

2862.

TOWNSHIP ROAD—MAY BE VACATED WHEN—COUNTY COMMISSIONERS HAVE SUCH AUTHORITY—JOINT ACTION OF TWO ADJOINING COUNTIES NOT REQUIRED WHEN VACATED PORTION LIES ENTIRELY WITHIN ONE COUNTY.

SYLLABUS:

A board of county commissioners has authority to vacate a township road where the vacated portion will not lie outside the boundaries of their county, although such road extends therefrom into an adjoining county.

COLUMBUS, OHIO, January 26, 1931.

HON. L. M. SOLIDAY, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—In your recent communication you request my opinion upon the following statement of facts:

“In the eastern part of our county there is a township road which crosses from Muskingum County into Guernsey County. It is desired by residents of Muskingum County living upon the Muskingum County portion of said road to vacate the Muskingum County end of said road up to the county line. The county commissioners of our county are of the opinion that it will be for the best interest of the county to have said portion of this road vacated. However in view of Section 6874 I am not certain as to the board of county commissioners of Muskingum county acting alone to vacate this road.

Is the board of county commissioners of Muskingum county, Ohio, authorized to act alone in proceeding to vacate the Muskingum county portion of this road or will it be necessary for the action to be taken by the commissioners of both Muskingum and Guernsey Counties, acting jointly?”

Section 6860 of the General Code authorizes the county commissioners to locate, establish, alter, widen, straighten, vacate or change the direction of roads. The power therein granted extends to all roads within the county except that when the roads are on the state highway system, the approval of the Director of Highways shall be had before any action may be taken. Other related sections following Section 6860 set forth in detail the method of procedure with reference to the exercise of the power hereinbefore referred to. Section 6874, to which you refer and which is a part of the same group of sections, provides:

“When the proposed improvement is along or upon a county line or crosses such county line, or extends as a continuous road from one county into or through one or more adjoining counties, the boards of county commissioners of the counties interested shall sit as a joint board.”

In analyzing the section last above quoted, it will be observed that it expressly states, among other things, that when the improvement is on a road which crosses a county line or extends as a continuous road from one county into or through an adjoining county, boards of county commissioners of the counties interested shall sit as a joint board.

Section 6875, General Code, prescribes the method of procedure by the joint board of county commissioners. An examination of this section clearly discloses that the vacation of a road is intended to be included within the provisions of section 6874, *supra*, for the reason that said Section 6875 expressly uses, among others,

the term "vacated" in connection with the method of procedure. In other words, while Section 6874 relates to improvement, an examination of the sections following, which describe the method of procedure in connection with an improvement, conclusively establishes that the legislature intended that the vacation of a road was to be regarded as an improvement.

You will observe the necessity for action by a joint board is predicated upon the fact that the "proposed improvement" crosses the county line. This does not mean that, wherever a road crosses from one county into another, any improvement of that road, wherever located, must be by joint action. I take it that the word "improvement," when used as descriptive of a vacation proceeding, refers specifically to the portion of the road to be vacated. Unless this portion lies in both counties, no joint action is necessary.

This conclusion becomes clear when this word is used in connection with the other types of improvements described in Section 6860, General Code, to which reference has heretofore been made. Thus it would be clear that county commissioners might properly widen a highway wholly within their own jurisdiction without the necessity of consulting the commissioners of an adjoining county even though the road might eventually run into that county. Similarly no joint action would be necessary in order to straighten a portion of a road wholly within one county. In the last analysis, the word "improvement" must be construed as only contemplating that portion of the road which is directly affected by the proposed proceedings. This would only include the portions actually vacated and, hence, unless the vacated portion of the road, after official steps have been taken, will lie in two counties, no joint action is necessary.

I am accordingly of the opinion that a board of county commissioners has authority to vacate a township road where the vacated portion will not lie outside the boundaries of their county, although such road extends therefrom into an adjoining county.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2863.

APPROVAL, FINAL PLANS FOR ERECTION OF MONUMENT AT PORTLAND
MEIGS COUNTY, OHIO

COLUMBUS, OHIO, January 26, 1931.

Ohio State Archaeological and Historical Society, Columbus, Ohio.

GENTLEMEN:—This is to acknowledge the receipt of your recent communication submitting for my examination and approval the final plans for the monument to be erected by your society at Portland, Meigs County, Ohio, in honor of the Union soldiers who turned back the Morgan Raiders on July 20, 1863.

By the terms of Section 2 of the act (H. B. 273, 88th General Assembly, 113 O. L. 622) authorizing your society to receive by gift a site and erect a monument thereon, it is provided "that said site and the plans for said monument shall be approved by the Governor and the Attorney General of the State before they are accepted."

I have already approved the quit-claim deed by which Norma C. Peoples and C. E. Peoples, her husband, conveyed a parcel of real estate in Lebanon Township, Meigs County, Ohio, as a site for this monument. See Opinion No. 2855, rendered January 23, 1931.