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Marie Sprang
Fiscal Officer
Pleasant Township Trustees
12554 Barbara Drive
Kenton, Ohio 43326

RE: Reimbursement for Damaged Crops in the Right of Way

Dear Trustees:

The question, Does the township government owe compensation for crops that are in the right of way? The answer is no. Ohio Revised Code §5543.14 states as follows:

5543.14 County engineer to trim or remove vegetation along roads.

The county engineer may trim or remove any and all trees, shrubs, and other vegetation growing in or encroaching onto the right-of-way of the county roads of the engineer's county, and the board of township trustees may trim or remove any and all trees, shrubs, **and other vegetation** growing in or encroaching onto the right-of-way of the township roads of its township, as is necessary in the engineer's or board's judgment to facilitate the right of the public to improvement **and maintenance of**, and uninterrupted travel on, county and township roads. **The engineer or board is not required to compensate** the abutting landowner **for** trimming or **removing such** trees, shrubs, **and other vegetation** as is necessary **to facilitate these rights**. The department of agriculture or other

proper department may, with the consent of the proper authorities, take charge of the care of such trees to facilitate these rights. Such department may, with the consent of the proper authorities of the township, county, or state, plant trees along the public highway and may use any funds available for the development of forestry in the state to pay the expense of the planting and care of such trees. The ownership of all trees, so planted, shall remain in the public. (Emphasis added)

The right of way we are talking about is the ditch, the berm along the highways in question in which the farmer is encroaching on with his crop planting. This right of way was purchased long ago to serve as a grassy lane for water runoff and road protection. In this right of way are buried utilities such as fiber optic cable or other types possibly. Under Ohio Revised Code §5543.14 it is the duty of township trustees to maintain and to remove any and all obstructions whether they be manmade or vegetation in nature from this right of way. There are several other statutes that talk about obstructions being removed from the right of way. Case Law also has been litigated on this issue and specifically in Seville v. Saunders, 1999 Ohio App. LEXIS 4026, Ninth District, (Medina County, Ohio, 1999); Grime v. Lauber, 1974 Ohio App. LEXIS 3289 (Fulton County 1974) both held that trees that obstruct or impede the use of the existing right of way may be removed without additional compensation to the property owner. It is the duty of township government to keep this right of way unobstructed and open.

In this case the problem that arises is created by the farmer himself planting in the right of way. It would also be the duty of the township government to enjoin if necessary by injunctive relief the farmer from this type of conduct from future plowing up the grassy lanes known as grassy ditches to avoid erosion of the grassy lanes with his plowing methods. To compensate the wrong-doer for the improper conduct caused by him would be contrary to the spirit of §5543.14 of the Ohio Revised Code. It would be compensating him for creating an obstruction in the right of way.

Therefore, it is my opinion that the township government has no need to compensate an individual for placing an obstruction in the right of way. It is further the township government may have a duty to take affirmative action to prevent this type of conduct from continuing to happen and

destroying the right of way especially plowing up the grassy lane that we may know as a grassy ditch as this may erode the ditch or even disturb buried cable or other utilities buried in your easement/right of way area.

Sincerely,

Bradford W. Bailey, #0017814
Hardin County Prosecuting Attorney

BWB/jp