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1. SIDEWALKS ALONG TOWNSHIP ROADS — WITHIN LIMITS OF ROAD — DESIGNATED ON PLAT OF UNINCORPORATED COMMUNITY — PLAT DEDICATED AND ACCEPTED BY COUNTY COMMISSIONERS—TOWNSHIP TRUSTEES LEGALLY REQUIRED TO MAINTAIN AND REPAIR SUCH SIDEWALKS.
2. INJURY SUSTAINED THROUGH DEFECTIVE SIDEWALKS — TOWNSHIP TRUSTEES, IF GUILTY OF NEGLIGENCE, MAY BE LIABLE IN DAMAGES.

## SYLLABUS:

1. Township trustees are required by law to maintain and repair sidewalks along township roads where such sidewalks are within the limits of such roads as shown upon a plat of an unincorporated community which has been dedicated and accepted by the county commissioners as provided in Section 6886, General Code.

2. Township trustees may be held to answer in damages in the event of injury sustained due to the defective condition of such sidewalks the existence of which is due to the negligence of such trustees.

Columbus, Ohio, January 10, 1942.

Hon. Meryl B. Gray, Prosecuting Attorney,  
Lebanon, Ohio.

Dear Sir:

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

“Kings Mills is an unincorporated community located in Deerfield Township, Warren County, Ohio, consisting of quite a number of houses and being the location of the Peters Cartridge Company and the King Powder Company. A number of sidewalks are located in this settlement, which sidewalks were originally constructed by the abutting property owners themselves, neither the County Commissioners nor the Township Trustees exercising any jurisdiction whatsoever in connection with the construction of same.

On May 21, 1926, a plat of Kings Mills was recorded and properly accepted for the use of the public by the Warren County Commissioners. In so far as the provisions of this plat stipulating dedications are concerned, the following language is contained: “all of the roads and ways designated on the within plat as streets and alleys are of the width and located as indicated in said plat and all of said public roads and ways designated in said plat as streets and alleys are hereby and

herewith dedicated to the public for the use of the public as roads, streets, and alleys." This plat was approved by the County Commissioners as follows: "we hereby approve this plat and accept all the public roads and ways designated thereon as streets and alleys for the use of the public." As shown hereinabove, there is no reference whatsoever as to sidewalks.

G.C. Sections 7205 and 7206 provide for the construction of sidewalks and Attorney General's opinion No. 2209, 1928, holds in effect that where sidewalks have been constructed, the Commissioners and the Trustees should necessarily have the power to repair and maintain them. In so far as the present situation is concerned, no control of any kind has ever been exercised by any county officials over these sidewalks.

The questions, therefore, which raise themselves, are as follows:

(1) Are the Deerfield Township Trustees required by law to maintain and repair sidewalks along township roads where the sidewalks have been originally constructed by the abutting property owners and over which said sidewalks said Township Trustees have never exercised any control?

(2) If the answer to question one is 'no', would this situation be altered by the fact that a plat, as hereinabove described, had been dedicated and accepted? In other words, would the dedication of the roads themselves create a liability in so far as sidewalks on said roads are concerned?

(3) If the answer to questions one and two is 'no', and you determine that it is not mandatory upon the Township Trustees to maintain and repair these sidewalks, can said Township Trustees, *in their discretion*, legally expend Township funds for the purpose of maintaining and repairing said sidewalks?

(4) Can either the County Commissioners or the Township Trustees be held to answer for damages in the event that some injury was sustained due to the defective or negligent condition of said sidewalks?"

I am also in receipt of your subsequent letter in which you state the following:

"I wish to advise you at this time that I have succeeded in obtaining a statement from the Warren County Engineer based upon an investigation made by his department, which, I believe, will furnish you with the information you desired. This statement is as follows:

'Relative to the location of sidewalks on streets in Kings Mills. As per your request, we have checked the width of the streets as shown by the plat of Kings Mills, and find the sidewalks to be within the width of the various streets. (Signed) Sam D. Henkle, County Engineer.'

The dedication set out in your letter was made pursuant to the authority of Section 6886, General Code, which reads as follows:

"Any person or persons may, with the approval of the county commissioners, dedicate lands for road purposes. A

definite description of the lands to be dedicated with a plat of the same thereto attached and signed by the party dedicating the same, with the approval and acceptance of the commissioners endorsed thereon, shall be placed upon the proper road records of the county in which such road is situated. Provided, however, that if the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the commissioners by proper resolution approve and accept the lands for such purpose, as are provided for in cases where the commissioners by unanimous vote declare their intention to locate, establish, widen, straighten, vacate or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate land for road purposes together with the acceptance of the grant by the commissioners shall constitute the lands so dedicated, a public road without any further proceedings thereon."

By virtue of this dedication, the person making the same effected a conveyance to the county for highway purposes of the land shown in the plat as being within the boundaries of the "roads, streets and alleys." This doctrine was enunciated in *Reed v. Harlan*, 2 O.Dec. Rep. 553, 557, 3 West. L. M. 632:

"A road may exist by dedication, which is an appropriation or gift of the land to some public use, made by the owner of the fee, and accepted for such use, by or on behalf of the public."

See also *Todd v. Pittsburg, Ft. W. & C. R. Co.*, 19 O.S. 514; *Boeres v. Strader*, 13 O.Dec. Rep. 414, 1 C.S.C.R. 57; 13 O.Jur. 729.

Section 7464, General Code, provides for the classification of all roads in the state and 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."

It was said by one of my predecessors in office in an opinion to be

found in Opinions of the Attorney General for 1928, Volume II, page 1210, at page 1213, that:

“The proposed road here in question, on its establishment by the dedication of the necessary right of way by the bridge company and its acceptance by the county commissioners of Ottawa County, would not, therefore, be a state road until thereafter designated as such by the Director of Highways under the authority of Section 1189, General Code. Under the provisions of Section 7464, General Code, above quoted, county roads are all roads within the county that have been designated by the county commissioners as a part of the county system of roads in the manner provided by the Green law, so called, Sections 6965 et seq., General Code. The proposed road here in question would not, therefore, on its establishment, be a county road until designated by the county commissioners as a part of the Ottawa County system of roads in the manner provided by the sections of the General Code just noted. Inasmuch as, under the provisions of Section 7464, General Code, township roads are all public highways of the state other than state or county roads, it follows that the proposed road here in question, on its establishment by statutory dedication in the manner provided by Section 6886, General Code, would be a township road until otherwise designated.”

It was further stated in that opinion at page 1214, that:

“As before indicated the road here in question, when thus established, will, in the first instance, be a township road, which the township trustees under the provisions of Sections 7464 and 3370, General Code, will be required to repair and maintain.”

Both of those statements are, I believe, correct statements of the applicable law.

Such part of the streets and ways in the settlement of Kings Mills as are on roads which have been properly designated as a part of the county highway system of Warren County will, of course, have to be maintained by the county commissioners.

The county engineer has determined that the sidewalks are within the limits of the streets as dedicated. The sidewalks then are within the limits of the county and township roads and must be held to be a part of those roads. Authority for the construction of sidewalks along county or township roads outside municipalities is contained in Section 7205, General Code, which reads as follows:

“The county surveyor, upon the order of the county commissioners or township trustees, shall construct or cause to be constructed sidewalks of suitable materials, along the public highway, without any municipal corporation, upon the petition of a majority of the abutting property owners, and the expense of the construction of such sidewalks shall be paid by the county or township and the abutting property owner or owners in such

proportion as may be determined by the county commissioners or township trustees. Provided, however, that the abutting property owners shall pay not less than twenty-five per cent. of the cost of said sidewalks, and the county commissioners or township trustees may assess all of the cost of said sidewalks against the abutting property owners in proportion to benefits accruing to such property. The county commissioners or township trustees may by unanimous vote, order the construction of sidewalks along the public highway without a municipal corporation, without a petition therefor, and may assess all or any part of the cost thereof against abutting property owners, provided, however, that notice shall first be given by publication for three successive weeks in some newspaper of general circulation within the county, stating that it is the intention of said county commissioners or township trustees to construct said sidewalks, and fixing a date for hearing on said improvement. Notice to all abutting property owners shall be given by two publications in a newspaper of general circulation in said county at least ten days prior to the date fixed in said notice for the making of such assessments, and such notice shall state the time and place when abutting property owners will be given an opportunity to be heard with reference to said assessments, and the county commissioners or township trustees shall determine whether said assessments shall be paid in one or more installments."

It will be observed that this section only provides that the cost of construction may be charged in whole or part against the abutting property owners. This section was considered in an opinion of one of my predecessors in office found in Opinions of the Attorney General for 1928, Volume II, page 1420, the syllabus of which reads as follows:

"Where a sidewalk was originally constructed by order of the county commissioners or township trustees along a state road under authority of Sections 7205 and 7206 of the General Code, it may be maintained by said county commissioners or township trustees and the cost thereof expended from county or township funds, but no portion of such cost may be assessed against abutting property owners."

In that opinion it was said that the failure to insert any provision in the statute for assessing the cost of maintenance against abutting property owners by the county commissioners or the township trustees was fatal to the right to do so. I agree with that reasoning and am of the opinion that the sidewalks in Kings Mills must be repaired at county or township expense, depending on whether the streets are county or township roads. The fact that the sidewalks were originally built by the abutting property owners does not change the result since the sidewalks at the present time come within the limits of the county or township road systems.

While the question has not been passed on by the courts of this state, there is a well recognized rule, enunciated by courts in some of

the other jurisdictions in this country, that sidewalks are a part of the public roads, streets or highways. This was well stated by the Supreme Court of Errors of Connecticut in the case of *Manchester v. City of Hartford*, 30 Conn. 118, at page 120:

“The construction and repair of all the ‘streets, highways and roads’ within the limits of the City of Hartford, was and is a duty imposed upon the defendants by law, and that duty is not denied. \* \* \*

That the sidewalk on which the plaintiff received the injury complained of was part of the public street, road or highway which it was primarily the defendant’s duty to repair, a part of the ‘road’ within the meaning of the statute just recited, we have no doubt.”

In *City of Chicago v. O’Brien*, 111 Ill. 532, 53 Am. Rep. 640, the court said at page 536:

“A sidewalk is a portion of the public highway appropriated, it is true, to pedestrians alone, but still open and free to all persons desiring to use and enjoy it as a public highway. It is as much a public highway in the mode of its use as the street itself. The difference in the manner of their use does not render one public, more than the other. They are both free to be properly used and enjoyed by the entire public, and are constructed alike for their use.”

See also *Noonan v. City of Stillwater*, 33 Minn. 198, 200, 22 N.W. 444; *Drew v. Geneva*, 150 Ind. 662, 665, 50 N.E. 871; *Chicago R. I. & Pac. Ry. Co. v. Redding*, 124 Ark. 368, 187 S.W. 651.

Section 7467, General Code, imposes duties on the state, county and township with respect to the maintenance of roads and reads in part as follows:

“The state, county and township shall each maintain their respective roads as designated in the classification hereinabove set forth; \* \* \*.”

In an opinion of a former Attorney General of Ohio found in the *Opinions of the Attorney General for 1928*, Volume III, page 2286, the syllabus reads as follows:

“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 (or) the state, incorporated in either the county or state system.”

In *Sroka v. Green Cab Co., et al.*, 35 O.App. 438, at page 440, the court said:

“\* \* \* There is no provision that it is the duty of county commissioners to maintain public streets or county roads in proper repair, but they are liable, however, in their official

capacity for neglect wherever it is proper to keep the roads in repair. The duties are set forth in Section 7464, General Code, which provides that county roads shall be maintained by the county commissioners, and from it we observe that the roads applicable to this maintenance by the county commissioners are all roads which have been or may be improved by the county or heretofore built by the state and not a part of the state system, together with such roads as may be constructed by the township to conform to the standard for county roads."

In the case of *Johnson v. Grunkemeyer*, 11 O. D. (N.P.) 412, decided prior to the enactment of Section 7205, General Code, which section provides the authority for constructing sidewalks outside municipalities, the court said at page 413:

" \* \* \* the liability for neglect to keep such sidewalks in proper repair must rest upon those to whom power is given to build them in the first instance, county commissioners and township trustees are *quasi* corporations, and their powers must be strictly construed. The latter, certainly, can not be enlarged by judicial construction, in order to hold them liable for negligence upon improvements not erected by them nor placed under their control by direct enactment."

From the foregoing quotation, in the light of Section 7205, General Code, it would seem that county commissioners or township trustees should be held liable for negligence in connection with maintenance of streets and roads, including sidewalks within the limits thereof, constructed by them or placed under their control by some positive act such as the dedication and acceptance of the plat of Kings Mills.

In specific answer to your first question, it is my opinion that the trustees of Deerfield Township are required by law to maintain the sidewalks in the unincorporated community of Kings Mills which are located along such streets as are not part of the state or county highway systems.

Answers to your second and third questions are not necessary.

Specifically answering your last question, I am of the opinion that township trustees, and not the county commissioners, may be held to answer in their official capacity for damages sustained due to defective conditions of the sidewalks which parallel and are within the limits of township roads, if the existence of such condition is the result of their negligence.

Respectfully,

THOMAS J. HERBERT  
Attorney General.