

upon said improvement, or the abutting owner being in possession at least has a better claim than the state or county can establish.

In this connection your attention is invited to the fact that where there is a dispute between the abutting owner and the state or county as to the boundaries of the highway, information may at times be obtained as to the actual amount of land owned by the owner of property abutting upon the improvement by looking to the evidence of title of the abutting owners. If his deed contains a description by metes and bounds and the monuments mentioned in said description are still in existence, the exact boundaries of his land may be determined and the boundaries of the roadway thus established.

It is well settled that the right of prescription or adverse user does not run against the state or county. As stated in the case of *Heddleston vs. Hendrix*, 52 O. S. 460:

“The general rule of law is that the statute of limitations does not apply as a bar to the rights of the public unless expressly named in the statute.”

See also *Haynes vs. Jones*, 91 O. S. 197, in which it was held that:

“No adverse occupation or user of land belonging to the state can divest its title,”

and the cases cited in *Commissioners vs. Railway*, 12 O. N. P. (N. S.) 129.

The facts set forth in your letter are too meager to enable this department to pass on the title to the road referred to in your letter.

The most that can be said is that, I cannot see that the sections of the two acts above quoted are of any value in attempting to establish the width of the road or the county's title thereto.

If the county can establish that it at one time acquired title to a sixty foot right of way, since an abutting owner can not acquire title by adverse possession, the possession and use of a part of the right of way by such owner would be of no avail to him. On the other hand, if the county cannot establish that it at one time acquired title to a sixty foot roadway, if the abutting owner has possession, such owner would probably prevail in a court action, under that principle of law stated in 32 Cyc. 677, in the following language:

“Physical occupancy and legal possession of property are not necessarily identical, but although the presumption is a rebuttable one, possession is prima facie evidence of title to and ownership of either real or personal property and is good against any one but the true owner and so one in the actual possession of land although without title is entitled to retain possession thereof as against a stranger.”

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1233.

APPROVAL, BONDS OF THE CITY OF NILES, TRUMBULL COUNTY,  
OHIO—\$26,715.00.

COLUMBUS, OHIO, November 2, 1927.

*Industrial Commission of Ohio, Columbus, Ohio.*