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BRIDGES—STATE, COUNTY ROADS—CONNECTING STATE ROADS—§5591.02, .21 RC INAPPLICABLE, BRIDGE ON MUNICIPAL STREET—BOARD OF COUNTY COMMISSIONERS, QUESTION OF FACT TO BE DETERMINED—§5591.02 RC “IMPROVED ROADS \* \* \* GENERAL OR PUBLIC UTILITY RUNNING INTO OR THROUGH MUNICIPAL CORPORATIONS”.

SYLLABUS:

1. The provisions in Sections 5591.02 and 5591.21, Revised Code, for construction and maintenance by the county commissioners of “bridges \* \* \* on state and county roads” and “bridges \* \* \* connecting state \* \* \* roads” have no application to a bridge on a municipal street even though that street connects two state roads.

2. The question of whether particular bridges are located on “improved roads which are of general or public utility, running into or through (such) municipal corporation,” within the meaning of Section 5591.02, Revised Code, is one of fact for determination in the first instance by the board of county commissioners concerned.

Columbus, Ohio, July 17, 1957

Hon. Anthony J. Bowers, Prosecuting Attorney  
Allen County, Lima, Ohio

Dear Sir:

The questions you have presented to me concern the responsibility, under Sections 5591.02 and 5591.21, Revised Code, of the boards of county commissioners of Van Wert and Allen Counties for the maintenance and repair of two bridges over the Miami and Erie Canal within the city of Delphos, Ohio, which canal runs north and south through the center of said city and is the dividing line between the two counties.

You advise that it is your opinion that the bridges in question are on streets established by the city for the use and convenience of the city and not a part of a state or county road and that by reason of these facts the county commissioners have no authority over nor duty to perform in connection with the construction or repair of such bridges. This is the rule, of course, stated in Opinion No. 471, Opinions of the Attorney General for 1951, page 211, and followed in Opinion No. 6030, Opinions of the Attorney General for 1955, page 653.

From the information furnished me, I find that one of the bridges in question is located on First Street, the termini of which are some distance within the corporation limits, on the east at a cemetery, and on the west at State Street, which is State Route 697. First Street crosses Main Street, which is State Route 66, just east of the canal, and crosses the canal at a point between the point of intersection of the two state routes just mentioned.

The second bridge is on Seventh Street, which street extends into and terminates in an adjoining subdivision on the east, crosses State Route 190 just outside the east corporation line of Delphos, crosses the canal at the center of the city and terminates at Bredeick Street, State Route 66, on the west, some distance inside the west corporation line of the city.

It is the contention of the city authorities that First Street and Seventh Street both "connect" state routes and are therefore "connecting-improved roads" within the meaning of Section 5591.21, Revised Code, and that both streets are "improved roads which are of general and public utility running into or through a municipal corporation" within the meaning of Section 5591.02, Revised Code, and therefore, the commissioners of Van Wert County and the commissioners of Allen County, together with the city of Delphos should maintain and repair the bridges over the Miami and Erie Canal within the city.

Section 5591.02, Revised Code, reads as follows:

"The board of county commissioners shall construct and keep in repair all necessary bridges in municipal corporations 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 and improved roads which are of general and public utility, running into or through such municipal corporation."

Section 5591.21, Revised Code, provides in part:

"The board of county commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state, county, and improved roads, except only such bridges as are wholly in municipal corporations having by law the right to demand, and do demand and receive, part of the bridge fund levied upon property therein \* \* \*."

The reference in these sections to cities having a right to share a "bridge fund" appears to be an obsolete and inoperative vestige of a much

earlier enactment. Of this language my predecessor said, in Opinion No. 471, Opinions of the Attorney General for 1951, at page 214:

“These sections make exception of bridges within villages and cities having the right to demand, and which do demand and receive, a portion of the bridge fund levied upon property within such corporation. Such exception, however, is no longer of any force or effect and must be disregarded inasmuch as the statute authorizing counties to levy for such bridge fund has been repealed and investigation fails to disclose the enactment of any substitute legislation or the existence at this time of any such fund.”

This purported exception may, therefore, be disregarded.

It will be observed that the statutes here in question refer to the duty of the county commissioners to construct and repair necessary *bridges* over streams and public canals *on* state, county and improved roads, or *bridges connecting* state, county, and improved roads. This reference is not to *connecting roads*, but to *bridges connecting roads*. The bridges in questions are on streets which connect state routes but are not *bridges connecting state roads*.

Not being bridges “connecting state \* \* \* roads” it would seem that the structures here in question would fall within the rule stated in Opinion No. 6030, Opinions of the Attorney General for 1955, page 653, as set out in the following language on page 656 therein:

“It may be concluded, therefore, that (1) a board of county commissioners is not authorized to construct or maintain bridges located wholly within a municipal corporation on streets which are not “state and county roads and improved roads which are of general and public utility, running into and through such municipal corporation,” and (2) such board is not authorized to issue bonds for such purpose.”

If, however, the county commissioners should choose to establish either of the streets here in question as county roads it will be seen that they would then come under a duty to maintain such bridges as exist thereon. The authority thus to establish a street as a county road was pointed out in Opinion No. 2321, Opinions of the Attorney General for 1928, page 1688, the syllabus in which reads in part as follows:

“1. County commissioners are authorized to establish a county road wholly within the limits of a municipality, where such road is established upon a street which is a connecting link between two state highways and will be of general utility to the through traffic operating over such highways.

"2. Where a county road is properly established upon a street within the limits of a city, the county commissioners have the authority and duty to construct and maintain necessary bridges thereon \* \* \*."

This action is, of course, discretionary with the county commissioners and if they choose not thus to establish these streets, or either of them, as a part of the county road system, it could not be claimed that any duty to maintain the bridges in question would rest on them because neither such street here involved "connects" two state roads.

Assuming, then, that these streets are not established as county roads, it becomes necessary to consider the meaning and the relationship of the phrase "improved roads which are of general and public utility running into or through such municipal corporation" as found in Section 5591.02, Revised Code, and the words "improved roads" in Section 5591.21, Revised Code.

It hardly appears tenable to hold that the legislature intended that the county commissioners have primary responsibility for all bridges "on or connecting improved roads" without qualification as set forth in Section 5591.21, Revised Code, in view of the provision of Section 5591.02, providing for such responsibility in the case only of bridges "on \* \* \* improved roads *which are of general and public utility running into or through such municipal corporation.*" (Emphasis added) I think it clear that the two sections as they refer to "improved roads" must be read *in pari materia* and that it be assumed the legislative intent was that the language "improved roads" as found in Section 5591.21, Revised Code, carry with it, by implication, the qualification and limitation of Section 5591.02, Revised Code.

On the fact question thus presented my predecessor said in Opinion No. 6030, Opinions of the Attorney General for 1955, page 653, at page 656:

"In your inquiry you have stated that the bridge here in question is not located on a "state route or county road," and I assume that it is the position of the county commissioners also that it is not located on an "improved road" of "general and public utility" within the meaning of Section 5591.02, Revised Code. Such classification, if disputed, would present a question of fact on which it would be wholly inappropriate for me to express an opinion."

I agree that it would be wholly inappropriate for me to express an opinion on such a question of fact, including that in the case at hand. Such a question is one initially for the administrative determination of the boards of county commissioners concerned, subject, of course, to judicial review in case of abuse of discretion.

In specific answer to your inquiry, therefore, it is my opinion that :

1. The provisions in Sections 5591.02 and 5591.21, Revised Code, for construction and maintenance by the county commissioners of "bridges \* \* \* on state and county roads" and "bridges \* \* \* connecting state \* \* \* roads" have no application to a bridge on a municipal street even though that street connects two state roads.

2. The question of whether particular bridges are located on "improved roads which are of general or public utility, running into or through (such) municipal corporation," within the meaning of Section 5591.02, Revised Code, is one of fact for determination in the first instance by the board of county commissioners concerned.

Respectfully,

WILLIAM SAXBE

Attorney General