

OPINION
48-204

October 8, 1948 (OPINION)

VILLAGES

RE: Vacation of Streets

Re: Chapter 40-39 of the 1943 Revised Code

Your letter of October 6, 1948, has been received and sent to my desk.

The vacation of streets is governed by chapter 40-39 of the 1943 Revised Code. The petition for vacation must be signed by "all of the owners of the property adjoining the plat to be vacated."

You state that the church owns all of the land on both sides of the street to be vacated. If this is the case, the church would be the only petitioner necessary.

When the petition is presented to the village board, the board considers its, and if they favor considering the granting of the petition they order it filed with the clerk. Then if you have a newspaper published in your village, a notice of hearing on the petition must be published for four weeks. The notice must state that the petition will be considered at a date not less than thirty days after the first publication of the notice.

If there is no newspaper in your village, then you will have to post five copies of the notice in five public places for four weeks, and the date of hearing could not be less than thirty days after the date of posting.

At the time of the hearing, all interested persons may appear and state their opinion either for or against the vacation. The board then passes on the question and if they decide to vacate the street as prayed for, they pass a resolution by a two-thirds vote declaring the street, accurately describing it, to be vacated. A transcript of this resolution duly certified by yourself, as clerk, must be filed for record and duly recorded in the office of the register of deeds in your county.

Any person aggrieved by the decision of the board may appeal to the district court provided that the appeal is taken within twenty days after the passage of the resolution.

P.O. SATHRE

Attorney General