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1. TOWNSHIP TRUSTEES—RESOLUTION DULY PASSED BY BOARD OF COUNTY COMMISSIONERS—TOWNSHIP TRUSTEES AUTHORIZED TO TAKE CARE OF CONSTRUCTION, RECONSTRUCTION, RESURFACING AND IMPROVING OF COUNTY HIGHWAYS WITHIN TOWNSHIPS—PLANS AND SPECIFICATIONS TO BE FIRST SUBMITTED TO COUNTY COMMISSIONERS FOR APPROVAL—PERMITTED UNDER LAWS OF OHIO—RESOLUTION NOT BINDING AND MAY BE IGNORED.
2. LEGISLATIVE ENACTMENT—PUBLIC HIGHWAYS CLASSIFIED, STATE ROADS, COUNTY ROADS, TOWNSHIP ROADS—COUNTY MAY NOT SET UP ITS OWN CLASSIFICATION.
3. ARRANGEMENT OUTLINED IN BRANCH 1 OF SYLLABUS NOT BINDING UPON COUNTY COMMISSIONERS OR TOWNSHIP TRUSTEES.

SYLLABUS:

1. A resolution duly passed by a board of county commissioners requesting and authorizing the township trustees of the various townships within the county to take charge of the construction, reconstruction, re-surfacing and improving of all the county highways within the various townships, and providing that all plans and specifications for the improvement of the said county roads be first submitted to the county commissioners and be subject to their approval, is permitted under the laws of this state.

2. The legislature having classified the public highways of the state into three classes i.e., state roads, county roads, and township roads, a county may not set up its own classification and an arrangement such as that set forth in syllabus I of this opinion does not abolish the county highway system within a county adopting such an arrangement.

3. An arrangement such as that set forth in syllabus 1 is not binding upon either the county commissioners or the township trustees and they may elect to ignore it.

Columbus, Ohio, September 8, 1949

Hon. J. Harry Leopold, Prosecuting Attorney
Putnam County, Ottawa, Ohio

Dear Sir:

Your request for my opinion is as follows:

“May I have an opinion on the following :

“The following is a resolution duly passed by the Board of Commissioners of Putnam County, Ohio, on the 17th day of March, 1943 :

‘Mr. “S” moved the adoption of the following resolution :

RESOLUTION TO AUTHORIZE THE TOWNSHIP TRUSTEES OF THE VARIOUS TOWNSHIPS OF PUTNAM COUNTY, OHIO, TO CONSTRUCT, RECONSTRUCT, RESURFACE OR IMPROVE ANY AND ALL COUNTY ROADS WITHIN THE VARIOUS TOWNSHIPS IN SAID COUNTY.

‘Whereas, the Board of County Commissioners of Putnam County, Ohio, being convened in special session and having discussed and considered the subject of the construction, reconstruction, resurfacing or improving of all county roads in the various townships of said county ; and

‘Whereas, it would be more practical, economical and expeditious to permit the Boards of Trustees of the various townships to take charge of the various roads in their respective townships ;

‘THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PUTNAM COUNTY, OHIO :

‘1. That the Boards of Trustees of the various townships of Putnam County, Ohio, are hereby requested and authorized to take charge of the construction, reconstruction, resurfacing and improving of all county highways within the various townships of this county.

‘2. That all plans and specifications for improvements of said county roads be first submitted to the Board of County Commissioners and be subject to its approval.

‘3. That two thousand dollars is hereby set aside to the trustees of each township of this county from the automobile license and gasoline tax fund for the construction, reconstruction, resurfacing and improving of all the roads in the various townships.

‘This resolution shall take effect and be in full force at the earliest period allowed by law.

‘Passed this 17th day of March, 1943.’

“In Putnam County, while the county system of highways was set up as provided by the statute the same has not been kept in force and effect, and all the roads in the county are being maintained by the township trustees of the various townships

according to the resolution herein set out. Our county engineer is desirous of knowing whether this resolution as passed by the board of county commissioners was sufficient to transfer to the township trustees the repair, maintenance and construction of county roads in Putnam County. Also, can a county be operated without county highway system under the statutes of Ohio.

"It would of course necessarily follow, I believe, that if this resolution was sufficient to transfer such authority to the township trustees then a similar resolution would transfer the authority back to the county engineer."

As I understand your request, you inquire whether such an arrangement as now exists between the county commissioners and the township trustees is proper under the laws of Ohio.

I direct your attention to Section 337I-1, General Code, which reads as follows:

"In the maintenance and repair of roads the township trustees and any township highway superintendent appointed by them, shall be subject to the general supervision and direction of the county engineer. They shall follow the direction of the county engineer as to methods to be followed in making repairs."

Section 7184, General Code, reads as follows:

"The county surveyor shall have general charge of the construction, reconstruction, improvement, maintenance and repair of all bridges and highways within his county under the jurisdiction of the county commissioners. The county surveyor shall also have general charge of the construction, reconstruction, resurfacing or improvement of roads by township trustees under the provisions of Sections 3298-1 to 3298-15n, inclusive, of the General Code. The county surveyor shall have general charge of the construction, reconstruction, resurfacing or improvement of the roads of a road district under the provisions of Sections 3298-25 to 3298-53, inclusive, of the General Code. The county surveyor shall not be authorized, however, to perform any duties in connection with the repair, maintenance or dragging of roads by township trustees, except that upon the request of any board of township trustees he shall be required to inspect any road or roads designated by them and advise them as to the best methods of repairing, maintaining or dragging the same."

The above sections place under the supervision of the county engineer the maintenance and repair of all roads within the county, even those that the township trustees have authority to maintain and repair.

Section 3370, General Code, provides :

“The township trustees shall have control of the township roads of their township and shall keep the same in good repair. The township trustees may, with the approval of the county commissioners or state highway commissioner, as the case may be, maintain or repair a county road or intercounty highway or main market road within the limits of their township.

“In the maintenance and repair of roads the township trustees may proceed in any one of the following methods as they may deem for the best interest of the public, to wit :

“1. They may designate one of their number to have charge of the maintenance and repair of roads within the township, or

“2. They may divide the township into three road districts, in which event each trustee shall have charge of the maintenance and repair of roads within one of such districts, or

“3. They may appoint some competent person, not a member of the board of trustees, to have charge of the maintenance and repair of roads within the township which persons shall be known as township highway superintendent, and shall serve at the pleasure of the township trustees. The method to be followed in each township shall be determined by the township trustees by resolution duly entered on their records.”

Section 3298-1, General Code, reads as follows :

“The board of trustees of any township shall have power, as hereinafter provided, to construct, reconstruct, resurface or improve any public road, or roads, or part thereof, under their jurisdiction. Such trustees shall also have the power to construct, reconstruct, resurface or improve any county road or inter-county highway or main market road within their township ; provided, however, that in the case of a county road the plans and specifications for the proposed improvement shall first be submitted to the county commissioners of the county and shall receive their approval and in the case of an inter-county highway or main market road such plans and specifications shall first be submitted to the state highway commissioner and shall receive his approval. The township trustees shall have power to widen, straighten or change the direction of any part of a road in connection with the proceedings for its improvement.”

Under the last two sections quoted, I believe that the arrangement set out in the resolution is proper. Thus, in 20 O. Jur., 720, the following appears :

“The authority and duty to construct and improve highways is, in general, distributed between the state highway department and the boards of county commissioners and township trustees of the various counties and townships in accordance with the classification of such highways as state, county, or township roads, respectively, although provision is made in many instances, as pointed out in the immediately succeeding sections, for co-operation between the state, county, township, and municipal authorities, and for the improvement of roads of different classes by the highway authorities of particular governmental subdivisions and departments with the consent of the authorities having jurisdiction thereof under the general law.”

Also, in 20 O. Jur., 750, the following is stated :

“The state and the several counties and townships are each required to maintain their respective roads as designated in the classifications set forth in Section 7464, General Code. Either a county or a township may, however, by agreement between the county commissioners and the township trustees, contribute to the repair and maintenance of the roads under the control of the other, and the township trustees may, with the approval of the county commissioners or state highway commissioner, as the case may be, maintain or repair a county road or inter-county highway or main market road within the limits of their township.
* * *”

Therefore, from the authorities cited, it is my opinion that the arrangement existing between the county commissioners and the township trustees, whereby the townships are authorized to take charge of the construction, reconstruction, resurfacing and improving of the county highways within the various townships of the county is proper.

Your second question, as I understand it, is whether or not a county may be operated without the county highway system as set up by statute.

Section 7464, General Code, 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 sys-

tem, 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.”

This is a classification set out by the Legislature setting out the classes of highways in this state. Since the Legislature has decreed that this classification shall exist, a county may not set up its own system. Merely because the statutes provide for an arrangement as to repair and maintenance, they do not abolish the system; the system still exists and the county commissioners still have control even though an arrangement such as is described above is set up.

Your third question is whether such an arrangement is binding upon both parties.

The answer to this question must be in the negative, since while the county commissioners may enter into such an arrangement, they may also invalidate the arrangement since the Legislature has given the county commissioners exclusive control over county roads. If such arrangement were binding, it would permit a board of county commissioners to bind their successors in office. Thus, in the opinion of the Attorney General for 1928, Volume I, page 629, it is stated as follows:

“The authority to determine which, if any, of the roads in the county system of highways shall be improved is vested by law in a board of county commissioners, as is the power to decide in what manner the roads shall be improved and how the improvement will be financed. The Legislature has conferred such power and authority upon the board of county commissioners and it seems to me quite plain that the commissioners now in office cannot, by making a contract with the township trustees or otherwise, take away from the county commissioners, who succeed them, the power and authority so vested by the Legislature and thus tie the hands of future boards.

“Likewise, certain powers and duties have been vested in the township trustees and the trustees now in office cannot, in the

method described in your letter, deprive their successors in office of the power and duty to exercise *their* discretion as they see fit in determining certain questions relating to the question of the township's cooperation in improving a county road. * * *

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"Likewise, certain powers and duties have been vested in the township trustees and the trustees now in office cannot, in the method described in your letter, deprive their successors in office of the power and duty to exercise *their* discretion as they see fit in determining certain questions relating to the question of the township's cooperation in improving a county road. * * *

Although there was a contract involved in that opinion, the same reasoning applies, since if this arrangement were binding it must be considered a contract.

It will be noted that this opinion is confined to the answers to your specific questions with reference to the resolution of the board of county commissioners and nothing herein is intended to cover the validity of Item 3 of said resolution pertaining to the appropriation of the automobile license and gasoline tax fund monies. In reference thereto, your attention

is called to the limitations imposed upon the gasoline tax fund by Sections 5527 and 5537 of the General Code of Ohio.

Therefore, it is my opinion that an arrangement between the county commissioners and the township trustees, whereby the township trustees are authorized to construct, reconstruct, resurface or improve county roads within the township limits is not binding upon either the board of county commissioners or the township trustees and either the board of county commissioners or the board of township trustees may elect to ignore it.

Respectfully,

HERBERT S. DUFFY,
Attorney General.