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1. BRIDGES—COUNTY COMMISSIONERS CHARGED WITH DUTY OF CONSTRUCTING NECESSARY BRIDGES ON STATE AND COUNTY HIGHWAYS WITHIN MUNICIPAL CORPORATIONS—MUNICIPALITY ALSO AUTHORIZED TO CONSTRUCT BRIDGES WITHIN MUNICIPALITY—SECTION 3629 G. C.
2. MAINTENANCE AND REPAIR OF BRIDGES ERECTED ON STATE AND COUNTY HIGHWAYS—WITHIN MUNICIPAL CORPORATIONS—JOINT OBLIGATION OF COUNTY AND MUNICIPALITY.

SYLLABUS:

1. The county commissioners are charged with the duty of constructing necessary bridges on state and county highways within municipal corporations even though

a municipality is also authorized by Section 3629, General Code, to construct bridges within the municipality.

2. The maintenance and repair of bridges erected on state and county highways within municipal corporations is a joint obligation of the county and the municipality.

Columbus, Ohio, May 5, 1945

Hon. Webb D. Tomb, Prosecuting Attorney
Tiffin, Ohio

Dear Sir :

This will acknowledge receipt of your request for my opinion, which reads as follows :

"The County Commissioners of Seneca County are in doubt as to their liability for the construction, maintenance and repair of bridges located on State roads within municipalities. My examination of this question indicates that both court decisions and opinions of the Attorney General leave considerable doubt as to the division of the obligation between counties and municipalities.

Section 2421 of the General Code would seem to indicate that the obligation is that of the commissioners unless a city or village actually receives a part of the bridge fund. On the other hand, an examination of Section 2421-1 of the General Code would seem to leave room for the possible construction that only municipalities of the population under fifteen thousand have the right to demand a part of the so-called bridge fund. Attorney General's opinion number 4078 for the year 1935 seems to say that the obligation is that of both the county and the municipality.

Seneca County has made no levy and has had no bridge fund for approximately twelve years. Accordingly, your opinion is respectfully requested as to the respective obligations of Seneca County and the municipalities therein with respect to construction, maintenance and repair of bridges located on State and County roads within municipalities."

Section 2421, General Code, reads in part as follows :

"The commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting 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, General Code, reads 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, in 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.”

Section 1189 of the General Code of Ohio reads in part as follows:

“* * * When any road or street into or through a municipality is designated as a state highway, such action shall in no way relieve the county commissioners of their obligations for the construction or maintenance of bridges as set forth in General Code Section 7557. * * *”

These sections establish beyond all question that the county commissioners must construct and keep in repair all bridges which are a part of State or County highway systems in cities and villages. Reference to municipalities receiving a portion of the bridge fund must be disregarded as no such fund has been in existence for years.

The general statutory authority of municipal corporations over bridges is found in Sections 3629 and 3714 of the General Code.

Section 3629 reads as follows:

“To lay off, establish, plat, grade, open, widen, narrow, straighten, extend, improve, keep in order and repair, light, clean and sprinkle, streets, alleys, public grounds, places and buildings, wharves, landings, docks, bridges, viaducts, and market places, within the corporation, including any portion of any turnpike or plank road therein, surrendered to or condemned by the corporation.”

Section 3714 reads as follows:

“Municipal corporations shall have special power to regulate the use of the streets, to be exercised in the manner provided by law. The council shall have the care, supervision and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts, within the corporation and shall cause them to be kept open, in repair, and free from nuisance.”

You will note that this latter section employs the following language: “care, supervision and control,” and “shall cause them to be kept open, in repair, and free from nuisance.”

The effect of the foregoing statutes is such that the county commissioners are authorized to construct, and such board of commissioners must keep in repair, all bridges of the State or County highway system within the municipalities. Also under clear authority of Section 3714, General Code, supra, all municipal corporations are charged with the repair and maintenance of all public bridges within the corporation and under authority of Section 3629, General Code, to construct bridges within such municipality.

As suggested in your letter, one of my predecessors held in Opinions of the Attorney General, 1935, Opinion No. 4078, that there was a joint responsibility on the part of the county and the municipality to keep in repair bridges within a municipality and it was the primary duty of the board of county commissioners to construct and repair said bridges.

Later, the Supreme Court of Ohio in the case of *Lengyel v. Brandmiller, et al*, 139 O. S., 478, held:

“1. A statutory duty rests on both the county and the municipality to see that a bridge erected and maintained by a county and comprising a part of the street system in a municipal corporation is kept in repair, and one who is injured by the collapse of such bridge, due to a defective condition of which the county had actual notice and the city constructive notice, may maintain an action for damages against both the county and the municipality. * * *”

In the face of the foregoing authorities and specifically answering your question, it is my opinion that:

1. The county commissioners are charged with the duty of constructing necessary bridges on state and county highways within municipal

corporations even though a municipality is also authorized by Section 3629, General Code, to construct bridges within the municipality.

2. The maintenance and repair of bridges erected on state and county highways within municipal corporations is a joint obligation of the county and the municipality.

Respectfully,

HUGH S. JENKINS

Attorney General