

estimated basis is subject to revision when the work is complete. (See in this connection two opinions of this department of date December 24, 1919, Opinions Attorney General 1919, pp. 1567 and 1573). This principle (when applied to the present case, will, if an assessment has already been made on an estimated basis, permit of a readjustment on account of the omission of part of the project as originally planned. The ten per cent assessment which your department is to make in connection with the proposed substitute pavement, will be a proceeding entirely independent of the assessment made by the county on account of the original project.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*

1576.

ROADS AND HIGHWAYS—WHERE CENTER LINE OF SECTION OF TOWNSHIP ROAD IS DIVIDING LINE BETWEEN VILLAGE AND TOWNSHIP—HOW IMPROVEMENT MADE.

*Where the center line of a section of township road constitutes the dividing line between a village and the township within which such village is situate, the village may improve the half of such section of road lying within its limits, and the township may improve the remaining half. Apportionment should first be made under section 7177 G. C.*

COLUMBUS, OHIO, September 20, 1920.

HON. CHESTER A. MECK, *Prosecuting Attorney, Bucyrus, Ohio.*

DEAR SIR:—You have recently written to this department as follows:

“There is a road in this county which is the boundary line between a township and a municipal corporation and the council wish to reconstruct and improve the same. This road has never been apportioned according to section 7177 of the General Code and it is a query with me just what method to pursue in improving it. Can the township and the municipal corporation enter into an agreement to improve the same and each pay one-half of the costs thereof? Bonds will have to be issued for the payment of the expense of building this road. I wish you would advise me as to the proper procedure in this matter.”

In response to a request for additional information, you have advised that the municipal corporation in question is a village; that the whole of the section of highway proposed to be improved is within one township, the township being the same as that within which the municipal corporation is situated; that the center line of said section of highway marks the boundary between the municipal corporation and the township; and that the highway in question is a township road.

You make reference to section 7177 G. C., and that section reads as follows:

“If a road is established as a part of the line or boundary of a township or municipal corporation, the trustees of such adjoining townships and council of 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 corporation, as justice and equity requires. The trustees of the respective townships, and council of the 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.”

This section was in existence at the time of the passage of the so-called Cass Highway Law (106 O. L. 574) but was not repealed or amended by that law as were most of the then existing highway statutes.

However, a careful consideration of the statutes providing for street improvement by municipalities and for road improvement by township trustees does not indicate that there is any inconsistency between them on the one hand and said section 7177 G. C. on the other.

As you are aware, there appears in the so-called White-Mulcahy Act (107 O. L. 73) a thorough revision of the statutes relating to road construction by township trustees; and said revision is embodied in the series of sections now designated as sections 3298-1 to 3298-15n.

No extended comment upon said series of sections is necessary here. Said sections provide in brief that the board of township trustees shall have power to construct, reconstruct, resurface or improve township roads, and under certain conditions, county roads and state roads. Authority is conferred upon the trustees by section 3298-13 to apportion the compensation, damages, costs and expenses of the improvement in such manner as that

“all or any part thereof shall be assessed against the real estate abutting upon said improvement, or against the real estate situated within one-half mile of either side thereof, or against the real estate situated within one mile of either side thereof, according to the benefits accruing to such real estate; and the balance thereof, if any, shall be paid out of the proceeds of any levy or levies for road purposes upon the grand duplicate of all the taxable property in the township or from any funds in the township treasury available therefor.”

Further provisions in said series of sections authorize the trustees to make assessments against affected real estate; to levy taxes; and to issue bonds. Specific provision is also made as to the manner in which the contract shall be awarded and carried out.

On the other hand, statutes have long been in existence whereby municipalities, both cities and villages, may improve a municipal street on the assessment plan. These statutes are embraced in the series of sections 3812 to 3911 G. C. By section 3812 the assessment may be made against affected lands either on the basis of a percentage of tax value; or in proportion to benefits; or by the front foot of the property bounding and abutting upon the improvement. Bonds are authorized to be issued by the municipality in anticipation of the collection of assessments as well as for the procuring of the municipality's share of the cost. By virtue of section 3939, the municipality may also issue bonds for payment of the whole cost of a street improvement.

In view of the powers thus conferred respectively upon township and municipality, the practical side of the matter you have in mind would seem to be best approached by first complying with section 7177. Action under said section does not necessarily involve an agreement between the township and the municipality to pay one-half the cost of a given improvement,—rather there is a permanent apportionment as between the township and municipality for the care of the road. Since your letter indicates that the municipal and township authorities have in mind a plan that the municipality and township each pay half the cost, and since it further appears that the center line of the road marks the corporation line of the village, the logical apportionment under section 7177 of the section of highway in question would be a lengthwise allotment of one-half to the village and one-half to the township.

After this apportionment has been made the township is at liberty to proceed in accordance with sections 3298-1 et seq. for the improvement of its half of the road; for there is nothing in said series of sections to indicate that the township must improve the road to any given width. On the other hand, the municipal corporation may proceed in accordance with sections 3812 et seq. as to the half of the road within its limits. The proceedings of the township and the village will be carried on as entirely independent proceedings. Of course, when the time approaches for doing the work, there can be an understanding between the township and village authorities that the two contracts will be let at the same time, although there will have to be separate advertisements for each contract. Likewise, the assessment proceedings by the township and those by the municipality, and the bond issues by the township and municipality will be entirely separate and distinct affairs.

It cannot be urged, as against the plan outlined, that the municipality has no right to improve a township road. The fact remains that one-half of the highway is a street or public place within the confines of the village, and therefore subject to improvement by the village, even in the absence of such a statute as section 7177 G. C. See sections 3629, 3714 and 3812 G. C.; *Steubenville vs. King*, 23 O. S. 610; and see especially *Scully vs. Cincinnati*, 1 C. S. C. R. 183, 13 Ohio Dec. Reprint, 489; and *Glashein vs. Cheviot*, 5 O. L. R. 599, 53 W. L. B. 307.

Returning to the practical features of the situation, it should perhaps be noted that bonds issued by the township to provide funds for improving its half of the highway, will as to the "township's share" be in anticipation of the collection of taxes levied on all the taxable property of the township, including that within the village; whereas, bonds of the village for the village's share of the cost of improving that half of the highway within the village will be paid out of taxation of property within the village alone. Notwithstanding this circumstance, however, an undue burden on the village may be avoided because of the wide discretion vested in both municipal and township authorities in the matter of proportion of cost that may be assessed against benefited lands and the area that may be assessed.

Perhaps other plans of improvement of the road in question are available; but after careful thought as to the practical side of the matter, no reason is perceived why the simple method outlined above is objectionable from any standpoint.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*

1577.

#### INHERITANCE TAX LAW—HOW INTERESTS ARISING UNDER A CERTAIN WILL ARE TAXED.

*Method of inheritance taxation of interests arising under a certain will described.*

COLUMBUS, OHIO, September 20, 1920.

*Tax Commission of Ohio, Columbus, Ohio.*

GENTLEMEN:—Receipt is acknowledged of your letter of recent date requesting the opinion of this department upon the following question:

"F in his will provides as follows:

'I give, bequeath and devise all of my property to my beloved wife, M, and her heirs forever, in trust, however, for the following purposes \* \*

'Out of the income of my said estate my said trustees shall pay out to herself and to my beloved children, such sums of money as may be needed