

No. 1 September SS. 19~~5~~⁶

COMMONWEALTH

~~SECRET~~

In Re: Vacation of an Unnamed
Street by the City of
DuBois

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

IN RE: VACATION OF AN UNNAMED :
STREET BY THE CITY OF : No. Term, 1961
DUBOIS :
DUBOIS

P E T I T I O N

TO THE HONORABLE JOHN J. PENTZ, PRESIDENT JUDGE:

(1). The name of your Petitioner is the Township of Sandy acting through and by their regularly elected governing officials, the Township Supervisors.

(2). The name of the respondent is the City of DuBois acting through and by its regularly elected governing officials, their City Council.

(3). The City of DuBois has published notice of intention to vacate the following described street by ordinance, and the action now bears Council Bill No. 1012, having been introduced September 1, 1961:

"That the unnamed street, formerly Pennsylvania Route 17017, beginning at a point in the westerly right of way line of State Highway Route 402 leading from Route 255 to Oklahoma, said point being 14 feet southerly from the intersection of the said westerly right of way line with the southerly right of way line of the Pennsylvania Railroad; thence following the northern right of way line of said road (formerly Pa. Route 17017) westerly and approximately parallel to the southern right of way line of the Pennsylvania Railroad 1257 feet more or less to the westerly line of land of S.V. Corporation; thence southerly by said westerly line 33.0 feet; thence by the southerly right of way line of said road easterly 1254 feet more or less to a point in the westerly right of way line of Pa. Route 402; thence by said westerly line northerly 33 feet more or less to a point and place of beginning, throughout its entire width, being unnecessary, and having been unimproved and unused, be and is hereby vacated throughout its entire width. Said vacation being expedient for the public good."

(4). The date of adoption of said Ordinance is purportedly September 29, 1961.

(5). That said Ordinance is invalid, unconstitutional and otherwise of no affect because said road is and was a Township road, being part of the road system of the Township of Sandy and, therefore, not under the jurisdiction of the City of DuBois.

WHEREFORE, your Petitioner requests your Honorable Court that a rule to show cause issue against the City of DuBois:

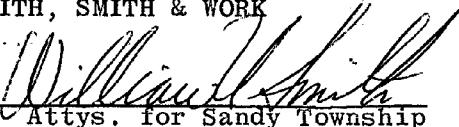
(a). To show cause why their purported action to vacate a Township road should not be declared null and void

(b). To determine whether or not a City may vacate a Township road.

Respectfully submitted,

SMITH, SMITH & WORK

BY


Attys. for Sandy Township

STATE OF PENNSYLVANIA: SS
COUNTY OF CLEARFIELD :

ROBERT C. SHAFFER, being duly sworn according to law, deposes and says he is a Supervisor of Sandy Township, a municipal subdivision of Clearfield County, and as such is duly authorized to make this Affidavit; further, that the facts set forth in the foregoing Petition are true and correct to the best of his knowledge, information and belief.

Robert C. Shaffer
(Robert C. Shaffer)

Sworn and subscribed to
before me this 28 day
of September, 1961.

Max Miland B. Genger

NOTARY PUBLIC
My Commission Expires
JANUARY 7, 1962

IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA

IN RE: VACATION OF AN UNNAMED :
STREET BY THE CITY OF : No. Term, 1961
DUBOIS

O R D E R"

AND NOW, the 5th day of Oct, 1961, on
consideration of the attached Petition and on motion of Smith,
Smith & Work, Attorneys for Sandy Township, a rule to show cause
shall issue against the City of DuBois:

(a). To show cause why their purported action to
vacate a Township road should not be declared null and
void.

(b). To determine whether or not a City may vacate
a Township road.

Said rule returnable the 25th day of October 1961,
at 10 o'clock.

BY THE COURT

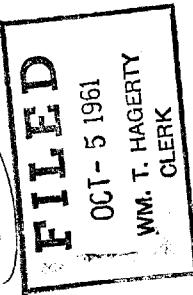
John P. Peay
P.J.

IN THE COURT OF COMMON PLEASES,
CLEARFIELD COUNTY,
PAULISTIANA,
PA.

Right side

IN THE COURT OF COMMON PLEASES,
CLEARFIELD COUNTY,
PAULISTIANA,
PA.

RECORDED AND INDEXED



SMITH, SMITH & WORK
ATTORNEYS-AT-LAW
CLEARFIELD, PA.

Lead-over Margin

Document Received
Oct 19 1961
John A. Chemer
City of Clearfield, Pa.

In Re: Vacation of an Unnamed
Street by the City of DuBois

versus

In the Court of ~~COMMON PLEAS~~
Quarter Sessions of Clearfield County, Pa.

No. 1 September SSns. ~~Term~~ 19 61

Pl. Fa., No. 19

And now, October 5, A. D. 1961, petition read and
considered and a rule is granted on City of DuBois,

(a). To show cause why their purported action to vacate a
Township road should not be declared null and void.

(b). To determine whether or not a City may vacate a Township
road.

Returnable October 25, 1961 at 10:00 o'clock

By the Court,

HON. JOHN J. PENTZ, P. J.

Certified from the record this 11th
day of October, 19 61

John J. Pentz
Prothonotary

No. 1 Sept. 22nd 1961

In Re: Vacation of an Unnamed
Street by the City of DuBois

vs

Rule On

City of DuBois

Smith, Smith & Work
Attorneys for Sandy
Township

Attorney for Claimant

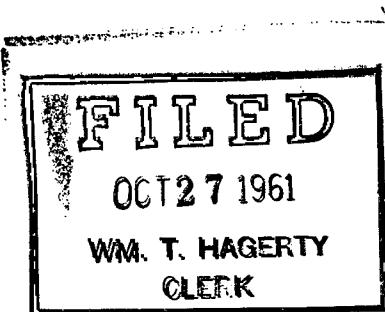
Attorney for Plaintiff

Attorney for Defendant

To be taxed as costs

Re: Vacation of Unnamed Road
in City of DuBois
No. 1 Sept. Ssns., 1961
QS

Testimony \$13.25



IN THE COURT OF QUARTER SESSIONS OF CLEARFIELD COUNTY, PENNSYLVANIA.

In re: VACATION OF AN UNNAMED :
STREET BY THE CITY OF : No. 1 September Sessions, 1961.
DUBOIS :
=

O P I N I O N

This matter comes before the Court on petition of the Supervisors of Sandy Township to stay a proceeding undertaken by the City of DuBois to vacate an unnamed street.

The unnamed street, or roadway, the City proposes to vacate is briefly described as extending from the western boundary of State Highway Route No. 402, westerly a distance of approximately 1254 feet and having a width of 33 feet throughout that distance. With the exception of the streets abutting on the western boundary of State Highway Route 402, the land on all sides of the street belong to the S. V. Corporation. At the western end of the road there is no access to the street, except over the land of the S. V. Corporation.

Upon presentation of the petition to stay the vacation proceedings, rule was issued returnable October 25, 1961. The City appeared at that date, and testimony was presented by the Township of Sandy, the petitioner. At the close of the testimony the City, by its attorney, made a motion to dismiss

the proceedings, and offered in conjunction therewith the record of an annexation of a portion of Sandy Township, asked by the City of DuBois on April 14, 1948 by proceedings appearing to No. 45 May Sessions, 1948 in the Court of Quarter Sessions of the County of Clearfield, which indicates the street to be vacated is included entirely within the annexed portion of Sandy Township, and is now entirely within the limits of the City of DuBois.

The City asserts that by virtue of this annexation proceeding, the City has exclusive jurisdiction to vacate the street without interference from the Township of Sandy in the Court of Quarter Sessions of Clearfield County or any other person or persons, except those within the City of DuBois.

This sole jurisdiction of vacating streets is vested in the City of DuBois, a Third Class City, by virtue of Section 2915, Article 29 of the Act of June 23, 1931, P. L. 932, as amended, (53 PS 37915) known as the Third Class City Code.

It has been since early times in Pennsylvania the rule of law that the control of streets and highways entirely within a city or borough, is within that municipality. VACATION OF OSAGE STREET, 90 PA. 114. This rule has been followed in so far as boroughs are concerned to the present time. ST. DAVID'S CHURCH VS. SAYEN, 244 PA. 300, 305; TURKEY RUN FUELS, INC., 173 Pa. Superior Ct. 76; BOROUGH OF BELLEVUE, 110 Pa. Superior Ct. 427. This rule is certainly applicable to third class cities

as well as all municipal division, whose authority and control of streets and highways is vested therein in much the same language as appears in the Borough Code and the Third Class City Code, Section 2915, supra.

The objection to the proceedings asserted by the Township is without force. The annexation proceedings were effected under the provisions of the Third Class City Code, Section 504, Article 5 (53 PS 35504), which provides that any objection to such annexation ordinance must be presented within thirty days from the date of filing the annexation ordinance in the Court of Quarter Sessions. That thirty day period has long since passed, nor may the annexation be collaterally attacked as attempted in this motion. POWELL VS. SCRANTON, 227 Pa. 604.

Therefore, the street to be vacated being wholly within the City of DuBois by virtue of the annexation proceedings, the City has exclusive jurisdiction to vacate the same.

O R D E R

NOW, November 3, 1961, rule discharged. Costs to be paid by petitioner.

BY THE COURT,


John H. Judy
President Judge

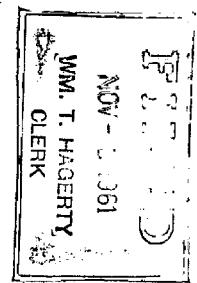
IN THE COURT OF QUARTER SSNS.
OF CLEARFIELD COUNTY, PENNA.
No. 1 September SSns., 1961

In re: VACATION OF AN

UNNAMED STREET BY THE

CITY OF DUBOIS

OPINION AND ORDER



JOHN J. PENTZ
PRESIDENT JUDGE
CLEARFIELD, PENNSYLVANIA