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ROAD—TOWNSHIP LINE ROAD—APPORTIONED BETWEEN TWO ADJOINING TOWNSHIPS BY ASSIGNMENT TO EACH OF PORTION, ENTIRE WIDTH OF SUCH ROAD—STATUS OF A ROAD “UNDER ITS JURISDICTION”—SECTION 5571.01 RC—TOWNSHIP MAY “RESURFACE, OR IMPROVE” PORTION WITHOUT CONSENT OF BOARD OF TRUSTEES OF OTHER TOWNSHIP—TWO TOWNSHIPS MAY COOPERATE IN IMPROVEMENT OF WHOLE LENGTH OF ROAD—SECTION 5573.15 RC.

SYLLABUS:

Where a township line road has been apportioned between two adjoining townships by the assignment to each of a portion of the entire width of such road, such portion, as to the township to which it is assigned, becomes a road “under its jurisdiction” within the meaning of Section 5571.01, Revised Code, and such township may “resurface, or improve” such portion without the consent of the board of trustees of such other township; or the two townships may cooperate in the improvement of the whole length of such road as provided in Section 5573.15, Revised Code.

Columbus, Ohio, May 2, 1956

Hon. Harold D. Roth, Prosecuting Attorney
Wyandot County, Upper Sandusky, Ohio

Dear Sir :

I have before me your request for my opinion which reads as follows:

"A township road, lying one-half in C county and one-half in W county—six miles in length, has been maintained for many years by agreement between E township lying in W county and T township lying in C county. In accordance with the agreement entered into between the townships many years ago, E township, W county, has maintained the North three miles and T township lying in C county has maintained the South three miles. In the North three mile section of the road there are ten to twelve houses—part of which are in each county; on the South three miles, there are just two or three houses.

"The residents living on the North three mile strip of road have requested the Trustees of E township, W county to hard-surface the North three miles of the road. The Trustees of E township are willing to do so and have the funds available but feel that the entire six miles should be done at one time. The Trustees of T township, C county refuse to take any action on hard-surfacing the South three mile section.

"Revised Code Section 5573.15 provides that townships can act jointly in connection with township line roads. However, no reference is made in this section to township roads that are actually county line roads. Revised Code Section 5573.15 refers to Revised Code Section 5555.21, et seq. which provide for joint action by the Boards of County Commissioners of adjoining counties for improvement of county line roads.

"The trustees of E township, W county, have requested that I secure an opinion from your office as to whether, based upon the facts above set forth, they could proceed to hard-surface the three miles of the road which they have been maintaining for many years, without agreement by the Trustees of T township, C county as to the South three miles and without proceeding through the County Commissioners of C county and W county under Revised Code Section 5555.21, et seq."

Section 5573.15, Revised Code, 3298-15n, General Code, to which your letter refers, was originally enacted in 1917, 107 Ohio Laws, 82, and, with one exception, material to the present inquiry was carried for-

ward into the Revised Code in the form enacted. Section 5573.15, Revised Code, reads as follows:

“The boards of township trustees of two or more townships *may* construct, reconstruct, resurface, or improve a township road or part thereof, along the line between such townships, extending into or through all such townships, or wholly within the township but within less than the legal assessment distance of the township line. In such case the several boards, when acting as a joint board and when acting separately, in the making of assessments and issuing bonds, *shall* be governed by Sections 555.21 to 555.34, inclusive, of the Revised Code, in so far as the same are applicable. * * *.” (Emphasis added.)

As originally enacted Section 3298-15n, General Code, provided in part as follows:

“The boards of trustees of two or more townships *shall have the power to* * * * resurface or improve a township road * * *.” (Emphasis added.)

Thus the 1953 revision deleted the somewhat cumbersome “shall have power to” and inserted in its place the more simple and direct “may.”

It is apparent, without extended discussion, that the provisions of Section 5573.15, *supra*, are permissive only. That section merely empowers or permits boards of township trustees, undertaking improvements of the nature therein specified, to cooperate in the manner set forth. It does not require that such improvements be undertaken only in accordance with its provisions.

Road improvement authority is conferred generally upon township trustees by Section 5571.01, Revised Code, in the following terms:

“The board of township trustees may construct, reconstruct, resurface, or improve any public road or part thereof under its jurisdiction or any county road, intercounty highway, or state highway within its township * * *.”

The basic question raised by your request is whether a township may undertake to improve some portion of the *total* width of a township line road.

In the case at hand you refer to an ancient agreement between the two townships apportioning the road in question between them for maintenance. It is assumed that this was done under the provisions of Section 5579.03, Revised Code, which reads as follows:

“If a road is established as a part of the line or boundary of a township or municipal corporation, the board of township trustees of such adjoining townships and legislative authority of such municipal corporation, shall meet at a convenient place as soon after the first Monday of March as convenient, and apportion such road between the townships, or township and municipal corporation, as justice and equity require. The board of the respective townships and legislative authority of the municipal corporation shall cause the road to be opened and improved accordingly, and shall thereafter cause their respective portions to be worked and kept in proper repair.”

Here it will be seen that when such apportionment has been made each township, as to that length of road which is thus apportioned to it, is not only authorized to keep it in proper repair, but is under a duty to do so. Such being the case it would appear that such road portion, as to each such township, is “under its jurisdiction” within the meaning of Section 5571.01, Revised Code, and each such township is authorized to “resurface, or improve” such portion as provided in that section.

Accordingly, in specific answer to your inquiry, it is my opinion that where a township line road has been apportioned between two adjoining townships by the assignment to each of a portion of the entire width of such road, such portion, as to the township to which it is assigned, becomes a road “under its jurisdiction” within the meaning of Section 5571.01, Revised Code, and such township may “resurface, or improve” such portion without the consent of the board of trustees of such other township; or the two townships may cooperate in the improvement of the whole length of such road as provided in Section 5573.15, Revised Code.

Respectfully,
C. WILLIAM O'NEILL
Attorney General