

2501.

ROADS AND HIGHWAYS—COST OF BRIDGES IN A PROCEEDING TO IMPROVE A COUNTY ROAD UNDER SECTION 6906 MUST BE PAID BY COUNTY—EXPENSE OF CONSTRUCTING CULVERTS MAY BE APPORTIONED ACCORDING TO PROVISIONS OF SECTION 6919 G. C.

SYLLABUS:

1. *The cost and expenses of constructing the necessary bridges in a proceeding to improve a county road under the provisions of section 6906, and related sections, of the General Code, may not be apportioned between the county, interested township or townships, and land owner, according to the provisions of section 6919 of the General Code. The entire cost and expenses of the construction of such bridges must be paid by the county.*

2. *The cost and expenses of constructing the necessary culverts in a proceeding to improve a county road under the provisions of section 6906, and related sections, of the General Code, may be apportioned between the county, interested township or townships, and land owners, according to the provisions of section 6919 of the General Code.*

COLUMBUS, OHIO, May 16, 1925.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—Receipt is acknowledged of your recent communication in which you submit the following inquiry:

“When the county commissioners proceed to improve a county road under the provisions of section 6906 et seq., G. C., may the cost and expense of constructing the necessary bridges and culverts on such improvement be considered as a part of the cost of the improvement and be divided between the county, township, village and land owners in accordance with the provisions of section 6919 G. C., or must the entire cost of such bridges and culverts be paid by the county?”

The sections referred to by you are a part of an act passed May 15, 1915 (106 O. L., 574), to provide a system of highways for the state of Ohio, and commonly known as the “Cass act,” and make up chapter six of the act, which chapter is entitled “Road Construction and Improvement by County Commissioners” and contained in Code sections 6906 to 6964-1, both inclusive.

Section 6906 of the General Code reads:

“The board of commissioners of any county shall have power, as herein after provided, to construct a public road by laying out and building a new public road, or by improving, reconstructing or repairing any existing public road or part thereof by grading, paving, draining, dragging, graveling, macadamizing, resurfacing or applying dust preventatives, or by otherwise improving the same. The county commissioners shall have power to alter, widen, straighten, vacate or change the direction of any part of such road in connection with the proceedings for such improvement.”

Section 6919 of the General Code provides for the apportionment of the compensation, costs and expenses of the improvement among the county, interested township or townships and land owners.

These two sections, in their present form were passed March 20, 1917 (107 O. L., 95).

It may be said generally that the remainder of the sections of this chapter provide an administrative and quasi-legislative procedure under which a proposed improvement may be brought about.

In answering your inquiry it is necessary to determine whether or not bridges and culverts are a part of a public road within the meaning of the words "public road," as those words are used by the legislature in said section 6906. The statute nowhere defines the words "public road." Neither does the statute define the word "bridge" or the word "culvert."

Commonly, in legal acceptance, the word "road" is synonymous with "highway" and has no fixed meaning in the law. In its popular sense it is a generic term for all kinds of ways and, unless the context in which the word appears shows a different legislative intention, it may, and usually does, include all parts within the bounds thereof; however, the scope to be given to the term depends upon the context in which it appears, 29 C. J., 363, 368.

It is significant to note that the term "bridges" or the term "culverts" is not used any place in chapter 6. Reference to other chapters of the Cass act, and particularly chapter 7, which contains what is commonly known as the state aid laws, shows that the legislature treated bridges and culverts as separate and distinct parts of a highway project.

Throughout the history of our legislation relating to the construction and improvement of roads under the jurisdiction of county commissioners, the legislature has dealt with and treated roads and bridges as separate and distinct improvements, providing in detail a different administrative and quasi-legislative procedure for the construction and improvement of each, and particularly providing a different source from which the cost and expense have been derived, the cost and expense of bridges being paid out of a fund raised by a general levy on the county, and the cost and expense of a road improvement being apportioned to the county, interested township or townships and property within a certain assessment zone.

This statement may be confirmed by reference to the chapter above referred to where provision may be found for the construction and improvement of roads, and by reference to sections 2421 to 2432, both inclusive, of the General Code, which are a part of the chapter entitled "county commissioners," and to sections 2343 to 2414, both inclusive, of the General Code, and which are a part of the chapter entitled "Building Regulations," where will be found a complete and detailed administrative and quasi-legislative procedure for the construction of bridges.

A number of other sections of the General Code clearly show that, so far as highway improvement statutes conferring jurisdiction upon county commissioners are concerned, bridges are not included within the meaning of the term "public road."

Section 2792 of the General Code, which prescribes the duties of the county surveyor, among other things provides that he "shall prepare all plans, specifications, details, estimates of costs, and submit forms of contracts for the construction or repair of all bridges, culverts, roads, drains, ditches and other public improvements."

The first sentence of section 7184 of the General Code reads:

"The county surveyor shall have general charge of the construction, reconstruction, improvement, maintenance and repair of all bridges and highways within his county under the jurisdiction of the county commissioners."

If the terms "road or highway" include bridges, why the necessity of using both the term "bridges" and the term "road or highway?"

Many other sections of like import might be referred to, but sufficient reference has been made to clearly show that the terms "public road" as used in said chapter six do not include bridges, and that the cost and expense of constructing bridges may not be apportioned between the county, township and land owners, but must be paid by the county.

Whether or not the terms "public road" include culverts is not so easy of solution. While a number of statutes would seem to indicate that the legislation treats culverts, like bridges, as a separate and distinct part or project in a road improvement, yet it is believed that the provisions are not sufficiently clear to limit the term "road" in its generic sense. This is particularly true when consideration is given to the fact that there is no legislation making separate and detailed provision for the construction of culverts by county commissioners other than what may be said to be found in said chapter six.

It would follow that culverts are included within the meaning of the terms "public road," and that the cost and expense of constructing culverts may be considered as a part of the cost of the improvement and be divided between the county, township, village and land owners.

Respectfully,
C. C. CRABBE,
Attorney General.

2502.

APPROVAL, 1 RESERVOIR LAND LEASE.

COLUMBUS, OHIO, May 18, 1925.

Department of Highways and Public Works, Division of Public Works, Columbus, Ohio.

GENTLEMEN:—I have your letter of May 14, 1925, in which you enclose the following lease, in triplicate, for my approval:

<i>Reservoir Land Lease</i>	<i>Valuation</i>
To John S. Bleecker, receiver for The Columbus, Newark and Zanesville Railway Company, site at Buckeye Lake, for dock-landing, bathing beach, dancing pavilion and other business purposes	\$100,000.00

I have carefully examined said lease, find it correct in form and legal, and am therefore returning the same with my approval endorsed thereon.

Respectfully,
C. C. CRABBE,
Attorney General.