with the intercounty highways and main market roads of such county all of the villages, hamlets, and centers of rural population within the county. Such system of highways when selected and designated by the county commissioners in the manner herein prescribed shall be known as the sys-

tem of county highways of said county, and all of the roads composing said system shall thereafter be known and designated as county roads. The county commissioners may call to their assistance the county surveyor in performing the duties devolving upon them under this section and may require him to report as to the relative importance of the highways of any township with respect to which the trustees thereof fail to report within a reasonable time, and upon the completion of their investigation and the designation of a system of county highways the commissioners shall require the surveyor to make a map thereof. A copy of this map with the mileage of the selected roads indicated thereon together with a brief statement by the county commissioners of their reasons for the selection made, shall thereupon be transmitted to the director of highways and public works of the State of Ohio.

If the director finds that said system has been designated in substantial compliance with the terms of this act (G. C. §§6965 to 6972), and that all portions of the system of county highways connect with either a main market road or an inter-county highway, or another county road, the director shall within sixty days approve such system and certify his approval to the board of county commissioners, who shall thereupon cause a copy of said map duly approved by them to be made a part of their records and shall cause a copy thereof to be filed in the office of the county surveyor and in the office of the clerk of each township within the county. The system of roads designated upon said map shall thereupon become the system of county roads of said county. Each road constituting a part of said system shall be given a number by the board of county commissioners who may also divide said roads into convenient sections and assign appropriate designations to each section. No main market road or inter-county highway or part thereof shall be included in the system of county highways hereinbefore provided for. The board of county commissioners of any county may from time to time make changes in the county system or addition thereto in the manner hereinbefore provided with respect to the creation of the same. All expenses incurred in carrying out the provisions of this and the preceding section shall be paid from the general county road fund."

It will be noted that the section last quoted specifically provides that changes in and additions to the county system may be made "in the manner hereinbefore provided with respect to the creation of the same." The legislature having inserted this provision in the law, it seems to me that if the county commissioners desire to make any change in the system as

originally created, or to make an addition thereto by adding a new or old township road, their proceedings at the least should be in substantial compliance with the procedure prescribed by the legislature for the creation of the system, and that if they fail to do so the road will continue to retain its status as a township road under Section 7464, General Code. However, the county commissioners in such a case may, if they so desire, assist the township trustees in maintaining the road, because such assistance is authorized by Sections 7464 and 7467, General Code.

Respectfully,

HUGH S. JENKINS

Attorney General