

OPINION NO. 71-030**Syllabus:**

1. The legal requirements for the establishment of a county road wholly within a municipality are that the road have utility to the general public rather than solely to the citizens of the municipality; that it be a connecting link between state and county highway systems; and that the consent of the municipality should be obtained.

2. A street may be within such requirements when it links a state highway and a county road within a municipality.

3. A county may pay for the repair of the bridge on a municipal street as soon as that portion of the street on which the bridge is located has become a part of the county road system.

To: Thomas R. Spellerberg, Seneca County Pros. Atty., Tiffin, Ohio
By: William J. Brown, Attorney General, June 7, 1971

Your request for my opinion concerns the authority of the Board of County Commissioners of Seneca County to pay for the repair of a bridge on Circular Street within the City of Tiffin. The specific questions posed by your letter of April 20, 1971, are as follows:

"1. What are the legal requirements for the county to establish a county road wholly within the city of Tiffin?"

"2. Does Circular Street as such comply with said requirements?"

"3. Can the County M & R funds received by Seneca County from the Motor Vehicle License fees and Gasoline Tax be used for the repair of this bridge inasmuch as Circular Street is not now a county road wholly within the City of Tiffin?"

In a letter, dated April 16, 1971, you had previously stated the third of the above questions in the following slightly different form:

"If the procedure as set forth in my letter of

April 9, 1971 to the County Commissioners is followed by the County and the City, can the County repair and pay for said bridge repair out of the County M & R Fund?"

It appears from the maps and the other materials submitted with your letters that four state highways intersect at approximately the center of the City of Tiffin. Routes 18 and 101, following Market Street, run generally east and west. Routes 100 and 231, following Washington Street, run generally north and south. A few blocks south of the intersection of these four highways, Route 100 splits off from Washington Street and follows Melmore Street to the south-east. Also at this point two other streets split off from Washington Street: Coe Street, running south-east and located north of Melmore Street; and Sycamore Street, running south-west and located west of Washington Street. Coe is a continuation of County Road 36, while Sycamore is a continuation of County Road 19.

Circular Street runs a curving course from the east side of the City of Tiffin to the south side, and it provides a convenient by-pass for those who desire to avoid the main intersection mentioned above. One terminus is at Market Street (State Highways 18 and 101) several blocks east of the main intersection. From that point it curves gradually south, south-west, west and north-west to its other terminus at Sycamore Street (County Road 19). Between these two terminal points, it intersects Coe Street (County Road 36), Melmore Street (State Highway 100) and Washington Street (State Highway 231). The bridge which is in need of repair (a photograph indicates that it is presently closed to vehicular traffic) is located on Circular Street about 400 feet south of its Market Street terminus.

By a letter dated April 9, 1971, you advised the Board of County Commissioners that they were authorized to pay for the repair of the bridge under the following conditions: (1) the county should request the city's permission to establish a county road over Circular Street and to improve and repair the bridge at the county's expense; (2) the city should grant the requested permission; and (3) the county should establish a county road over Circular Street and authorize the bridge improvement and repair.

The material you have submitted indicates that the first of these three steps has already been taken. On April 12, 1971, the Board of County Commissioners passed two resolutions, one requesting consent of the City of Tiffin to the establishment of a county road over Circular Street, and the other requesting the City's consent to improvement and repair of the bridge at the County's expense. The second of these resolutions states that Circular Street is a connecting link between all the above mentioned complex of state highways and county roads, and that it is generally used by all travelers on such highways and roads and not by the citizens of Tiffin alone.

In my opinion the procedure set forth in your letter of April 9, 1971, is correct in all essential aspects.

The public roads in the State of Ohio are, in so far as pertinent here, divided into state highways, county roads, and municipal streets.

The state highway system is described in Section 5511.01, Revised Code, which provides:

"All state highways established by law shall continue to be known as state highways, and the state highway system established by law shall continue to be known as the state highway system.

* * * * *

"The state highway routes into or through municipal corporations, as designated or indicated by state highway route markers erected thereon on October 11, 1945, are state highways and a part of the state highway system. The director may erect state highway route markers* * * upon those portions of the state highway system lying within municipal corporations, and the consent of such municipal corporations* * * shall not be necessary.* * *

* * * * *

"The director shall place in the files of the department a record of the routes of all such state highways and shall cause them to be corrected and revised to show all changes and additions to the date of such correction. A copy of such record* * * shall be admissible* * * for the purpose of proving the existence and location of any state highway within a municipal corporation.

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The county road system is described in Section 5541.02, Revised Code, which provides:

"The board of county commissioners* * * shall select and designate a connected system of county highways* * *. Such system* * * shall be known as the system of county highways of the county, and all of the roads comprising such system shall be known and designated as county roads * * *"

The power of a municipality over the streets within its boundaries is described in Section 723.01, Revised Code, in the following terms:

"Municipal corporations shall have special power to regulate the use of the streets. The legislative authority of such municipal corporation shall have the care, supervision, and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation, and shall cause them to be kept open, in repair, and free from nuisances."

Despite the control exercised by a municipality over its own streets, it is clear that a county road, like a state highway, can co-exist with a city street, and a street can be a part of the county road system just as it can be a part of the state highway system. See Sections 5557.01 to 5557.09, Revised Code. Thus, Section 5557.01, supra, provides:

"As used in sections 5557.01 to 5557.07* * * 'road' includes any state or county roads, or the

streets of any municipal corporation, or any part of such roads or streets, which forms a continuous road improvement."

And Section 5557.02, Revised Code, provides:

"The board of county commissioners may construct a proposed road improvement into, within, or through a municipal corporation, when the consent of the legislative authority of such municipal corporation has been first obtained.* * *"

Furthermore, Section 5557.08, Revised Code, provides:

"The board of county commissioners may repair that portion of a county road extending into or through a municipal corporation, or a part of a county road and a municipal corporation's streets extending into or through a municipal corporation and forming a continuous road improvement, when the consent of the legislative authority of said municipal corporation has been first obtained,* * *."

1.) Since it is clear that a county road may be established wholly within the boundaries of a municipality, I approach your first question: What are the legal requirements for such an establishment?

The memorandum of authorities and citations, included in the materials you have submitted, refers to Opinion No. 2321, Opinions of the Attorney General for 1928, as the key opinion. I agree with that characterization. The facts there were quite similar to those here. The county commissioners wanted to establish a county road between two state highways within the city of Youngstown and construct a bridge over the Mahoning River as a part of the road. The opinion refers to two Supreme Court cases which hold that the board of county commissioners may establish a county road, wholly within the confines of a municipality, when such road will be an important link between two state roads running through the municipality. (State, ex rel., v. Commissioners, 107 Ohio St. 465, 473-474; and Wells v. McLaughlin, et al., 17 Ohio 99.) Then, after discussing the pertinent sections of the General Code, which remain essentially unchanged in the Revised Code, the opinion concludes in the following language which is dispositive of your question:

"From the foregoing discussion a conclusion may be drawn that county commissioners, acting in good faith, and in recognition of the necessities of public travel, may establish a county road within the boundaries of a municipality, although both of the termini of such roads are within the municipal limits. Such road may or may not occupy the limits of a municipal street, the existence of a street being of no significance in connection with the question of the power of the commissioners. In order to authorize the establishment of a county road within municipal limits, there must be some general utility to the proposed road other than to the inhabitants of the municipality. That is to say, the commissioners would not be justified in establishing a county road within a municipality for the sole convenience of its inhabitants.

"In the present instance the conditions are such as, in my opinion, clearly justify action on the part of the county commissioners with respect to Cedar Street in case they so decide. It constitutes an important link between two state roads. It is true that by means of certain other connecting links, through travel may ultimately arrive at the business section of the city, but the more expeditious way provided by the use of Cedar Street is, in my opinion, sufficient justification for the establishment of it as a county road. That is to say, if action should be taken by the commissioners, I do not believe that it would constitute an abuse of discretion in view of the facts in this case. It seems to me to be clearly within the rule set forth in the Bushnell case, supra.

"It follows that if the commissioners have authority to establish Cedar Street as a county road, they likewise have, after such an establishment, under the provisions of Sections 2421 and 7557 of the Code, supra, the authority and also the duty to maintain and repair the bridge or viaduct located thereon. The street would then constitute a county road, and, as such, the duty with respect to bridges is clear."

(Emphasis added.)

I conclude, therefore, that the Board of County Commissioners for Seneca County may establish a county road within the boundaries of the City of Tiffin if such road has some general utility other than to the inhabitants of Tiffin, and particularly if it forms a link between two state highways. I see nothing to the contrary in the various opinions which seem to have caused some concern to your County Engineer (Opinion No. 684, Opinions of the Attorney General for 1927; Opinion No. 1147, Opinions of the Attorney General for 1927; Opinion No. 471, Opinions of the Attorney General for 1951; Opinion No. 6030, Opinions of the Attorney General for 1955; Opinion No. 811, Opinions of the Attorney General for 1957; and Opinion No. 1274, Opinions of the Attorney General for 1964), although the last of these opinions seems to be mistaken in accepting the statement of the prosecuting attorney that a county road loses its identity as such when the territory through which it runs has been annexed by a municipality. Compare Opinion No. 4078, Opinions of the Attorney General for 1935.

It will be observed that Section 5541.02, supra, simply authorizes the board of county commissioners to establish a county road, whereas Sections 5557.02 and 5557.08, Revised Code, authorize the board to construct or repair such road only after having obtained the consent of the municipality. Opinion No. 2321, supra, has the following comment on this difference in the statutes:

"* * *While there is some doubt in my mind as to the application of this section and the succeeding section to the mere establishment of a county road within a municipality, as distinguished from the construction or other improvement thereof, I am inclined to believe that the safer course to pursue would be to secure the consent of council, even though no actual improvement were contemplated at the time of the establishment of a city street as a county road.

* * *

(Emphasis added.)

I agree that you have followed the safer course in advising the Board of Commissioners of Seneca County to seek the consent of the legislative authority of the City of Tiffin for the establishment of a county road over Circular Street.

2.) The next question is whether, under the circumstances of this case, Circular Street can legally be established as a county road. I have no hesitation in answering that question affirmatively with respect to that portion of Circular Street which lies between Market Street (State Highways 18 and 101) and Washington Street (State Highway 231).

In the first place the Board of County Commissioners has stated, in its resolution seeking permission to repair the bridge, that travellers from outside the City of Tiffin "generally use said Circular Street in travelling between said state and county routes into, through and out of said City of Tiffin* * *." This is a finding of general or public utility, and is a matter, the determination of which is committed by statute to the Board. Opinion No. 811, Opinions of the Attorney General for 1957.

Secondly, this portion of Circular Street forms a link between four state roads. Your letter of April 20, 1971, states that the County Engineer is not sure whether the state roads actually extend through the City of Tiffin. In connection with your letters you have submitted photographs of the State Highway route markers within the City of Tiffin, together with a Department of Highways map of the City of Tiffin, corrected as of April 28, 1971, which clearly shows all four state highways passing through the city. Under Section 5511.01, *supra*, this is ample proof of "the existence and location of any state highway within a municipal corporation."

I have some doubt as to that portion of Circular Street which continues west and north-west from Washington Street to its terminus at Sycamore Street. Sycamore is a continuation of County Road 19, but it is not clear from the material submitted to me whether it has ever been established as a part of the county road system of Seneca County. If it has not, then this portion of Circular Street does not form a link between state and county highways. See *State, ex rel., v. Commissioners*, 107 Ohio St. 465, *supra*. This deficiency can, of course, be easily remedied by applying the same procedure to Sycamore Street which has already been used to establish Circular Street as a part of the county road system.

3.) In view of the foregoing the answer to your third question is clear. Once Circular Street has been properly made a part of the Seneca County road system, the County Maintenance and Repair funds can be used to repair the bridge. Section 5591.02, Revised Code, with the omission of certain obsolete language (*City v. Dumford*, 22 Ohio App. 2d 75, 76), provides:

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

It is, therefore, my opinion and you are hereby advised that:

1. The legal requirements for the establishment of a county

road wholly within a municipality are that the road have utility to the general public rather than solely to the citizens of the municipality; that it be a connecting link between state and county highway systems; and that the consent of the municipality should be obtained.

2. A street may be within such requirements when it links a state highway and a county road within a municipality.

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