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INTER-COUNTY HIGHWAY—CONSTRUCTED BY CO-OPERATION OF STATE AND TOWNSHIP UPON APPLICATION OF SAID TOWNSHIP—ASSESSMENTS MAY NOT THEREAFTER BE LEVIED ON ABUTTING PROPERTY OWNERS OF ANOTHER TOWNSHIP.

SYLLABUS:

*When a portion of an inter-county highway lying along a township line was constructed in 1927 by the State Highway Department pursuant to an application of, and in cooperation with, the trustees of one of the townships bounded by such highway, there is no authority whereby the trustees of the other township bounded by such highway may now levy assessments or taxes to pay a portion of the cost of such improvement.*

COLUMBUS, OHIO, February 5, 1931.

HON CHARLES T. STAHL, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR:—Your letter of recent date is as follows:

"I would like the opinion of your department on the following:

On December 20, 1926, certain land owners filed a petition with the trustees of Center Township, Williams County, Ohio, for the improvement of a part of the Bryan-Edon Road, known as I. C. H. No. 308. The State Highway Department cooperated with the township trustees and the improvement was constructed during the summer of 1927. About one mile of this improvement is on the line between Center Township and Superior Township, Williams County, Ohio. The rest of the improvement is located entirely in Center Township.

The trustees of Superior Township did not cooperate in any way in the construction of this road. The petition provides that fifty per cent of the cost be paid by the State, thirty per cent by Center Township and twenty per cent by the owners of property within one-half mile of either side of the improvement.

The State furnished fifty per cent of the cost. Center township sold notes and furnished the money to pay the other fifty per cent. The Center Township trustees requested the Superior Township trustees to make an assessment for this road against the owners of land located in Superior Township. No action has ever been taken by the Superior Township trustees. An effort is now being made to have the Superior Township trustees levy these assessments and certify them to the county auditor. The trustees of Superior Township doubt their authority to levy such an assessment in view of the fact that Superior Township did not participate in the construction of the road.

This matter is probably controlled by Section 1214 G. C., as it existed in 1927. We would like to know if the Superior Township trustees now have authority to levy an assessment against land owners in Superior Township to pay for this road constructed in 1927.

One or two of the Superior Township land owners signed the petition. Please let me know if, in your opinion, that would make any difference.

The following is a copy of the agreement signed by the land owners:

'We, the undersigned land and property owners lying within one-half mile on either side of the improvement in the following road improvement, to-wit, the Bryan-Edon Road, I. C. H. No. 308, lying within Center Township, Williams County, Ohio, hereby agree in writing to assume and agree to pay the amount of twenty per cent of the total cost and expense of construction of said road, which per cent is to be paid by the property owners and which is to be increased from fifteen per cent to the total amount of twenty per cent under authority of Section 1214, General Code of Ohio. We, the undersigned, constitute fifty-one per cent or more of those to be specially assessed in said improvement.'

Your inquiry requires a consideration of the pertinent provisions of the law as in force and effect in 1926, assuming that the trustees of Center Township filed an application with the State Highway Department for state aid prior to the end of that year. In any event, since the improvement was constructed during the summer of 1927, the proceedings evidently became pending within the meaning of Section 26, General Code, before the effective date of any amendment of the law by the 87th General Assembly. The provisions of law in force prior to amendment by the 87th General Assembly are, accordingly, controlling as to your inquiry. Opinions of the Attorney General, 1927, Vol. II, p. 1357; 1928, Vol. I, p. 638; 1928, Vol. II, p. 971; 1928, Vol. II, 1196; 1928, Vol. III, 1921 and 1929, Vol. I, 499.

Section 1191, General Code, provided that the county commissioners of any county could make application for state aid for the improvement of an inter-county highway prior to March 1 of any calendar year. Sections 1192 and 1194 provided as follows:

Sec. 1192.

"In case the county commissioners do not file any application for state aid before March first of any years in which the funds will be available for the construction, improvement, maintenance or repair of some one or more of the inter-county highways or main market roads, then the board of township trustees of any township within the county may file such application, and the state highway commissioner may cooperate with such trustees in the construction or improvement of said highway in the manner hereinafter provided in cases where the county commissioners make such application."

Sec. 1194.

"The county commissioners or township trustees may expend any amount available by law for the construction, improvement, maintenance or repair of inter-county highways or main market roads within the county, providing the county commissioners or township trustees by resolution agree to pay the cost and expense of said improvement over and above the amount received from the state, and the amount assessed against abutting property owners, and the amount so contributed by the county or township shall be expended in the same manner as state aid money."

Section 1214 provided for the apportionment of the expense of an inter-county highway road improvement. Without quoting this lengthy section as then in force and effect, it is sufficient to state that provision was made for an apportionment of cost between a township, benefited property and the state such as was appar-

ently here adopted. The section further required the trustees to publish notice and hold a hearing before adopting assessments. It is pertinent to note that no provision was made whereby a joint board of township trustees could cooperate with the State Highway Department in the construction of a portion of what was then termed an inter-county highway lying along a township line. It is elementary that the township trustees of Center Township have no jurisdiction as a taxing authority over property lying outside the limits of their township. The property owners in Superior Township cannot now be assessed by the trustees of Superior Township for a portion of the cost of the improvement in question in the absence of statutory authority for the levy of such assessments. I do not find such authority. Section 1214, General Code, authorized the trustees upon whose application the improvement was made, to publish notice and levy assessments, but contained no such provisions applicable to any other board of township trustees. There existed no authority in my view whereby township trustees could cooperate with the State in the improvement of a portion of an inter-county highway lying along the line between two townships. The reference in Sections 1191 and 1192, *supra*, is clearly to roads within any township. Nor do I find elsewhere any authority for cooperative proceedings for the improvement of a road by two boards of township trustees except as to township roads provided for in Section 3298-15n.

With respect to the fact that one or two owners of land in Superior Township signed a petition for the improvement of the highway in question, this can have no bearing upon the question of whether or not the trustees of Superior Township may now levy these assessments. As hereinbefore indicated, such assessments may not be levied in the absence of statutory authority therefor. It is pertinent to note in this connection that no petition was apparently ever filed with the trustees of Superior Township.

In view of the foregoing, it is my opinion that when a portion of an inter-county highway lying along a township line was constructed in 1927 by the State Highway Department pursuant to an application of, and in cooperation with, the trustees of one of the townships bounded by such highway, there is no authority whereby the trustees of the other township bounded by such highway may now levy assessments or taxes to pay a portion of the cost of such improvement.

Respectfully,  
GILBERT BETTMAN,  
*Attorney General.*