

**Note from the Attorney General's Office:**

1981 Op. Att'y Gen. No. 81-039 was clarified by  
1982 Op. Att'y Gen. No. 82-025.

**OPINION NO. 81-039****Syllabus:**

1. Each county and township bears the responsibility for the maintenance and repair of its respective road or highway system, although the various political subdivisions may cooperate in the maintenance and repair of the others' roads.
2. The political subdivision with the responsibility for the repair and maintenance of a particular road must, as a part of that responsibility, clean and maintain the ditches which run along the side of the road for drainage purposes.
3. The political subdivision which is responsible for the repair and maintenance of a road is also responsible for the cleaning, repair, and replacement of a culvert on the road, even though the culvert may pass beneath the driveway of an abutting property owner. (1945 Op. Att'y Gen. No. 603, p. 763; 1925 Op. Att'y Gen. No. 2501, p. 333; 1925 Op. Att'y Gen. No. 2557, p. 389; 1923 Op. Att'y Gen. No. 784, p. 636, approved and followed.)
4. The duty to clean and repair storm sewers falls on the political subdivision responsible for the cleaning and repair of the ditches and culverts which comprise the storm sewer.
5. The costs of cleaning, maintaining, and repairing county and township roads, and the ditches, culverts, and storm sewers appurtenant to the roads, are to be paid as other costs of road maintenance and repair. Absent specific statutory authority, these costs may not be assessed against abutting property owners.

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**To: Craig S. Albert, Geauga County Pros. Atty., Chardon, Ohio**

**By: William J. Brown, Attorney General, July 14, 1981**

I have before me your request for an opinion concerning the responsibilities and procedures to be followed in the cleaning and repair of ditches, storm sewers, and driveway culverts along county and township roads. Specifically, your letter requested my opinion on the following ten questions:

1. Who has the responsibility to clean and repair roadside ditches along county roads?
2. Who has the responsibility to clean and repair roadside ditches along township roads?
3. Who has the responsibility to clean and repair storm sewers along county roads?
4. Who has the responsibility to clean and repair storm sewers along township roads?
5. Who has the responsibility for the repair or replacement of damaged culvert pipes under driveway aprons along county roads?
6. Who has the responsibility for the repair or replacement of damaged culvert pipes under driveway aprons along township roads?

7. Who has the responsibility for the cleaning of culvert pipes under driveway aprons along county roads?
8. Who has the responsibility for the cleaning of culvert pipes under driveway aprons along township roads?
9. How are the costs of the preceding responsibilities to be paid?
10. May any of the costs be assessed against the abutting property owner?

In responding to your questions, I deem it prudent to generally start with the premise that all roads in Ohio are classified as state, county, or township roads pursuant to R.C. 5535.01, which reads as follows:

The public highways of the state shall be divided into three classes: state roads, county roads, and township roads.

(A) State roads include the roads and highways on the state highway system.

(B) County roads include all roads which are or may be established as a part of the county system of roads as provided in sections 5541.01 to 5541.03, inclusive, of the Revised Code, which shall be known as the county highway system. Such roads shall be maintained by the board of county commissioners.

(C) Township roads include all public highways other than state or county roads. The board of township trustees shall maintain all such roads within its township. The board of county commissioners may assist the board of township trustees in maintaining all such roads. This section does not prevent the board of township trustees from improving any road within its township. (Emphasis added.)

Further, R.C. 5535.08 is a generalized mandate that state, county, and township each maintain its own respective road system as designated in R.C. 5535.01. R.C. 5535.08 reads:

The state, county, and township shall each maintain its roads, as designated in section 5535.01 of the Revised Code; however, the county or township may, by agreement between the board of county commissioners and the board of township trustees, contribute to the repair and maintenance of the roads under the control of the other. The state, county, or township, or any two or more of them, may, by agreement, expend any funds available for road construction, improvement, or repair upon roads inside a village. A village may expend any funds available for street improvement upon roads outside the village and leading thereto.

See R.C. 5543.02; R.C. 5571.01; R.C. 5571.02; 1977 Op. Att'y Gen. No. 77-028. Hence, the general statutory scheme is that the state, county, and township, each as to its respective jurisdiction, bears the responsibility for maintenance and repair of its respective road or highway system, although the various subdivisions may cooperate in the maintenance and repair of the others' roads. See, e.g., R.C. 5535.01; R.C. 5571.01. As a further point, I note that the term "road or highway" encompasses more than the roadbed itself. See R.C. 5501.01(C) ("Road" or "highway" includes bridges, viaducts, grade separations, appurtenances, and approaches on or to such road or highway").

With this general scheme in mind, I turn now to a consideration of your questions concerning the cleaning and repairing of roadside ditches. There is no statute which specifically places the responsibility for roadside ditches upon a particular subdivision. R.C. 5501.31 states in part: "[t]he director [of transportation]. . . may purchase or appropriate, for such length of time as is necessary and desirable, such additional property as is required for the construction

and maintenance of . . . drainage systems incident to any highway improvement, which he is or may be authorized to locate or construct." R.C. 5501.31 continues to read: "[t]he director [of transportation] may aid the board of county commissioners in establishing, creating, and repairing suitable systems of drainage for all highways within its jurisdiction or control and advise with it as to the establishment, construction, improvement, maintenance, and repair of such highways." The county engineer must prepare the plans, specifications, details, and estimates of cost, and submit forms of contracts for the construction, maintenance, and repair of ditches. R.C. 315.08. R.C. 5543.12 provides in part:

The county engineer or anyone acting under his authority, when authorized by the board of county commissioners or board of township trustees, may enter immediately:

(A) Upon any lands adjacent to any of the highways in the county for the purpose of opening an existing ditch or drain, or for digging a new ditch or drain for the free passage of water for the drainage of highways.

R.C. 5571.09 authorizes the board of township trustees to "bring and maintain all suits involving an injury to any township road, ditch, drain, or watercourse under the jurisdiction of such board and for the prevention of injury thereto." County commissioners have the same authority with regard to ditches established by the county. R.C. 305.12. The township trustees must also prevent the wrongful obstruction of any ditch along, upon, or across a public highway, pursuant to R.C. 5589.06.

Reading the above provisions together, it is apparent that when a political subdivision undertakes to establish a road or highway, it must also provide for the drainage of that highway. Roadside ditches which handle the road drainage must be deemed to be part of the highway system. Thus, the political subdivision with the responsibility for the repair and maintenance of a particular road must, as a part of that responsibility, clean and maintain the ditches which run along the side of the road. Generally, a county must clean and maintain ditches which run along the county's roads, and a township must clean and maintain the ditches which run along its roads.

In your letter, you suggest the possible applicability of R.C. Chapter 6121. However, R.C. Chapter 6121, concerning the Ohio Water Development Authority, is not directly relevant to your questions. It would appear that reference should be made instead to R.C. Chapter 6141, which set out a specific statutory scheme for cleaning and repairing ditches. I note that R.C. Chapter 6141 was repealed by Am. Sub. H.B. 268, 113th Gen. A. (1980) (eff. April 9, 1981) and portions of that chapter have been incorporated into other provisions of R.C. Title 61. Even if R.C. Chapter 6141 were still in full effect, however, it would have no application to your questions concerning roadside ditches. R.C. Chapters 6131, 6141, and other related chapters pertain to a system of ditches used to provide drainage for land in a particular watershed. Ditches which were constructed pursuant to R.C. Chapter 6131, and which were maintained pursuant to R.C. Chapter 6141 before its repeal, do not necessarily run along a public road, but, rather, run cross-country in order to provide controlled drainage for the land in the county. See R.C. 6131.02. The above-cited sections of R.C. Title 55 are specific in nature as to ditches within the right-of-way of, and appurtenant to, the public roads and highways, while R.C. Chapter 6131 and R.C. Chapter 6141 refer only in general terms to ditches, drains, and watercourses. When there is a generalized statutory reference to a particular subject, and a specific statutory reference to the same subject, the usual rule of statutory application is that the specific statute controls the statute of general import. See R.C. 1.12; Gibson v. Summers Construction Co., 163 Ohio St. 220, 126 N.E.2d 326 (1955).

In response to your questions concerning ditches, I conclude that the county or township responsible for a road or highway is also responsible for the cleaning and repair of a ditch which runs along the side of the road in order to handle the road's drainage.

I turn now to your questions concerning the repair, replacement, and cleaning of culvert pipes. A former Attorney General, citing Bouvier's Law Dictionary, defined "culvert" as "[a] waterway or water passage, whether of wood or stone, square or arched; a covered drain under a road designed for the passage of water from one side of the road to the other." 1945 Op. Att'y Gen. No. 603, p. 763, 765. There are no statutory provisions which expressly place the responsibility for culverts on county and township roads on any particular subdivision. However, reading several statutes together, it appears that culverts on a public highway are, like roadside ditches, part of that road, so that each county and township is responsible for the repair, cleaning, and replacement of the culverts on its respective highway system.

R.C. 5501.11 sets out the functions of the Department of Transportation, one of which is to "construct, reconstruct, widen, resurface, maintain, and repair the state system of highways and the bridges and culverts thereon." This section demonstrates a legislative intent that culverts are to be treated as the highway is treated for maintenance and repair purposes. While there is no such explicit language assigning the responsibility for the maintenance and repair of culverts on the county and township highway system, there are, nonetheless, statutory provisions which indicate that culverts under and along county and township roads are part of those respective highway systems for repair and maintenance purposes. R.C. 5549.01 authorizes the board of county commissioners to purchase "such machinery, tools, or other equipment. . .for the construction, improvement, maintenance, or repair of the highways, bridges, and culverts under its jurisdiction as it deems necessary." Such expenditures are paid out of available county road funds. R.C. 315.18 requires the county engineer to prepare the plans, specifications, details, and estimates of cost, and submit forms for the construction, maintenance, and repair of all culverts constructed for the county. R.C. 5543.19(B) authorizes the county engineer to "employ such laborers and vehicles, use such county employees and property, lease such implements and tools, and purchase such materials as are necessary in the construction, reconstruction, improvement, maintenance, or repair of bridges and culverts by force account" when not required to use competitive bidding. R.C. 5543.02 requires the county engineer to report to the county commissioners the condition of the county roads, bridges, and culverts, and to estimate the amount of funds needed to maintain, repair, or construct any new roads, bridges, or culverts within the county. See also R.C. 5543.05; R.C. 5549.04; R.C. 5591.36.

There are similar provisions governing the duties of township trustees. Township roads may be maintained and repaired by one or more trustees, or by a township highway superintendent. R.C. 5571.02. As demonstrated by R.C. 5571.03, such responsibility includes the maintenance and repair of culverts. R.C. 5549.21 authorizes the trustees to "purchase or lease such machinery and tools as are necessary for use in constructing, reconstructing, maintaining, and repairing roads and culverts within the township." R.C. 5549.21 also provides that payments for such purposes are made from the township road fund. R.C. 5571.13 requires the board of township trustees to report to the engineer in relation to the highways, bridges, and culverts within the township. See R.C. 5549.04.

Reading the above statutes together, it is apparent that culverts on the highway system are to be treated as roads and bridges are treated. Whichever political subdivision has the responsibility for repairing and maintaining the highway on which a particular culvert is located has the responsibility for maintaining and repairing that culvert. As discussed above, each county generally has the responsibility for its own roads, and each township must maintain its own system of roads. In similar fashion, the county must maintain the culverts which are on the county's roads, and the township must maintain the culverts which are on the township's roads.

The above conclusion is supported by several opinions from this office. In 1945 Op. Att'y Gen. No. 603, p. 763, my predecessor concluded, citing the forerunner of R.C. 5549.21, that culverts were part of the road, and thus the

responsibility for culverts fell on the political subdivisions responsible for the various classes of roads. 1925 Op. Att'y Gen. No. 2501, p. 333, 1925 Op. Att'y Gen. No. 2557, p. 389, and 1923 Op. Att'y Gen. No. 784, p. 636 also concluded that culverts were part of a road or highway for construction, maintenance, and repair purposes. See 1959 Op. Att'y Gen. No. 781, p. 496. See also 1960 Op. Att'y Gen. No. 1371, p. 350; 1946 Op. Att'y Gen. No. 925, p. 303.

While the above discussion concerns the responsibility for culverts in general, your specific questions address the responsibility for culverts under driveway aprons of abutting property owners. Clearly, if a culvert were located upon private property, and that property were unencumbered by a county's or township's road easement,<sup>1</sup> the owner of the property would alone be responsible for that culvert. See R.C. 6131.47. However, where a culvert has been constructed on the county's or township's easement, or right-of-way, in order to provide drainage for the road, that culvert is considered part of the highway system for purposes of maintenance and repair, even though it may be located under a property owner's approach or driveway.

R.C. 5543.16 provides in part: "[t]he owners of land shall construct and keep in repair all approaches or driveways from the public roads, under the direction of the county engineer." It could be argued that a culvert pipe under a driveway apron is part of the driveway, so that the property owner would be responsible for the culvert. However, R.C. 5543.16 represents an exception to the general rule placing the responsibility for highway maintenance and repair on the various governmental entities (an approach is part of the highway pursuant to R.C. 5501.01(C)), and, as such, must be strictly construed. See *State ex rel. Keller v. Forney*, 108 Ohio St. 463, 467, 141 N.E. 16, 17 (1923) ("the presumption is that what is not clearly excluded from the operation of the law is clearly included in the operation of the law"). An approach clearly refers to the surface of the road. See R.C. 5555.021; R.C. 5571.01(B). I decline to stretch the concept of approach to include culverts beneath the approach or driveway which serve the governmental purpose of road drainage, and which are generally considered part of the road itself.

The second paragraph of R.C. 5543.16 reads:

In the construction of a road improvement the director of transportation or engineer may, in all case where the approaches of the owners of abutting real estate are unsuitable to a projected improvement or so constructed as not to afford proper drainage after its completion, include in the plans for such improvement plans for proper approaches. The entire cost of constructing such approaches may be assessed against the lands along which they are constructed. (Emphasis added.)

In the limited situation where a property owner's approach does not provide proper drainage for a road improvement,<sup>2</sup> and the county engineer must provide for proper drainage, then the cost of constructing an adequate approach may be assessed against an abutting property owner. The placement of an adequate culvert pipe beneath an approach fits within this provision. However, the last sentence of R.C. 5543.16 indicates that a property owner's liability is limited to the initial construction cost of a proper approach. As the language of R.C. 5543.16

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<sup>1</sup>An abutting property owner outside a municipality holds the land in fee to the center of the road subject to an easement or right-of-way by a governmental entity for highway purposes. *Taylor v. Carpenter*, 45 Ohio St. 2d 137, 341 N.E.2d 843 (1976).

<sup>2</sup>See R.C. 5553.01 for a definition of "improvement."

demonstrates, the legislature considers construction to be a distinct concept from that of maintenance and repair. By referring only to construction costs being assessed, the General Assembly has indicated that maintenance and repair costs are not to be assessed. If maintenance and repair costs were to be assessed, they would have been specifically mentioned. Thus, once a culvert has been constructed to provide proper drainage for a road improvement, its subsequent maintenance and repair must be assumed by the proper political subdivision, and the costs thereof may not be assessed against the abutting property owner. I note that R.C. 5543.16 also provides that if an approach or driveway is destroyed in the construction, improvement, maintenance, and repair of any road, then the appropriate authority must compensate the property owner or reconstruct the driveway at public expense.

In response to your questions concerning culverts, I conclude that culverts on a highway are part of the highway for purposes of cleaning, repair, and replacement, and thus the political subdivision responsible for the road is responsible for the culverts thereon. Abutting property owners are not responsible for the repair and maintenance of a culvert along a highway right-of-way, even though such culvert runs under the owner's driveway apron, although the property owner may be assessed the original costs of constructing an approach which provides proper drainage for a road improvement.

You have also asked about the allocation of responsibility for storm sewers. It is my understanding that the purpose of the storm sewers with which you are concerned is to carry off drainage from the roads and highways. There are no specific statutory provisions concerning the cleaning and repairing of storm sewers. However, as noted above, a storm sewer's function is to operate as a drain for the highway system. I understand that the sewer accomplishes this function through a series of ditches. Thus, breaking the sewer system down into its component parts—ditches—it becomes apparent that the duty to clean and repair storm sewers falls on the entity responsible for cleaning and repairing ditches. As discussed above, this responsibility falls on the political subdivision responsible for the road along which the ditch runs. If the storm sewer must transport drainage under or along a highway by means of a culvert, then, as discussed above, the duty to clean and repair the culvert would also fall on the political subdivision responsible for the highway upon which the culvert is constructed.

You have posed the question as to how the costs of cleaning, maintaining, and repairing ditches, culverts, and storm sewers are to be paid. Because ditches, culverts, and storm sewers are repaired and maintained as part of a county's or township's duty to repair and maintain roads, the costs of working on ditches, culverts, and storm sewers should be paid in the same manner in which road maintenance and repair costs are paid. Absent specific statutory authority, *e.g.*, R.C. 5555.03 (concerning improvements and repairs made pursuant to petition by landowners), these costs cannot be assessed against property owners.

In conclusion, it is my opinion, and you are advised, that:

1. Each county and township bears the responsibility for the maintenance and repair of its respective road or highway system, although the various political subdivisions may cooperate in the maintenance and repair of the others' roads.
2. The political subdivision with the responsibility for the repair and maintenance of a particular road must, as a part of that responsibility, clean and maintain the ditches which run along the side of the road for drainage purposes.
3. The political subdivision which is responsible for the repair and maintenance of a road is also responsible for the cleaning, repair, and replacement of a culvert on the road, even though the culvert may pass beneath the driveway of an abutting property

owner. (1945 Op. Att'y Gen. No. 603, p. 763; 1925 Op. Att'y Gen. No. 2501, p. 333; 1925 Op. Att'y Gen. No. 2557, p. 389; 1923 Op. Att'y Gen. No. 784, p. 636, approved and followed.)

4. The duty to clean and repair storm sewers falls on the political subdivision responsible for the cleaning and repair of the ditches and culverts which comprise the storm sewer.
5. The costs of cleaning, maintaining, and repairing county and township roads, and the ditches, culverts, and storm sewers appurtenant to the roads, are to be paid as other costs of road maintenance and repair. Absent specific statutory authority, these costs may not be assessed against abutting property owners.