

I note that in the resolution "declaring it necessary to improve," it is recited that the assessments are to bear interest on the deferred payments at 5½ per cent per annum; whereas the ordinance "determining to proceed" provides that the assessments are to bear interest at 6 per cent on deferred payments. The ordinance for the issue of bonds likewise provides for interest at 6 per cent per annum, payable semi-annually.

I do not regard this difference as between the ordinance to issue bonds and the ordinance relating to the assessment as vital; because the provisions of section 3817 G. C. are to the effect that the assessment installments shall bear interest until payment at the same rate as the bonds issued in anticipation of the collection thereof, so that the law itself operates to fix the rate of interest on deferred installments once the rate of interest on the bonds has been determined.

I am of the opinion that said bonds, drawn in accordance with the legislation authorizing their issuance, will, upon delivery, constitute valid and binding obligations of said village.

Respectfully,
 JOHN G. PRICE,
Attorney-General.

1645.

BRIDGES AND CULVERTS—DUTY OF COUNTY COMMISSIONERS TO
 MAKE REPAIRS IN SUCH CASE—SPECIFIC CASE.

Under the facts set out in the opinion, it is the duty of the county commissioners to make repairs to a bridge.

COLUMBUS, OHIO, November 9, 1920.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIRs—You have recently submitted to this department a letter reading as follows:

"The council of the village of Lebanon, Ohio, recently applied to the board of county commissioners of Warren county, Ohio, and requested said board to make certain repairs to the approach of the bridge over Turtle creek on Broadway street in said village of Lebanon, Ohio.

Broadway street extends through the village of Lebanon from north to south, a distance of about one mile.

The bridge across Turtle creek was built by the county commissioners about 15 years ago, it was constructed of concrete and is in good repair. The bridge is wholly within the village of Lebanon.

The village of Lebanon never demanded nor received any part of the the bridge fund levied upon the property within said village.

The cost of said repairs to said approach is conceded to be more than \$50.00.

The duties of the board of county commissioners as to this particular matter seem to be contained in sections 2421 and 2422 of the General Code. The board of county commissioners are in doubt as to their duties in making said repairs; and doubt whether they are required by said law to make said repairs. They ask me to refer this matter to the Attorney General for his opinion."

With the above letter you have submitted a memorandum prepared by Hon. W. Chester Maple, solicitor for the village of Lebanon; and you have advised in personal conference with this department that the memorandum submitted by Mr. Maple is correct in its recital of facts as to the laying out of a certain county road now forming a street in said village.

It appears from the data prepared by Mr. Maple that a public road known as the Dayton pike enters Lebanon at the north and proceeds southwardly through Lebanon as far as South street. The continuation of said Dayton pike as it passes through Lebanon is known as Broadway street. At or near the south line of South street a public road designated Cincinnati pike enters Broadway street from the west at an acute angle.

The bridge in question furnishes the means of crossing Turtle creek on what is now known as part of said Broadway street, said bridge lying south of South street and south of the point where the Cincinnati pike enters Broadway street. The facts in connection with the laying out and establishment of what is now known as Broadway street south of South street are set out in Mr. Maple's memorandum to the effect that:

"In 1853 a petition was filed with the county commissioners of Warren county, Ohio, to establish a county road commencing at the south end of Broadway street in Lebanon, Ohio, at a point in South street and extending south therefrom; viewers were appointed by the commissioners who reported in favor of the establishment of the county road; the report of the county surveyor was filed giving a plat of said road, as recommended by the viewers; and the commissioners in regular session, established said road as a public highway; said county road as established by the commissioners in 1853 extended from South street in said village, south from the end of Broadway street, crossing the railroad and crossing Turtle creek and extending on to what is now known as Orchard avenue in said village.

In 1862 certain territory was annexed to the incorporated village of Lebanon and territory lying south of South street in said village extending south for some distance beyond what is now known as Orchard avenue in said village and comprising the territory through which the county road established by the commissioners in '53 was included within the territory annexed to said village at that time.

Broadway street in the village of Lebanon as now marked upon the plat of said village lying south of South street in said village, extending to Orchard avenue in said village, was never established by the village as a street. At the time the territory was taken into the incorporated village of Lebanon, what is now marked as Broadway street was a county road, and the same has remained open as a public highway through said village since 1853."

It further appears that the repairs needed are in the nature of an extension of certain wing walls appurtenant to the bridge.

The general question of the duty of county commissioners with respect to bridges within municipalities was considered in an opinion of this department of date December 24, 1919, now appearing in Opinions of Attorney-General, for 1919, Vol. II, at page 1622. Among the conclusions reached in said opinion were the following, as shown by the first two paragraphs of the headnotes:

"1. County commissioners are by virtue of sections 2421 and 7557

under the duty of keeping in repair those necessary bridges within the cities of the state which are over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use; and they are under a like duty as to similar bridges within those villages which do not demand and receive a portion of the bridge fund as authorized by section 2421-1 (108 O. L. 259). If a village does demand and receive a portion of the bridge fund from the county, then the village is under the duty of maintaining such of the bridges mentioned as are wholly within the village.

2. Municipal corporations, both cities and villages, are under the duty of maintaining bridges on streets established by the city or village for the use and convenience of the municipality and not a part of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road."

When the conclusions thus reached by this department are applied to the statement of facts submitted by yourself and Mr. Maple, it clearly follows, and you are accordingly advised that it is the duty of your county commissioners to make the repairs in question.

It is proper to say that in addition to the authorities cited in the opinion of this department above quoted from, the conclusions in said opinion find support in the two cases referred to in the memorandum submitted by the solicitor for the village of Lebanon:

State ex rel. vs. Eirick, 17 O. C. C. (N. S.) 331, 25 O. C. D. 18 (affirmed by supreme court without opinion, 84 O. S. 503).

Railway Company vs. Cincinnati, 94 O. S. 269.

Respectfully,

JOHN G. PRICE,

Attorney-General.

1646.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN
PUTNAM AND LAWRENCE COUNTIES, OHIO.

COLUMBUS, OHIO, November 10, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*