

3546

SYLLABUS:

"County roads under the jurisdiction of each board of county commissioners," as said language is used in division (D) of Section 4501.04, Revised Code, includes all roads within a county over which the board of county commissioners has the power to exercise authority in that it has, directly or by its actions pursuant to specific statutory authority, the obligation to construct, reconstruct, improve, maintain or repair such roads at the time when the director of highways determines the ratio of the funds available for distribution under said paragraph.

Columbus, Ohio, January 11, 1963

Hon. John T. Corrigan, Prosecuting Attorney
Cuyahoga County, Cleveland, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"Since 1954 the State Highway Department has annually requested certification from the Board of County Commissioners of the several counties of the total county road mileage in the county which is eligible for consideration in the distribution of revenues provided for under Section 4501.04 (D) of the Revised Code of Ohio. On April 24, 1961, the Board of County Commissioners of Cuyahoga County filed with the Director of Highways a statement showing 1140.14 miles of county roads under the jurisdiction of the Board. This was an increase of 1112.71 miles over the certification of 27.43 miles for the year 1960 and previous years. A copy of this certification is attached herewith.

"On January 29, 1962, the County Engineer also filed with the Director of Highways, pursuant to his request, a new map showing all of the county roads. There was also transmitted with the map a tabulation by municipalities and townships of all county roads on the county road system as well as those county roads which are on the state system.

"It appears that for many years the State Highway Department has taken the position that the mileage of county roads to be credited to Cuyahoga County under Section 4501.04 of the Revised Code, refers to the mileage of the county roads within the townships only and that the county cannot be credited for any of the county road mileage inside of municipalities which are a part of the county highway system and are on the county road records. The State Highway Department in support of its position relies on the definition of a county road system as set forth

in Chapter 5541 of the Revised Code. On the other hand, the County Engineer, the Board of County Commissioners and this office have taken the position that Section 4501.04 (D) Revised Code, which refers to 'the total number of miles of county roads *under the jurisdiction* of each Board of County Commissioners in each county' includes county roads duly established under Chapter 5541, as well as Chapter 5553 of the Revised Code, and which lie in townships, villages or cities or are situated on state highways.

"The County Road Records go back to the beginning of Cuyahoga County, and some even as early as 1801. All roads included in these records whether in townships, villages, cities or on state highways have been duly established under Chapter 5553 of the Revised Code and improved under Chapter 5555 of the Revised Code, or such other statutes as have preceded these Chapters. All of these roads have been recorded in the county road records as county roads. We have never recognized any difference between the county roads in township areas and those in municipal areas except that in the case of municipalities we recognize that the primary obligation for maintenance and construction rests with the municipalities and in order to maintain or construct a county road within a municipality we must first obtain its consent as provided in Chapter 5557 of the Revised Code. We contend that these roads are 'under the jurisdiction of' the Cuyahoga County Board of County Commissioners within the meaning of Section 4501.04 (D) of the Revised Code. This then accounts for the wide discrepancy between the Director of Highways in crediting Cuyahoga County with only 27 miles of legal county roads and the 1140 miles of legal county roads which the county claims should be credited.

"Your opinion is, therefore, respectfully requested as to a determination of what county roads are 'under the jurisdiction of each board of county commissioners' within the meaning of Section 4501.04 (D) of the Revised Code.

"In the determination of this matter we should also like to have your opinion on the following questions:

"1. What is a county road and what legal steps must be followed to have it properly established, recorded, and acknowledged as such?

"2. Does a county road which has been established under appropriate law at the time become vacated as such by the incorporation of a municipality out of township area in which it was located?

"3. Does a county road, established and recorded as such before municipalities in its path were created and before a State Highway System was established, lose its identity as such when it also becomes a state highway?

"4. Is a county road still a county road the same as it was in township area (except for municipal consent under Chapter 5557 R.C.) when it becomes also a city street and a state highway?

"5. Is there any difference between the legal status of a county road in a village and the same road in a city?

"6. What changes in the status of a county road (other than municipal consent) take place when the area traversed changes from township to village?

"7. What changes take place when the area traversed changes from village to city?

"8. What changes take place when the county road in either township, village, or city, also becomes a state highway?

"9. Can the County cooperate with the state and participate in or contribute to a project which is on the State Highway System but which is not a county road?

"10. Does a bridge have any different status or category than a road or is it considered as a part of the road the same as a culvert, ditch, curb, berm or catch basin?

"11. Revised Code 5591.02 places upon the board of county commissioners the responsibility to construct and keep in repair all bridges in municipal corporations on state and county roads and improved roads which are of general and public utility running into or through such municipal corporation.

"a. Does such construction and repair require municipal consent?

"b. If a project under this statute is on the State Highway System does it require approval of the State Highway Director?

"c. Is the mandate of this statute a primary obligation upon the County? If so, what secondary or other obligation is there?

"In view of the fact that this matter and the questions heretofore propounded are of a state-wide interest your formal opinion is respectfully requested."

The numbered questions in your request are, by the language of said request, to be answered in determining the main issue, the meaning of the language found in Section 4501.04 (D), Revised Code. In considering my response, I originally attempted to specifically answer each of said numbered questions, but I find that to do so would entail the reiteration

of a substantial part of the provisions of Title 55, Revised Code, as well as statutes found in Titles 3, 7 and elsewhere in the Revised Code. Further, 27 Ohio Jurisprudence 2d, devotes some 456 printed pages to the subject of Highways and Streets, containing several thousand annotations of authority, statutory, judicial and otherwise. I have found that to attempt to answer each of the enumerated questions completely, so as not to subsequently find that, under particular circumstances, a rule contrary to that stated by me would be true, would cause this writing to be more in the nature of a multi-volumed treatise than an opinion on a particular question. Since your request indicates that such questions are asked in connection with the determination of the specific question, I shall not attempt to answer them with particularity but shall limit this opinion to the main question stated in your request.

Section 4501.04, Revised Code, reads in pertinent part as follows:

“* * * * * * * * *”

“(C) Forty-seven per cent of all such moneys shall be for the use of the county in which the owner resides or in which the place is located at which the established business or branch business in connection with which the motor vehicle registered is used, for the construction, reconstruction, improvement, maintenance, and repair of roads and highways, for the payment of costs apportioned to the county under the provisions of section 4907.47 of the Revised Code, and maintaining and repairing bridges and viaducts.

“(D) In addition to the distribution of revenue provided for in divisions (A), (B), and (C) of this section, nine per cent of all such moneys shall be for the use of the several counties for the highway, road, and other purposes specified in division (C) of this section and shall be distributed to the several counties in the ratio which the total number of miles of county roads under the jurisdiction of each board of county commissioners in each county bears to the total number of miles of county roads in the state as determined by the director of highways. Before such distribution is made each board of county commissioners shall certify in writing to the director of highways the actual number of miles under its statutory jurisdiction which are used by and maintained for the public.

“* * * * * * * * *”

Your inquiry can be answered by a determination of the meaning of the phrase, “county roads under the jurisdiction of each board of county commissioners in each county bears to the total number of miles of county roads in the state as determined by the director of highways.”

It will first be noted that such statutory language, as applied to each county, causes the director of highways to establish a ratio on the miles of county roads under the jurisdiction of the particular board of county commissioners as compared to the total miles of county roads in the state.

It is obvious that, if the distribution of the funds available under division (D) of Section 4501.04, *supra*, is to be made with mathematical accuracy, the sum total of all of the numerators for each of the eighty-eight counties in the fraction created by the above ratio must be equal to the denominator thereof, and therefore the "county roads in the state" must be the total of all of the "county roads under the jurisdiction of each board of county commissioners." The answer to this question will resolve itself upon a determination of what constitutes "county roads under the jurisdiction of a board of county commissioners" within the purview of that provision of law.

The public roads *of the state* are defined by Section 5535.01, Revised Code, as follows:

"The public highways of the state shall be divided into three classes: state roads, county roads, and township roads.

"(A) State roads include the roads and highways on the state highway system.

"(B) County roads include all roads which are or may be established as a part of the county system of roads as provided in sections 5541.01 to 5541.03, inclusive, of the Revised Code, which shall be known as the county highway system. Such roads shall be maintained by the board of county commissioners.

"(C) Township roads include all public highways other than state or county roads. The board of township trustees shall maintain all such roads within its township. The board of county commissioners may assist the board of township trustees in maintaining all such roads. This section does not prevent the board of township trustees from improving any road within its township."

As to public roads *of the state*, I stated in Opinion No. 1841, Opinions of the Attorney General for 1960, page 667, at page 672:

"* * * Under Section 5535.01, Revised Code, the public highways of the state are divided into three classes: state roads, county roads, and township roads. There is no provision in law for a road to be in two classes."

Sections 5541.01 to 5541.03, Revised Code, referred to in division (B) of Section 5535.01, *supra*, provide a procedure for adoption of a system of highways by the board of county commissioners of a county, the roads composing such system to be known and designated as county roads. A map of such system is forwarded to the director of highways and, upon the approval of the director, such system becomes the system of county roads of the county. Your letter of request indicates that the 1140.14 miles of county roads referred to in said request were established as county roads pursuant to said Sections 5541.01 to 5541.03, inclusive, and it appears that some of these roads were later, through incorporation or annexation, included within the limits of municipal corporations.

Section 723.01, Revised Code, provides:

“Municipal corporations shall have special power to regulate the use of the streets. The legislative authority of such municipal corporation shall have the care, supervision, and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation, and shall cause them to be kept open, in repair, and free from nuisance.”

In the case of *The City of Steubenville v. King*, 23 Ohio St., 610, the second paragraph of the syllabus states:

“When territory, including a public road connecting with the streets of a city, is annexed to the city, and the road continues to be used as a street or thoroughfare, it thereby becomes a ‘public highway’ of the city, within the meaning of section 439 of the municipal code (66 Ohio L. 222), although it has never been ‘accepted and confirmed by an ordinance specifically passed for such purpose’, as provided in section 440.”

The statutory provisions referred to in the above quote are now found in Sections 723.01 and 723.03, Revised Code.

In *Sroba v. The Green Cab Co., et al.*, 35 Ohio App., 438, the Court of Appeals for Cuyahoga County said at page 441:

“* * * A county road loses its character as such as soon as it becomes located within the limits of an incorporated village. Thereafter it must be treated as one of the streets of the village. *City of Steubenville v. King*, 23 Ohio St., 610, cited with approval in *Harkness & Cowing Co. v. Village of St. Bernard*, 6 Ohio App., 369.”

In view of Section 723.01, *supra*, and the conclusions of the cases of *City of Steubenville v. King* and *Stroba v. The Green Cab Co.*, it might appear that when territory containing a county road becomes a part of a municipal corporation, said road ceases to be a county road. On the other hand, however, I have found no provision of law holding that a duly established county road ceases to be a county road in such a circumstance; and other provisions of the Revised Code give a contrary impression. In this regard, Section 5507.08, Revised Code, reads in part:

“The board of county commissioners may repair *that portion of a county road extending into or through a municipal corporation, or a part of a county road and a municipal corporation’s streets extending into or through a municipal corporation.* * * *” (Emphasis added)

Also, Section 5591.02, Revised Code, provides in part:

“The board of county commissioners shall construct and keep in repair all necessary bridges in municipal corporations * * * on all * * * *county roads running into or through such municipal corporation.*” (Emphasis added)

I also note that each of the two cases above cited dealt with an action for damages against a county for injury received on a county road located within a municipal corporation. In each case it was held that the municipal corporation had the primary duty to maintain the street since the street was located within the municipal corporation, and that the county was not liable. Thus, the determination of those cases as to the status of the roads in question, may be limited to the specific fact situations therein involved.

Of further significance is the fact that the legislature in enacting Section 4501.04, *supra*, did not choose to permit the words “county roads” to stand unencumbered, but added to them the words “under the jurisdiction of each board of county commissioners.” The word “jurisdiction” is defined in Webster’s Third New International Dictionary, in part, as follows:

“* * * power or right to exercise authority * * * the limits or territory within which any particular power may be exercised. * * *”

The legislature speaks of roads “*under the jurisdiction*” of the board of county commissioners, in division (D) of Section 4501.04, *supra*, and I believe, therefore, that said word means those roads over which it has the

power or right to exercise authority. I am fortified in this conclusion by the language used in the final sentence of division (D) of Section 4501.04, *supra*, which speaks of the actual miles (of roads) under the "statutory jurisdiction" of the county commissioners. While Section 4501.04, *supra*, does not so specifically state, it is implicit from its terms that the certification sent to the director of highways pursuant to the last sentence of division (D) thereof should be used by him in determining the ratio described in said paragraph.

One of the basic rules of statutory interpretations provides that a statute should be given a fair construction in accordance with the purpose which caused its enactment, 50 Ohio Jurisprudence 2d, 230 *et seq.*, Statutes, Sections 246 *et seq.* Thus, in determining the meaning of the language used by the General Assembly herein, the purpose for which the fund distributed by paragraph (D) of Section 4501.04, *supra*, are to be used, should be considered. Said statute provides that said fund shall be used for highways, roads and other purposes specified in division (C) of Section 4501.04, *supra*, which include construction, reconstruction, improvements, maintenance, and repairs of roads and highways.

Under Chapter 5553., Revised Code, a board of county commissioners may make improvements to roads in the county, other than those on the state highway system.

Under Chapter 5555., Revised Code, similar powers are granted.

Chapter 5557., Revised Code, places a limitation upon the board of county commissioners, in that municipal approval must first be had before any improvement may be made by the county to a street located in a municipal corporation. However, thereafter, if the county pays the entire cost, no further action is needed by the municipality.

Pursuant to Section 5535.08, Revised Code, the board of county commissioners may, by agreement, expend funds for repairs, improvements, etc., to certain roads within a village.

These powers, as all others dealing with the roads and the board of county commissioners, must be exercised in accordance with the statutory requirements which are imposed with regard thereto, and only as to those roads which come within their terms.

In accordance with the foregoing, therefore, I am of the opinion and you are advised that "county roads under the jurisdiction of each board of

county commissioners,” as said language is used in division (D) of Section 4501.04, Revised Code, includes all roads within a county over which the board of county commissioners has the power to exercise authority in that it has, directly or by its actions pursuant to specific statutory authority, the obligation to construct, reconstruct, improve, maintain or repair such roads at the time when the director of highways determines the ratio of the funds available for distribution under said paragraph.

Respectfully,

MARK McELROY

Attorney General