

6941, *supra*. Inasmuch as the petition must be signed by fifty-one per cent of the persons to be assessed therefor, manifestly this would include property owners in the adjoining counties as well as those in the county in which the improvement is to be made.

Respectfully,
 EDWARD C. TURNER,
Attorney General.

2681.

ROADS—DUTIES OF COUNTY COMMISSIONERS AND TOWNSHIP TRUSTEES AS TO STREETS IN PLATTED TERRITORY OUTSIDE OF MUNICIPALITY DISCUSSED.

SYLLABUS:

Township trustees are by virtue of the provisions of Section 7464, General Code, charged with the duty of maintaining roads and streets in platted territory outside the boundaries of any municipality, unless such roads or streets are, by action of the county commissioners of the state, incorporated in either the county or state system.

COLUMBUS, OHIO, October 6, 1928.

HON. OSCAR A. HUNSICKER, *Prosecuting Attorney, Akron, Ohio.*

DEAR SIR:—This will acknowledge the recent communication of Mr. Ferbstein, Assistant Prosecuting Attorney, which reads as follows:

“We respectfully request an opinion from your office concerning the interpretation of Section 7464 of the General Code as set forth in 112 O. L. 496. Our specific question under this section is as follows:

Paragraph C of Section 7464 says that ‘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.’

Under the above quoted section, first, are the trustees compelled to maintain and improve roads and streets in allotted territory outside of the municipality assuming that a plat of said territory has been duly made and dedicated and recorded and that the road or street has thereby become a public highway; and, secondly, would it be illegal for the township trustees to spend township money improving such roads or streets if it is not mandatory upon them to do so?”

The answer to this inquiry is, I believe, clear from the language of Section 7464 of the Code, from which a portion is quoted in the communication. The section in full is 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."

Manifestly this section is comprehensive of all public highways in the state, except, of course, streets located within the boundaries of a municipality. The properly executed, accepted and recorded plat of territory located outside of a municipality would, of course, dedicate the roads and streets therein to the public, and such dedication would, under the provisions of Section 3589 of the Code, vest the title in the county. That section is as follows:

"Such plats or maps shall be deemed in law a sufficient conveyance to vest fee simple of all such parcels of land as are therein expressed, named, or intended for public use, in the county in which the village is situated, for the uses and purposes therein named, expressed or intended, and for no other use or purpose whatever."

This section has been held applicable to land outside the boundaries of municipalities. *Walsworth vs. Collinwood*, 8 O. C. C., 477.

Such roads and streets must, however, by virtue of the provisions of Section 7464, supra, be treated as township roads for the purpose of maintenance, except as to such portions as may, by action of the county commissioners or state, be incorporated within the county or state system. This is the conclusion reached by me in Opinion No. 1627, dated January 26, 1928, and addressed to Hon. Otho L. McKinney, Prosecuting Attorney, Springfield, Ohio, from which I quote the following:

"Reverting to the 1919 opinion, it should be pointed out that the plat there in question had been recorded prior to the amendment of Section 4346, which required the consent of the platting commission of the city, the property in question being located within three miles thereof. Accordingly, the question of the necessity of securing the consent of the platting commission to the vacation of the street in question was not involved. That opinion does, however, point out that every character of public highway outside of a municipality must, of necessity, under the provisions of Section 7464 of the General Code, be either a state road, a county road or a township road. Streets and alleys in a plat ordinarily are neither state roads nor county roads and consequently the opinion holds that they must of necessity be township roads. While Section 7464 of the General Code, classifying and defining roads and highways, has since been amended, the amendment does not affect the reasoning in that opinion and my conclusion is that streets and alleys in a recorded plat outside of municipalities must be treated as township roads unless, by action of the county commissioners or the state, they are incorporated in either the county or state system."

From what has been said, it is clear that the roads and streets in platted territory outside of the boundaries of any municipality constitute township roads for the purpose

of maintenance and repair and it is the duty of the township trustees, in so far as funds are available, to discharge their duties with respect thereto. It is, however, a well recognized principle that a public board of this character, with limited funds, may use its discretion as to the application thereof, for the purpose for which the funds were made available. The road levy should be expended by the township trustees upon those roads which, in the judgment of the board, are of the most importance from the standpoint of use. At the same time, if funds are available, it is the duty of the trustees to maintain properly all roads, including those here under consideration.

It may be well to direct your attention to Sections 6973 et seq., of the General Code, granting power to boards of county commissioners to improve roads, streets or alleys within platted land situated without a municipal corporation. While the power to improve and also to maintain such public highways is thereby given to the county commissioners, there is no mandatory duty imposed with respect to such improvement. In fact, Section 6988 of the Code states in part:

“No road, street or alley improved under the provisions of this act, shall by reason of such improvement become a county road.”

This makes the purpose clear to retain the original status of such highways while at the same time the authority to improve is given to the county commissioners.

It follows from what has been said that it would not be illegal for the trustees to expend township moneys for the maintenance of the roads and streets in such allotted territory.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2682.

SCHOOL FUNDS—LUNCH ROOM FUND—HOW DEPOSITED.

SYLLABUS:

Moneys in the school lunch room fund established under authority of Section 4762-1, General Code, are to be considered as a part of the school funds of the district and deposited in the depositories provided for such school funds and paid out upon warrants signed by the clerk and president of the board of education.

COLUMBUS, OHIO, October 6, 1928.

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

GENTLEMEN:—This will acknowledge receipt of your request for my opinion as follows:

“Under the provisions of Section 4762-1 of the General Code is the lunch room fund therein provided to be considered as a part of the school funds of the district and deposited in the depositories provided for such school funds and paid out upon warrants signed by the clerk and president of the board of education, or may such lunch room funds be considered as entirely separate from the regular funds of the school district and be deposited in a bank to be selected by the board of education and be paid out in a manner designated by the board of education?”