

**OPINION NO. 86-094****Syllabus:**

1. R.C. 5553.31 sets forth the statutory method by which land may be dedicated for road purposes, and requires, inter alia, that a person must propose to dedicate land for road purposes and the proposal must be approved and accepted by the board of county commissioners.
2. The fact that an easement is denominated on a plat as a township road is not, standing alone, sufficient to indicate that the property owner proposed to dedicate the easement as a public road under R.C. 5553.31. Where a plat contains express dedication of a road, the approval of the plat by the board of county commissioners is not, pursuant to R.C. 711.041, an acceptance of the dedication. The board of county commissioners must specifically approve or accept the dedication.
3. In order to constitute a common law dedication of land for road purposes, the landowner must intend to dedicate such land, and the public authority must accept the dedication.
4. The portion of R.C. 5553.02, which states that no public road shall be located or established

unless, inter alia, the location or establishment begins on a public road and services at least three private residences or businesses in the first five hundred feet, is not applicable to the acceptance by the board of county commissioners of land dedicated for road purposes pursuant to R.C. 5553.31. (1984 Op. Att'y Gen. No. 84-016, approved and followed.)

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To: Richard L. Ross, Morgan County Prosecuting Attorney, McConneville, Ohio  
By: Anthony J. Celebrezze, Jr., Attorney General, December 10, 1986

I have before me your request for my opinion concerning the dedication of land for road purposes. Your letter of request sets forth the following facts.

[I]n Windsor Township, Morgan County, Ohio, there is a Bald Eagle Subdivision which was accepted by the Morgan County Commissioners on June 14, 1971. The plat for Bald Eagle Subdivision shows a Township Road 602 from the already existing County Road 2 to the Bald Eagle Subdivision. The road records of Windsor Township only show the township road going part way and do not show it going to the subdivision. I have spoken with all three commissioners, who were in office in 1971, they do remember the situation and expressly remember not approving a road to the subdivision. However, the commissioners journal is silent as to any road and only speaks of approving the plat of the subdivision. At the time, the "road" or easement went from County Road 2 to the subdivision, the land owner who laid out the subdivision had his own private air strip which stopped on one side of the easement. In the fourteen and one-half years since then, the landing strip has been extended across the easement. Until approximately six weeks ago, all parties, that is the owner of the landing strip, the owners in Bald Eagle Subdivision, the Commissioners, and the Board of Township Trustees felt it to be a private easement. Now with discovery of the language on the plat map in 1971, some feel that the commissioners, pursuant to Ohio Revised Code Section 5553.31 accepted a road into the subdivision when they accepted the plat.

The language on the plat about which you are concerned denominates the easement "Windsor Township Road 602." The plat further states: "Approved by the Morgan Co. Board of Commissioners" and this statement is followed by the Commissioners' signatures. Pursuant to a telephone conversation that you had with a member of my staff, it is my understanding that you wish to know whether the board of county commissioners unknowingly accepted the easement as a public road in 1971 by approving the plat which showed the easement in dispute as a township road. If not, you also wish to know whether the board of county commissioners may now accept the easement as a public road even though there are not three residences within the first five hundred feet, as required by R.C. 5553.02. I note that the easement about which you ask is not located within a municipality.

It is my understanding that you are concerned about whether the public road was established through statutory

dedication.<sup>1</sup> A dedication of land is a gift whereby the owner of land grants his property to the government for a specified purpose. See 1984 Op. Att'y Gen. No. 84-016. R.C. 5553.31 sets forth the statutory method by which land may be dedicated for road purposes, and states as follows:

Any person may, with the approval of the board of county commissioners, dedicate lands for road purposes. A definite description of the lands to be dedicated with a plat of such lands thereto attached and signed by the party dedicating such lands, with the approval and acceptance of the board indorsed thereon, shall be placed upon the proper road records of the county in which such road is situated. The board shall not approve and accept the dedication of any land for road purposes until any lien attached to such land under division (A) of section 505.82 of the Revised Code is satisfied. If the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the board by proper resolution approves and accepts the lands for such purpose, as are provided in cases where the board by unanimous vote declares its intention to locate, establish, widen, straighten, vacate, or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the lands so dedicated a public road without any further proceedings thereon. (Emphasis added.)

It is apparent from the language of R.C. 5553.31 that in order for there to be a statutory dedication, a landowner must propose to dedicate his land for road purposes, and must follow the provisions of R.C. 5553.31 in order to propose the dedication to the commissioners; further, the board of county commissioners must approve and accept the landowner's proposal to dedicate his land for road purposes, and must take those actions specified in R.C. 5553.31. See Oberhelman v. Allen, 7 Ohio App. 251 (Hamilton County 1915); 1976 Op. Att'y Gen. No. 75-014; 1956 Op. Att'y Gen. No. 7136, p. 690; 1956 Op. Att'y Gen. No. 7113, p. 679. Under R.C. 5553.31, the board of county commissioners must indorse its approval and acceptance of the dedication on the plat showing the lands to be dedicated. R.C. 711.041, which states that no plat certifying land outside a municipal corporation may be recorded without the approval of the county commissioners noted thereon, further provides that: "The approval of a plat by the board of county commissioners shall not be deemed to be an acceptance of the dedication of any public street, road, or highway dedicated on such plat." Thus, the fact that the board of county commissioners has approved the plat of a subdivision does not indicate the board's acceptance of the dedication of any public road

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<sup>1</sup> There are several methods by which a public road may be established. See 1984 Op. Att'y Gen. No. 84-016. See, e.g., Railroad Co. v. Village of Roseville, 76 Ohio St. 108, 81 N.E. 178 (1907) and Oberhelman v. Allen, 7 Ohio App. 251 (Hamilton County 1915) (a public road may be established by prescription); Op. No. 84-016 (board of county commissioners may undertake proceedings to appropriate land for road purposes pursuant to R.C. 5553.03-.16).

dedicated on the plat. See Krzewinski v. Eaton Homes, Inc., 108 Ohio App. 175, 161 N.E.2d 88 (Lorain County 1958), appeal dismissed, 169 Ohio St. 86, 157 N.E.2d 339 (1959); Op. No. 76-014; 1956 Op. No. 7113. See, e.g., In Re Application of Loose, 107 Ohio App. 47, 49, 153 N.E.2d 146, 148 (Franklin County 1958) (holding there to be a statutory dedication where plat contained the notation, signed by the county commissioners: "Approved this 1st day of March, A.D. 1906, and the roads, streets and alleys therein dedicated to public use, are hereby accepted as such for the county of Franklin, state of Ohio"); 1958 Op. Att'y Gen. No. 2262, p. 370 at 375 (finding there to be a statutory dedication where statement appeared on plat, signed by platters, that they "do hereby dedicate the streets to the public use forever" and the plat was signed by the county commissioners, "Accepted and approved by the County Commissioners"). See also Op. No. 76-014 at 2-40 to 2-41 (explaining 1958 Op. No. 2262 as follows: "[n]otably, however, the specific term 'accepted' was used in the indorsement and other actions of the board had further indicated actual acceptance").

From the facts presented in your request and an examination of the plat which you have sent, it is apparent that there was no statutory dedication in this instance. R.C. 5553.31 requires that, "[a] definite description of the lands to be dedicated with a plat of such lands thereto attached and signed by the party dedicating such lands, with the approval and acceptance of the board indorsed thereon" be placed upon the proper road records. There is no indication that this requirement was met. The plat contains no language by which the landowner expressly dedicates the easement or any streets to the public use. The mere labeling of an easement as a township road does not, in my opinion, serve as a proposal to dedicate the easement as a public road. The fact that the subdivider subsequently extended an airstrip across the easement is further proof that he did not propose to dedicate the easement as a public road. The plat contains the approval of the county commissioners, but such approval is obviously only of the plat itself, see generally R.C. 711.05 (approval of plat by county commissioners). There is no express language or overt action indicating acceptance of dedicated roads. As stated in R.C. 711.041, the approval of a plat by the board of county commissioners is not an acceptance of the dedication of any street, road, or highway dedicated on the plat. Thus, even if there were streets dedicated on the plat, the approval of the plat would not constitute an acceptance of the dedication. In this instance, however, no dedication appeared on the plat. It can hardly, then, be said that the approval of the plat worked as an acceptance of any easement shown on the plat as a public road, regardless of the fact that the easement was denominated a township road. Thus, I conclude that there was no statutory dedication.

I note that a public road may also be established by common law dedication. See Oberhelman v. Allen. In order to constitute a common law dedication of land to public use, "there must have been an intention to dedicate, and an actual dedication on the part of the owner, and an acceptance on the part of the public, which may be proved by the circumstances of the case." Lessee of Village of Fulton v. Mehrenfeld, 8 Ohio St. 440, 446 (1858). See State ex rel. Fitzthum v. Turinsky, 172 Ohio St. 148, 174 N.E.2d 240 (1961); Railroad Co. v. Village of Roseville, 76 Ohio St. 108, 81 N.E. 178 (1907); State ex rel. Litterst v. Smith, 87 Ohio App. 513, 94 N.E.2d 802 (Pike County 1950); Oberhelman v. Allen. The acceptance of

the dedication by the public authority may be express or implied, but in order to imply acceptance by the public, the public authority must take some positive or affirmative action to indicate that it has taken control or direction over the property, such as improving the street or road. See State ex rel. Fitzthum v. Turinsky, 172 Ohio St. at 153, 174 N.E.2d at 243 (an acceptance may be implied "as a result of the authorities taking some positive action such as the actual improvement of a street or road"); Lessee of Village of Fulton v. Mehrenfeld. Mere use of a road by the general public is, however, insufficient to imply acceptance of the dedication.<sup>2</sup> State ex rel. Fitzthum v. Turinsky; Railroad Co. v. Village of Roseville. The dedication of land by the owner may also be express or implied. State ex rel. Litterst v. Smith. As the court stated in Litterst, the dedication "is express when the animus dedicandi is expressly declared; it is implied when it arises by operation of law from the acts of the owner....Anything which fully demonstrates the intention of the donor, or the acceptance by the public, is effectual." 87 Ohio App. at 517, 94 N.E.2d at 804-05.

I cannot, as an executive officer, make findings of fact as to intent. Such a function rests solely with the judiciary. See 1983 Op. Att'y Gen. No. 83-057. It does not appear, however, that the instant situation involved a common law dedication. There is no indication that the owner intended to dedicate the easement, that he, in fact, did dedicate the easement, or that the public accepted a dedication. You state in your letter that, until recently, all parties involved, including the owner of the property, the county, and the township, believed the property to be a private easement. In fact, the owner has extended an air strip across the easement - certainly an act which is inconsistent with an intent to dedicate the easement as a public road. Thus, despite the fact that the easement is denominated a township road on the plat, I conclude, from the facts given, that there was no intent on the part of the landowner to dedicate the land to the public, nor did the public accept the easement as a public road. Cf. Oberhelman v. Allen (finding that a road had not been established by common law dedication, even though street signs had been placed on the roadway and the supposed road appeared in a street directory maintained by the police department and on a tax plat.) Thus, there was no common law dedication of the easement.

Because I have concluded that there was no dedication of the easement to the public for road purposes in 1971, I turn now to your second question, whether the board of county

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<sup>2</sup> As is pointed out in State ex el. Fitzthum v. Turinsky, 172 Ohio St. 148, 153, 174 N.E.2d 240,243 (1961), "it is most unrealistic to impose on such officials [of local political subdivisions], without their consent, the added burden of maintaining the streets and roads in all the housing projects and subdivisions...throughout the state." A county or township has the responsibility of maintaining and repairing roads dedicated to its use. See R.C. 5535.01; R.C. 5535.08; R.C. 5571.02. See also 1958 Op. Att'y Gen. No. 2262, p. 370; 1949 Op. Att'y Gen. No. 1209, p. 835. Therefore, a public authority must be shown to have actually accepted the dedication of a road, whether that acceptance is express or implied, before a common law dedication will be found.

commissioners may now accept the easement as a public road, even though there are not three residences within the first five hundred feet, as required by R.C. 5553.02.

As discussed above, R.C. 5553.31 sets forth the statutory procedure whereby a person may dedicate lands for road purposes. If the landowner and the county meet the requirements set forth in R.C. 5553.31, they may now effect a dedication of the easement for road purposes.

R.C. 5553.31 provides in part, that:

If the lands so dedicated contemplate a change in an existing road, the same proceedings shall be had thereon, after the board by proper resolution approves and accepts the lands for such purpose, as are provided in cases where the board by unanimous vote declares its intention to locate, establish, widen, straighten, vacate, or change the direction of a road without a petition therefor, but otherwise the proposal to dedicate lands for road purposes, together with the acceptance of the grant by the board, constitutes the lands so dedicated a public road without any further proceedings thereon. (Emphasis added.)

R.C. 5553.02 authorizes a board of county commissioners to locate, establish, alter, widen, straighten, vacate, or change the direction of roads, as provided in R.C. 5553.03-.16. R.C. 5553.02 also sets forth the circumstances under which the board may locate or establish a public road, and provides, that:

The board of county commissioners may locate, establish, alter, widen, straighten, vacate, or change the direction of roads as provided in sections 5553.03 to 5553.16 of the Revised Code. This power extends to all roads within the county, except that as to roads on the state highway system the approval of the director of transportation shall be had. However, no public road shall be located or established, by the board of county commissioners, unless the location or establishment begins on a public road and terminates on a public road, or begins on a public road and services a public park, a state supported educational institution, public school, public aviation area, or a public recreation area, or begins on a public road and services at least three private residences or businesses in the first five hundred feet and one private residence or business in each two hundred feet thereafter. (Emphasis added.)

R.C. 5553.02 authorizes the county commissioners to locate, establish, alter, widen, straighten, vacate, or change the direction of a public road in accordance with the procedures set forth in R.C. 5553.03-.16. Thus, the "three private residences" language contained therein has no application to the different procedure for a dedication of property under R.C. 5553.31. This conclusion is supported by Op. No. 84-016, which states: "The last portion of R.C. 5553.02, which provides that no road shall be 'located or established' by a board of county commissioners unless certain specified requirements are met, is not applicable to the acceptance of lands dedicated for road purposes pursuant to R.C. 5553.31" (syllabus).

In conclusion, it is my opinion, and you are advised, that:

1. R.C. 5553.31 sets forth the statutory method by which land may be dedicated for road purposes, and requires, inter alia, that a person must propose to dedicate land for road purposes and the proposal must be approved and accepted by the board of county commissioners.
2. The fact that an easement is denominated on a plat as a township road is not, standing alone, sufficient to indicate that the property owner proposed to dedicate the easement as a public road under R.C. 5553.31. Where a plat contains express dedication of a road, the approval of the plat by the board of county commissioners is not, pursuant to R.C. 711.041, an acceptance of the dedication. The board of county commissioners must specifically approve or accept the dedication.
3. In order to constitute a common law dedication of land for road purposes, the landowner must intend to dedicate such land, and the public authority must accept the dedication.
4. The portion of R.C. 5553.02, which states that no public road shall be located or established unless, inter alia, the location or establishment begins on a public road and services at least three private residences or businesses in the first five hundred feet, is not applicable to the acceptance by the board of county commissioners of land dedicated for road purposes pursuant to R.C. 5553.31. (1984 Op. Att'y Gen. No. 84-016, approved and followed.)