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WATER—DITCH — CULVERT — TOWNSHIP TRUSTEES RESPONSIBLE FOR REMOVAL OF OBSTRUCTION WHICH DIVERTS OR OBSTRUCTS FLOW OF WATER—NO TOWNSHIP HIGHWAY SUPERINTENDENT—TOWNSHIP DIVIDED INTO THREE ROAD DISTRICTS—COUNTY ROAD—SECTIONS 3370, 13421-7 G. C.

SYLLABUS:

The township trustees are responsible for the removal of an obstruction which diverts or obstructs the flow of water as described in Section 13421-7, General Code, where there is no township highway superintendent and the township has been divided into three road districts as provided in the second suggested method in Section 3370, General Code. This is true even though the road is a county road.

Columbus, Ohio, August 18, 1949

Hon. Darrell R. Hottle, Prosecuting Attorney
Highland County, Hillsboro, Ohio

Dear Sir:

Your letter requesting my opinion reads as follows:

“There is a problem in this county which seemingly can only begin to be solved by obtaining your opinion on the question hereinafter set forth. Although I have made my statements as to this situation, the Commissioners and Trustees would like your opinion.

“For some time water has flowed off the land of a county resident into a ditch along one of the county roads. The water flowed through a tile under the road and under the land of another land owner, finally emptying into a small branch. There is also an open culvert through which water flowed from the first owner’s land under the road onto the second owner’s land.

“The second land owner has for several months placed a dam of dirt on his property so that the water can not now flow on the surface of his land, but the water now backs up, fills the ditch alongside the road adjacent to his land, over the road and the ditch on the opposite side, as well as the first owner’s land on the opposite side of the road.

“The county Commissioners and the Trustees of the township wherein this ditch is located are not in agreement as to whose

duty it is to remove or cause to be removed the dam and prevent the resulting damage to the county road.

“The particular township has no highway superintendent, but the township roads are maintained and repaired under the authority of Section 3370 (2), General Code of Ohio. It is provided in Section 13421-7 of the General Code that the township highway superintendent be responsible to initiate any action of removing an obstruction to any ditch, drain, or water course or which diverts any water from adjacent land to or upon a public highway. In as much as the township has no highway superintendent, the Trustees maintain that they are not obligated to act under that particular section.

“Your opinion is asked upon the question :

“Are the township Trustees or are the county Commissioners responsible for the removal of an obstruction which diverts or obstructs the flow of water as described in Section 13421-7, where there is no township highway superintendent, where the township has been divided into three road districts as provided in Section 3370 (2) and where the road in question is a county road.”

Section 3370, General Code, reads in part as follows :

“* * * * In the maintenance and repair of roads the township trustees may proceed in any one of the following methods as they may deem for the best interest of the public, to-wit :

“1. They may designate one of their number to have charge of the maintenance and repair of roads within the township, or

“2. They may divide the township into three road districts, in which event each trustee shall have charge of the maintenance and repair of roads within one of such districts, or

“3. They may appoint some competent person, not a member of the board of trustees, to have charge of the maintenance and repair of roads within the township which person shall be known as township highway superintendent, and shall serve at the pleasure of the township trustees. The method to be followed in each township shall be determined by the township trustees by resolution duly entered on their records.”

Your township is now operating under the second method whereby the township is divided into three districts with each township trustee in charge of a certain road district.

Section 13421-7, General Code, reads in part as follows :

“Whoever wrongfully obstructs any ditch, drain or water course along, upon, or across a public highway, or wrongfully

diverts any water from adjacent lands to, or upon a public highway, shall be fined not more than one hundred dollars, nor less than five dollars; and whenever the township highway superintendent may learn of any such obstruction or diversion he shall forthwith notify the township trustees, who shall cause written notice thereof to be personally served upon the person, firm or corporation, or upon any agent in charge of the property of the person, firm or corporation so causing such obstruction or diversion; which notice may be served by a constable of the proper township or by any person authorized and deputed therefor, by the township trustees and which shall describe and locate said obstruction or diversion and direct the immediate removal of the same; if said person, company or corporation shall not within five days from the receipt of said written notice proceed to remove said obstruction and complete the removal of the same within a reasonable time, the township highway superintendent, upon the order of the township trustees, shall remove said obstruction. * * *

A careful reading of this statute discloses that it is the township trustees who have the authority to give written notice and direct the person causing the obstruction to remove same. It also gives the trustees authority to order the township highway superintendent to remove the obstruction if the person causing said obstruction does not do so within the required time. There can be no doubt that the legislature intended that the township trustees were to be charged with the duty of repairing public roads in such a situation as this. It will be further noted that the statute does not limit the trustees' duties to township roads but uses the broader term of "public roads." Thus, this county road falls within the term "public roads."

The only problem here is the fact that there is no township highway superintendent. Section 13421-7, General Code, gives the duty in a situation such as this to the township trustees with power to delegate it to the highway superintendent, that is, in case the township chose to have a superintendent. It is only logical to assume that since the township could lawfully have another officer do the identical job as that of a highway superintendent, the other officer would also be required to assume the duties of a superintendent. In this case, the trustee in charge of the district in which the obstruction is located is the person whom the township trustees should order to remove the obstruction if the offending party does not. He is the person who assumes the duties of a highway superintendent.

Since Section 13421-7, General Code, gives the responsibility of removing an obstruction to the township trustees, they should not be allowed to avoid it. After giving the trustees this responsibility, it cannot be said that the legislature intended them to escape it by not including a highway superintendent in their plan of organization. The intent of the legislature was to put the responsibility in the hands of the trustees. This intention should be observed in interpreting Section 13421-7, General Code. In 37 O. Jur. at p. 548, it reads in part as follows:

“It often happens that the true intention of the lawmaking body, though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning. In such cases, the carrying out of the legislative intention, which, as we have seen, is the prime and sole object of all rules of construction, can only be accomplished by departure from the literal interpretation of the language employed. The manifest purpose and intent of the legislature will prevail over the literal import of the words. * * *”

I believe that the intent of the legislature was to give the responsibility of removing an obstruction which diverts the flow of water as described in your inquiry to the township trustees. They intended to give the trustees authority to direct the township highway superintendent to remove such obstructions if the township had such a superintendent. Since it is not necessary to have a township highway superintendent, the duty devolves upon the person who has the functions comparable to a superintendent, the township trustee in charge of the road district in which the obstruction is located.

Therefore, it is my opinion that it is the duty of the township trustees to order the obstruction removed. If it is not removed by the offending party, it shall be removed by the trustee in charge of the district in which the obstruction is located.

Respectfully,

HERBERT S. DUFFY,
Attorney General.