

2557.

BRIDGES—COUNTY COMMISSIONERS REPAIR THOSE WITHIN AND  
DIRECTOR OF HIGHWAYS THOSE WITHOUT A MUNICIPALITY—  
PARTLY WITHIN AND PARTLY WITHOUT.

*SYLLABUS:*

*It is the primary duty of the county commissioners to maintain and repair bridges within the boundaries of a municipality located upon extensions of state roads, while it is the duty of the Director of Highways to maintain and repair bridges upon state roads located outside of the boundaries of municipalities. Where a bridge is located, partly within and partly without a municipality, the duty of maintenance and repair of that portion without the municipality rests upon the Director of Highways, and a similar duty rests upon the county commissioners with respect to that portion located within the boundaries of the municipality.*

COLUMBUS, OHIO, September 7, 1928.

HON. JOHN P. ROGERS, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—This will acknowledge the recent communication of Mr. Morgenthaler, Assistant Prosecuting Attorney, enclosing a copy of a resolution of the city commission of the City of Middletown, which resolution is as follows:

“RESOLUTION NO. 1966.

Be it resolved by the City Commission of the City of Middletown, State of Ohio, That the City Manager be and he is hereby authorized and ordered to apply to the County Commissioners for said Board of County Commissioners to obtain a ruling or opinion from the Attorney General of the State of Ohio, upon the question of whether or not the Tytus Avenue Bridge over the Canal at Middletown, Ohio, and the Central Avenue Bridge over the river in Middletown, Ohio, are bridges which, under the new law, it is the duty of the state to repair and maintain or whether they are bridges which, under the new law, it is the duty of the county to repair and maintain, and that the City Manager be authorized to forward a copy of this Resolution to said Board of County Commissioners.

Adopted July 16, 1928.

Attest:

John Kunz, Clerk.

William Stringham,  
Chairman of City Commission.”

While this resolution does not disclose the character of Tytus Avenue and Central Avenue, I am advised by the Director of Highways that the Tytus Avenue bridge is located upon an extension of a state highway and is entirely within the corporate limits of Middletown, while the Central Avenue bridge is also located upon a state highway but partly within and partly without the city limits.

The duties of the Director of Highways with respect to the maintenance and repair of bridges upon state highways are defined in Section 1224 of the General Code, as follows:

“The director shall maintain and repair to the required standard, and, when in his judgment necessary, shall widen, reconstruct, resurface, repair or maintain all highways comprising the state highway system and bridges

and culverts thereon. In repairing the state highway system the director shall not be limited to the use of the material with which such highway or roads and bridges and culverts thereon were originally constructed, but may reconstruct, widen, repair, resurface and maintain such highways or roads and bridges and culverts thereon by the use of any material which he deems proper. Nothing in this act shall be construed so as to prohibit the federal government, or any individual or corporation from contributing a portion of the cost of the construction, maintenance and repair of said highways."

While the language as quoted above is very broad and, standing alone, would apparently require the director to maintain and repair bridges within the corporate limits of a municipality, if located upon a state highway, yet the language of the Legislature, used in Section 1224-1a of the Code, is such as to indicate to me that Section 1224 is applicable only to that portion of the highways which is outside of the limits of municipalities. The pertinent part of Section 1224-1a is as follows:

"The director may at his discretion construct, reconstruct, improve, maintain or repair any continuation of a highway on the state highway system through the limits of a municipal corporation, and the bridges and culverts thereon, but he shall first obtain the consent of the legislative authority of such municipal corporation before proceeding with such work. He may also, if he deems it to the best interest of the public, upon obtaining the consent of the legislative authority of any city, maintain or repair any continuation of such road or highway within such city, and he may construct or reconstruct the bridges and culverts thereon, and pay the portion agreed to of such work from state funds."

From this language it is clear that a distinction is drawn between state highways outside of municipal limits and the extensions thereof through the limits of municipal corporations. As to such extensions, the director is authorized to maintain and repair bridges, but there is no mandatory duty placed upon him with respect to such maintenance and repair. His action in this respect is entirely discretionary and hence it is necessary to look elsewhere to determine on whom rests the mandatory duty to maintain and repair bridges upon state highways within municipal limits.

Section 2421 of the General Code is as follows:

"The commissioners shall construct and keep in repair necessary bridges over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property therein. If they do not demand and receive a portion of the bridge tax, the commissioners shall construct and keep in repair all bridges in such cities and villages. The granting of the demand, made by any city or village for its portion of the bridge tax, shall be optional with the board of commissioners."

Section 7557 of the Code also imposes the duty upon the county commissioners to construct and keep in repair bridges on state and county roads within the limits of municipalities. That section is as follows:

"The county commissioners shall cause to be constructed and kept in repair, as provided by law, all necessary bridges in villages and cities not having the right to demand and receive a portion of the bridge fund levied upon property within such corporations, on all state and county roads, free turnpikes, improved roads, transferred and abandoned turnpikes and plankroads, which are of general and public utility, running into or through such village or city."

It may be stated in passing that the exception noted in these sections has no application and need not be discussed, there being no provision in the General Code conferring on cities and villages the right to demand and receive part of the bridge fund.

It thus appears that, whereas Sections 2421 and 7557, *supra*, by their terms impose the absolute and primary duty upon the county commissioners to maintain and repair all bridges on state and county roads, that obligation no longer extends to the maintenance and repair of bridges on state roads outside of municipalities in view of the later enactment of Section 1224, *supra*. That section places the duty of such maintenance and repair upon the Director of Highways. I accordingly feel that outside of municipalities bridges upon state highways must be maintained by the Director of Highways.

On the other hand, bridges upon extensions of state highways through municipalities must still be maintained and repaired by county commissioners, although Section 1224-1a, *supra*, permits the director in his discretion to do the work himself with the consent of the local legislative authority.

At this point it is well to call attention to Section 1191 of the General Code, which authorizes the county commissioners to cooperate with the superintendent of highways in the construction or reconstruction of bridges and viaducts within municipal corporations, and authorizes them to pay such portion of the cost of the work as may be agreed upon between the commissioners and the Director of Highways. Likewise, Section 1229-15 authorizes municipal corporations to cooperate with the Superintendent of Highways in the construction and reconstruction of bridges and viaducts within such municipal corporations and also authorizes the payment of such portion of the cost of the work as may be agreed upon between the council and the Director of Highways. It follows, therefore, that so far as bridges on state roads within municipalities are concerned, the primary duty of maintenance and repair rests upon the county commissioners, but the authority to proceed with relation thereto exists in all three authorities, viz., the Director of Highways, the county commissioners and the municipal authorities; and these authorities may, any two or all of them, act jointly where the work is one of reconstruction. In the event the Director of Highways participates therein, it is his duty to make the improvement and the other subdivisions may contribute in accordance with the agreement reached.

Applying the principles hereinabove set forth, it follows that with respect to the Tytus Avenue bridge the primary duty of maintenance and repair rests upon the county commissioners. The Director of Highways also has authority to do this work, but this rests entirely within his discretion.

A difficult situation is presented, however, with respect to the Central Avenue bridge. From the information which I have, this bridge is on a state highway but is located partly within and partly without the municipal limits of Middletown. By

Section 1224, supra, the duty of maintenance and repair of all bridges located without municipalities rests primarily upon the Director of Highways. Sections 1191 and 1229-15 of the Code, to which I have heretofore referred, only authorize cooperation by county commissioners and municipalities, respectively, in the construction or reconstruction of bridges located within municipal corporations. Accordingly neither of these authorities has the right to cooperate in the reconstruction of bridges located without the boundaries of municipalities. It is also to be observed that these sections are limited to "reconstruction" and do not contemplate any participation in maintenance and repair work on bridges either within or without municipal limits. It accordingly follows that the obligation to maintain and repair that portion of the bridge located without the municipal limits rests solely upon the Director of Highways and as to that portion there is no right on the part of the other authorities to co-operate. This is so because of the fact that the duty of maintenance and repair imposed by Section 1224, supra, supersedes that found in the other section of the Code imposing similar duties with respect to state roads upon the county commissioners.

As to that portion within the municipal limits, however, the primary duty resides in the county commissioners. The Director of Highways may, as before stated, do this work himself if in his discretion he so desires. If the work is such as to be a reconstruction of the bridge in question, then the county commissioners and the municipality, under Sections 1191 and 1229-15, heretofore referred to, may co-operate with the director.

The situation is an awkward one and does not seem to be specifically covered by statute, but in the case of ordinary maintenance and repair, in my opinion the obligation as to part of the bridge rests upon the Director of Highways and as to the other part upon the county commissioners. In case of reconstruction, I believe it would be practicable for the Director of Highways to proceed under Sections 1191 and 1229-15 and agree with the county commissioners or the municipal authorities, or both, upon the portion of the cost to be paid by each of the interested authorities. Such work would, of course, be under the supervision of the Director of Highways.

Summarizing, and specifically answering the inquiry submitted, I am of the opinion that it is the primary duty of the county commissioners to maintain and repair bridges within the boundaries of a municipality located upon extensions of state roads, while it is the duty of the Director of Highways to maintain and repair bridges upon state roads located outside of the boundaries of municipalities. Where a bridge is located partly within and partly without a municipality, the duty of maintenance and repair of that portion without the municipality rests upon the Director of Highways, and a similar duty rests upon the county commissioners with respect to that portion located within the boundaries of the municipality.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*