

2102.

PETITION—COUNTY ROAD IMPROVEMENT—SIGNATURES OF 51% OF
LAND OWNERS NECESSARY FOR COMMISSIONERS TO PROCEED
BY MAJORITY VOTE.

SYLLABUS:

In order that a board of county commissioners may proceed with a road improvement pursuant to a petition being filed as provided in Sections 6902-2 and 6907, General Code, it is only necessary that such petition be signed by at least fifty-one per cent of the persons, residents of the county, who are the owners of land to be specially assessed for the improvement.

COLUMBUS, OHIO, July 17, 1930.

HON. C. G. L. YEARICK, *Prosecuting Attorney, Newark, Ohio.*

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

“The benefit of your opinion is respectfully requested as to the following question:

Sec. 6906-2 of the General Code of Ohio reads:

‘When a petition signed by at least fifty-one per cent of the land or lot owners who are to be specially assessed praying for the improvement of any road is filed with the board of county commissioners as provided in Section 6907 of the General Code said improvement may be made by a majority vote of the county commissioners. The procedure for such improvement shall otherwise be the same as in the case where the commissioners proceed without a petition.’

Sec. 6907 G. C. designates the signers of such petition as ‘the land or lot owners, residents of such county, who are to be specially taxed or assessed for said improvement * * * .’

This office has been asked to determine whether a petition signed by the owners of at least 51% of the real estate to be specially assessed paying for the improvement petitioned for is sufficient, under the statutes cited, or whether the statutes contemplate a petition signed by at least 51%, numerically, of the land or lot owners residing on the proposed improvement.

Fifty-one per cent of the persons owning lands or lots, as aforesaid, would not necessarily represent 51% of the total property to be assessed under such proposed improvement. Those who have signed the petition, representing more than 51% of the property to be assessed—although not 51% of the persons living along the proposed improvement who own small properties,—are all residents of the county.

I desire to inquire whether, in your opinion, a petition signed by a small group of persons, who, however, own at least 51% of the land or lots to be specially assessed paying for the contemplated road improvement, is sufficient to warrant the county commissioners to proceed in the premises.”

The reference in Sections 6906-2 and 6907, General Code, which you quote, to a petition signed by “fifty-one per cent of the land or lot owners, residents of such county who are to be specially taxed or assessed” is identical with the provisions of Section 3298-2, General Code, relating to a petition to be filed with a board of township trustees asking for the improvement of a road. This last mentioned section was under consideration by this office in an opinion, appearing in Opinions of the Attorney

General for 1927, Vol. II, p. 836. The question presented to this office in that opinion was as follows :

"Can the township trustees of a township under a petition filed in purview of Section 3298-2, G. C., consisting of at least fifty-one per cent of the land owners for the improvement of a road, the land owners agreeing to pay fifty per cent and the township to pay fifty per cent, assess the land owners who do not sign the petition to the full amount of fifty per cent; or is it necessary to get a written agreement from each and all land owners that would be assessed thereby before the trustees of the township would have jurisdiction to act under Section 3298-1, G. C.?"

It was held as set forth in the syllabus :

"Upon the petition of at least fifty-one per cent of the owners of lands and lots who are to be especially taxed for a proposed improvement, the township trustees of the township may under the provisions of Sections 3298-2, et seq., of the General Code, determine that such improvement shall be made and assess the cost thereof in the manner petitioned for, provided that it be in any of the methods enumerated in Section 3298-13 of the General Code. It is not necessary to secure the written agreement of other property owners to be assessed under said plan who have not petitioned for the improvement."

The then Attorney General obviously construed Section 3298-2, as requiring that the petition be signed by at least fifty-one per cent of the land owners to be specially assessed. There is no reference in either Section 3298-2 nor in Sections 6906-2 or 6907, General Code, to the extent of land ownership of the petitioners. This is apparently of no consequence in determining the sufficiency of a petition filed under these sections. The Legislature has elsewhere in the same clear and unambiguous language provided for the signing of a petition by fifty-one per cent of the persons to be specially assessed for a given improvement. Sections 6930, et seq., General Code, relating to proceedings for the improvement of a road in two or more counties, contain similar provisions, Section 6941 providing for a petition "signed by fifty-one per cent of the persons to be specially assessed."

I do not think it may be said that the Legislature intended to provide that the extent of land ownership of the petitioners should be taken into consideration in determining the sufficiency of a petition such as is referred to in Section 6906-2, General Code, for the reason that where the Legislature has intended to provide that property ownership shall be a pertinent factor, it has so expressed itself. For instance, Section 3836, General Code, relating to a petition for a street improvement in a municipality provides that a petition for such improvement may be subscribed "by three-fourths in interest of the owners, or the owners of sixty per cent of the foot frontage of property abutting upon a street". This is clear evidence in my opinion of the fact that where the Legislature contemplated that a petition should be filed by property owners to be assessed representing a percentage of the total area to be assessed, it has expressly so provided.

It is, accordingly, my opinion in specific answer to your question that, in order that a board of county commissioners may proceed with a road improvement pursuant to a petition being filed as provided in Sections 6906-2 and 6907, General Code, it is only necessary that such petition be signed by at least fifty-one per cent of the persons, residents of the county, who are the owners of land to be specially assessed for the improvement.

Respectfully,
GILBERT BETTMAN,
Attorney General.