

520.

ROADS—TOWNSHIP—TRUSTEES AND NOT COUNTY SURVEYOR  
DESIGNATE IMPROVEMENTS.*SYLLABUS:*

*A county surveyor has no power to direct or order township trustees to improve or repair certain roads. Power to determine what township roads are to be improved or repaired is vested in such board of trustees alone.*

COLUMBUS, OHIO, June 14, 1929.

HON. ROY E. LAYTON, *Prosecuting Attorney, Wapakoneta, Ohio.*

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

“Have you ever given any opinion as to the powers and authority of the county surveyor over the township trustees in connection with the maintenance and repair of township roads. If so, please send me a copy, or copies, and oblige.

The question I have in mind is whether the county surveyor under the present law, has a right to direct or order the township trustees to improve or repair certain roads, or parts of roads, in the township, which for some reason (usually personal) they persist in ignoring. In this connection, his authority seems to be enlarged under the new law pertaining to increase of tax on motor vehicle fuel.

The sections I have in mind in this connection are 3371-1, 7184 and the new law 5541-8 of the General Code.”

Section 3371-1 of the General Code, to which you refer, provides:

“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 surveyor. They shall follow the direction of the county surveyor as to methods to be followed in making repairs and all expenditures made by them for maintenance and repair purposes shall where the amount involved exceeds fifty dollars receive the approval of the county surveyor before payment is made.”

In analyzing the provisions of the above section in connection with its related sections, it would appear that the power of a county surveyor with reference to roads, is limited to the supervision as to the methods to be followed in making such repairs and maintenance. Section 3370 expressly provides that the township trustees shall have control of the township roads and shall keep the same in good repair.

It would appear that there are no sections which authorize the surveyor to determine what roads shall be improved, neither is it believed that the type of improvement is to be determined by the surveyor. However, when the township trustees have lawfully determined to improve a road and set forth the type of improvement, undoubtedly the method employed in accomplishing the general purpose of the trustees would be under the supervision of the county surveyor.

Section 7184, to which you refer, provides that the surveyor shall have general charge of the construction, reconstruction, resurfacing or improvement of roads by township trustees under the provisions of Sections 3298-1 to 3298-13, inclusive, of

the General Code. It further provides that he shall have general charge of such improvements under Sections 3298-25 to 3298-53, inclusive, of the General Code. The section further provides, however, that said surveyor shall not be authorized to perform any duties in connection with the repair, maintenance or dragging of roads by township trustees, except that he shall be required to inspect any such roads designated by the trustees and advise them as to the methods of repairing, maintaining or dragging the same. Therefore, it would appear that there is nothing in this section which grants him any power other than the supervision of such work as may be undertaken by the trustees.

In this connection, it may be further noted that Sections 3298-1 to 3298-53a, inclusive, deal with the power of trustees over roads. Section 3298-1 provides that boards of trustees of any township shall have power to construct, reconstruct, resurface or improve any public road under their jurisdiction, etc. Other sections relate to the power of trustees to construct roads in pursuance of petitions filed. Other sections authorize such trustees, by unanimous vote, to determine to improve roads without a petition. Section 3298-15k, which is in *pari materia* with the other sections above mentioned, provides, in substance, that when such work is undertaken it shall be done under the general supervision and direction of the county surveyor. It will therefore appear that by reason of the section last mentioned, there is no authority in the county surveyor to determine what projects shall be undertaken, but when a given improvement is undertaken, then it becomes his duty to supervise the same.

Section 7187 requires the county surveyor to make an annual estimate for the township trustees setting forth the amount required by the township for the construction, reconstruction, resurfacing or improvement of public roads. The section further provides that the county surveyor shall approve all estimates which are paid from township funds for the construction, reconstruction, resurfacing or improvement of roads under the provisions of Sections 3298 to 3298-15, inclusive. Said section also provides that he shall approve all estimates which are paid from the funds of a road district for the construction, reconstruction, resurfacing or improvement of the roads thereof under the provisions of Sections 3298-25 to 3298-53, inclusive, of the General Code. However, it is believed that the power mentioned in the section last referred to relates to expenditures which are made after the trustees have undertaken a given improvement, and have no reference to any authority of the surveyor to determine what improvement is to be undertaken in the first instance. In other words, under the provisions of this section, the surveyor advises the township trustees as to the status of the various roads in such township. When an improvement is undertaken, under the provisions of the sections therein mentioned, the surveyor approves the estimates, thereby authorizing him to determine when such improvements have been made in accordance with the contract as let.

In my opinion No. 476, issued to Hon. R. D. Williams, Prosecuting Attorney, Athens, Ohio, under date of June 4, 1929, consideration was given to the provisions of Section 5541-8, as enacted by the 88th General Assembly, in the so-called Sullivan-Bostwick Law. The second branch of the syllabus of said opinion reads:

"The discretion to determine the nature of the improvement and the part of the county system to be improved from funds which are the proceeds of the two cents gasoline tax, as provided in House Bill No. 335 (Sullivan-Bostwick Act), is in the township trustees, unless such trustees see fit to relinquish this privilege to the county commissioners."

In the body of said opinion it was pointed out that in the exercise of the power, such trustees are under the supervision and direction of the county surveyor. How-

ever, it is believed that the duties of the surveyor under Section 5541-8 are substantially the same as his duties in the other sections hereinbefore referred to.

In view of the foregoing, it is my opinion that the county surveyor has no power to direct or order township trustees to improve or repair certain roads. Power to determine what township roads are to be improved or repaired is vested in such board of trustees alone.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*

521.

COUNTY COMMISSIONERS—CONSTRUCTION OF ROAD AND BRIDGE AS PART OF IT SIMULTANEOUSLY—DURATION OF NOTICE BEFORE LETTING OF CONTRACT—REQUIREMENT WHEN BRIDGE PROJECT ALONE.

*SYLLABUS:*

1. *Under the provisions of Section 6911 of the General Code, as amended by the 87th General Assembly in the Norton-Edwards Act, the county commissioners may include the construction or reconstruction of necessary bridges as a part of a road improvement proceeding, but are not required to do so. When such a proceeding is undertaken, two weeks' notice is required to be given before letting the contract, as provided in Section 6945 of the General Code.*

2. *Section 6911 of the General Code has no application to bridges except in those cases where the construction or reconstruction of bridges forms a part of a particular road improvement proceeding instituted under said section.*

3. *When the commissioners are proceeding to construct or reconstruct a bridge separate and apart from a road improvement project, the provisions of Section 2343, et seq., of the General Code apply, and unless the cost of such bridge is less than one thousand dollars, four weeks' notice must be given before letting the contract.*

COLUMBUS, OHIO, June 14, 1929.

HON. MARCUS C. DOWNING, *Prosecuting Attorney, Findlay, Ohio.*

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

“Please advise if the county commissioners can sell a bridge and road in one proposal and advertise for a period of fifteen (15) days, the same as the State Highway Department is now doing.”

Sections 2343, et seq., of the General Code relate to the method of procedure by the county commissioners in the construction of bridges. Section 2343 relates to the making of accurate plans, etc., in the construction of substructures for bridges. Section 2344 relates to the preparation of plans, specifications, etc., when it is contemplated to construct a bridge superstructure. Section 2345 authorizes the commissioners to invite and receive proposals on any other plan at the option of the bidders under the circumstances defined therein.

Section 2352 provides: