

of a married woman who is deceased, all of the expenses of her last illness, and funeral expenses were paid by the husband, and no administration was had of her estate. There are also numerous other instances where the title to the real estate has passed to the heirs by reason of intestacy in which, either there has been an administrator who has been discharged without having caused an affidavit of transfer of real estate to be transferred with the recorder or where, for other reasons, no affidavit for transfer has been made of record.

Upon an examination of the language used in the act, it is apparent that the Legislature could not have intended to repeal Section 2768, General Code, for the reason that the language used throughout the act is permissive, rather than mandatory, and further since the new Section 10509-102, General Code, provides only for the transfer of title to property by an executor after the will shall have been probated, or by an administrator, after his appointment.

While Sections 2768 and 10509-102, General Code, are inconsistent in many respects, it can hardly be said that the latter section can repeal by implication that part of Section 2768, with which it is consistent, and therefore Section 2768 would remain effective for the transfer of title to real property belonging to decedents' estates in all cases where Section 10509-102 is not applicable by its terms.

It is therefore my opinion that Section 10509-102 is not so inconsistent with Section 2768 that it would repeal such section by implication; accordingly the county recorder should accept for record affidavits for transfer prepared in conformity with Section 2768 of the General Code.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3843.

PETITION—TOWNSHIP ROAD IMPROVEMENT—SIGNATURES OF
51% OF LAND OWNERS NECESSARY FOR TRUSTEES TO PRO-
CEED BY MAJORITY VOTE—ADDITIONAL SIGNATURES RE-
OPEN ENTIRE PROCEDURE.

SYLLABUS:

1. *Where only a majority of a board of township trustees acts upon a petition to improve a road if said petition does not contain at least fifty-one percent of the land or lot owners who are to be especially taxed or assessed for said improvement the action of said trustees is void.*
2. *Under such circumstances, if the board of trustees has acted by a unanimous vote, the lack of sufficient signatures on the petition would have no effect.*
3. *Under such circumstances, additional names might be added to the petition, but if action is to be taken by only a majority of the members of the board of trustees, in order to make the action valid, it will be necessary for them to re-enact all of the procedure the same as if an original petition had been filed.*

COLUMBUS, OHIO, December 11, 1931.

HON. I. K. SALTSMAN, *Prosecuting Attorney, Carrollton, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication which reads:

“Your opinion has been requested upon the question of the validity of the petition asking for the improvement of a township road and filed under G. C. 3298-2-3-4, et seq.

When the petition was presented, the trustees viewed the improvement and upon their minutes stated that the public convenience and welfare required that the improvement should be made and later upon the minutes determined the route and termini of such road and still later, gave proper notice and hearing concerning the appropriation of property.

At the time the petition was filed the trustees thought that 51% of the land owners affected and entitled to vote, had signed said petition, but after the plat of the new road and territory affected, was submitted by the County Surveyor, it was learned that less than 51% had in fact signed said petition.

The statute is silent upon whether new names may be added or withdrawn.

The question therefore is—‘May new names be added at this time to the petition in order to comply with the 51 percent requirement?’ Section 3298-2, General Code, reads:

“When a petition is presented to the board of trustees of any township asking for the construction, reconstruction, resurfacing or improvement of any public road, or part thereof, as hereinafter provided for, signed by at least fifty-one per cent of the land or lot owners, residents of the county, who are to be specially taxed or assessed for said improvement as hereafter provided, the township trustees shall, within thirty days after such petition is presented, go upon the line of said proposed improvement and, after viewing the same, determine whether the public convenience and welfare require that such improvement be made. The petition shall state the method of paying the compensation, damages, costs and expenses of the improvement, desired by the petitioners, who may request that the same be apportioned and paid in any one of the methods provided by Section 3298-13 of the General Code.”

From the above, it is evident that when a proper petition is presented, the township trustees “shall go upon the line of said proposed improvement and determine whether the public convenience and welfare require that such improvement be made.”

Section 3298-5, General Code, authorizes the township trustees, by unanimous vote, to determine the necessity of improving a road without the presentation of a petition. It would therefore follow that if in the case you present, the action of the board of trustees was by unanimous vote of all the members, the number that had signed the petition would be of no consequence, and the improvement could proceed irrespective of the number of signatures. However, if the action taken was by only a majority vote of the board of trustees, then it would seem that they would have no jurisdic-

tion in the absence of a petition being filed, signed by fifty-one percent of the property owners as set forth in Section 3298-3, General Code.

It would appear from Section 3298-2, and related sections, that the filing of a proper petition, signed by at least fifty-one per cent of the land or lot owners, is a jurisdictional step that must be taken preceding the action of the township trustees in viewing the road and determining to improve it where such action is taken by a majority of the board only.

In the case you present, while it would seem there is nothing to prevent additional names being added to the petition, said petition would be of no effect, in so far as any actions that have been taken by the trustees prior to its being supplied with a sufficient number of names. In other words, new names might be added to the petition, but it would be necessary to have the board of township trustees take action thereon as if it were an original petition.

Based upon the foregoing, and in specific answer to your inquiry, it is my opinion:

First, where only a majority of a board of township trustees act upon a petition to improve a road, if said petition does not contain at least fifty-one percent of the land or lot owners who are to be especially taxed or assessed for said improvement the action of said trustees is void.

Second, under such circumstances, if the board of trustees has acted by a unanimous vote, the lack of sufficient signatures on the petition would have no effect.

Third, under such circumstances, additional names might be added to the petition, but if action is to be taken by only a majority of the members of the board of trustees in order to make the action valid, it will be necessary for them to re-enact all of the procedure the same as if an original petition had been filed.

Respectfully,

GILBERT BETTMAN,

Attorney General.

3844.

BOARD OF EDUCATION—WHERE NECESSARY MAY ESTABLISH
SCHOOLS CONSISTING OF LESS THAN EIGHT GRADES.

SYLLABUS:

If, in the opinion of a board of education, it will best serve the interests of education in the district, it may establish schools where one or several school grades are taught, and may, by force of Section 7684, General Code, assign the youth of the district to the schools so established.

COLUMBUS, OHIO, December 11, 1931.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your request for my opinion, which reads as follows:

“I am informed that in several cases where the elementary schools