

to pay their personal debts, and are apparently making no effort whatsoever to pay the same, even in the face of repeated warnings on the part of said officer.

Where an employe acting under the knowledge that his wages cannot be garnisheed persistently refuses to make any effort to settle his just debts, I am of the opinion that the managing officer would be justified in finding that such persistent refusal constitutes a failure of good behavior and would be justified in discharging the offender.

If the employe feels that his charge is unjustified, he is entitled to the benefit of a review of the case by your commission.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1334.

BRIDGE—LOCATED PARTLY WITHIN MUNICIPALITY AND PARTLY WITHOUT SAME—REPAIR DISCUSSED.

SYLLABUS:

1. *Where a bridge is located partly within and partly without a municipal corporation, and no part of said bridge is on an established road, as provided in Sections 2421 and 7557, General Code, a board of county commissioners is without authority to construct a bridge or repair an existing one, without first laying out and establishing a county road over a street or streets adjoining and forming one or more of the approaches to said bridge. In order to constitute a county road, within the provisions of Sections 6906, et seq., of the General Code, such road when so laid out and established must be a continuation of a state or county road extending into or through such municipal corporation, or must be a part of a continuous road improvement.*

2. *Where a bridge is established on a county road or upon one of the roads coming within the classification of roads, as provided in Sections 2421 and 7557, General Code, or where the county commissioners have laid out and established a county road within a municipality so that such bridge is on a county road, it is the duty of the county commissioners to construct and keep in repair such bridge.*

3. *Under the provisions of Sections 3295, et seq., of the General Code, the township trustees are authorized and empowered to co-operate with a municipality or a county in the construction or repair of a bridge, a part of which is located within and part of which is located without such municipality, such co-operation and participation in the improvement being subject to an agreement between the board of township trustees and the municipality, or the board of township trustees and the county commissioners.*

4. *Where a bridge over a stream lies partly within a municipality and partly within a township adjoining such municipality, and no part of such bridge is located upon a county road, free turnpike, improved road, abandoned turnpike or a plank road in common public use, which said road is of general and public utility running into or through such municipality, the duty of constructing that portion of such bridge located within such municipality is placed upon such municipality. However, the board of township trustees of the township, in which a part of such bridge is located, and the municipality may by agreement undertake the construction or repair of such bridge.*

COLUMBUS, OHIO, December 6, 1927.

HON. CLARENCE J. CROSSLAND, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—Receipt is acknowledged of your communication of recent date requesting my opinion as follows:

"One of the bridges located in Muskingum County and spanning the Muskingum river is known as the Monroe Street bridge. This bridge is used for ordinary pedestrian and vehicular traffic, and also carries a city water main.

The corporation line of Zanesville follows the center of the Muskingum river from a point north of this bridge, continuing at a right angle to and through the middle portion of the bridge and to a point a short distance south thereof. The said corporation line then runs diagonally in a general north-westerly direction across the west bank of the Muskingum river and cuts across what would be the west approach, if extended, of said bridge. As a result, the east half of said bridge, including the east approach thereto, is located in the city of Zanesville. This east approach is from the juncture of two streets, one known as Monroe Street and one known as Malinda Street. Each are distinctly city streets, although Malinda Street at its eastern terminus connects at a right angle with a street or road known as Hall Avenue, which said Hall Avenue is the direct continuation into the city of Zanesville of a county road known as the Adamsville Road. Hall Avenue runs both north and south of Malinda Street and does not follow into Malinda Street as the direct continuation of the said Adamsville road.

The west half of said bridge, including the west approach thereto, is located in Falls Township, Muskingum County. This west approach is from an unimproved street or road having a turnoff north along the west bank of the Muskingum river for a very short distance to an abrupt terminus, and which said approach and said turnoff is a more or less isolated although contiguous portion of said Falls Township. Said approach and said turnoff are wholly within Falls Township, and no part of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road.

The direct continuation westward of said Monroe Street bridge and its west approach continues across the corporation line of the city of Zanesville into a directly connecting street of said city. This direct and continuous unimproved street or road which extends from the Monroe Street bridge westward to its western terminus, which is the right angle intersection of a city of Zanesville street known as Linden Avenue, is itself, including the eastern terminus in Falls Township, known as West Monroe Street. West Monroe Street is not a part or continuation of any state road, county road, free turnpike, improved road, abandoned turnpike or plank road. Linden Avenue, with which West Monroe Street connects, is the continuation into the city of Zanesville of an unimproved county road. Linden Avenue runs both north and south of West Monroe Street and does not follow or run into West Monroe Street as the direct continuation of said county road.

The Monroe Street bridge in and of itself is no part or continuation of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road.

With reference to the above set of facts, I desire to ask the following questions:

(1) Within whose jurisdiction, with reference to Muskingum County, Falls Township and the City of Zanesville, is the repair or new construction of said bridge, either in whole or in part?

(2) If not within the present exclusive jurisdiction of one or another of the above mentioned political units, could jurisdiction be acquired by one from the other or others by appropriate and concurring legislation?"

I also acknowledge receipt of a drawing made by your county surveyor illustrating the facts set forth in your communication.

From the facts stated, it is quite clear that approximately one-half of the bridge in question which spans the Muskingum river and which is known as the Monroe Street bridge, is located within the City of Zanesville, Ohio, while the other half is located within Falls Township, which said township adjoins the corporate limits of the City of Zanesville, at the locality where this bridge is situated.

This bridge is not located on either a state or county road, and you state in your communication "that Monroe Street bridge in and of itself is no part of a continuation of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road."

Authority to build bridges within municipalities is conferred upon county commissioners by Section 2421, General Code.

"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 use* * * * ." (Italics the writer's.)

And by Section 7557, General Code :

"The county commissioners shall cause to be constructed and kept in repair, as provided by law, all necessary bridges in villages and cities * * * *on all state and county roads, free turnpikes, improved roads, transferred and abandoned turnpikes and plank roads, which are of general and public utility, running into or through such village or city.*" (Italics the writer's.)

That a board of county commissioners cannot build a bridge on other than established roads coming within the classification of roads mentioned in Sections 2421 and 7557, supra, has been well settled by the Supreme Court of Ohio in the case of *The State ex rel. Bushnell, as Trustee, etc., vs. The Board of County Commissioners of Cuyahoga County*, 107 O. S. 465, the syllabus of which is as follows :

"Sections 2421 and 7557, General Code, do not authorize the board of county commissioners to build bridges other than on established roads. Such board is without power to connect two state or county roads by a bridge, without first laying out and acquiring a road connecting such state or county roads. But where such board has been authorized by a vote of the electors under Section 5638, General Code, to expend in excess of \$18,000 in the construction of a bridge on a given site connecting two state or county roads, it may thereafter lay out and acquire a road on such site, and then construct the bridge within the limitations of the authorization."

In the above case the question of the legality of expending a certain sum of money which had been authorized by a vote of the people for the purpose of building a bridge was before the court and the court enjoined said expenditure on the ground that the bridge when constructed would not be located on either a state or county road. On page 474 of the opinion, Judge Robinson makes this very pertinent comment :

"The conceded facts being that no state or county road exists between the termini of the proposed bridge, it therefore follows that until such time as the board of county commissioners has laid out and acquired a road according to law between such termini it is without power to construct the bridge upon such site."

In connection with the authority of county commissioners to construct or repair bridges located within municipalities it may be well to refer to several former opinions of this department which are in conformity with the holding in the Bushnell case, *supra*.

In an opinion reported in Opinions, Attorney General, 1919, Vol. II, page 1622, it was held:

"1. County commissioners are by virtue of Sections 2421 and 7557 under the duty of keeping in repair those necessary bridges within the cities of the state which are over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use; and they are under a like duty as to similar bridges within those villages which do not demand and receive a portion of the bridge fund as authorized by Section 2421-1 (108 O. L. 259). If a village does demand and receive a portion of the bridge fund from the county, then the village is under the duty of maintaining such of the bridges mentioned as are wholly within the village.

2. Municipal corporations, both cities and villages, are under the duty of maintaining bridges on streets established by the city or village for the use and convenience of the municipality and not a part of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road."

Also in Opinions, Attorney General, 1924, at page 347 relative to the construction and maintenance of a bridge on an inter-county highway which was partly within and partly without the limits of a municipality, it was held:

"A bridge wholly or partly within the limits of a city and on an inter-county highway or main market road, with the construction and maintenance of which the county commissioners are charged by law, may be constructed and maintained under what is commonly known as the state aid road laws."

Your attention is also directed to Opinion No. 1147, addressed to the Bureau of Inspection and Supervision of Public Offices on October 14, 1927, the syllabus of which reads as follows:

"1. A board of county commissioners may lay out and establish a county road over a street already established within the limits of a municipal corporation, if such street be a continuation of a state or county road extending into or through such municipal corporation, or forms a continuous road improvement, in which case the consent of the council of said municipal corporation, evidenced by the proper legislation of council, must be first obtained. *If a street within the limits of a municipal corporation be not a continuation of a state or county road, or does not form a continuous road improvement, county commissioners are without authority to lay out and establish such street.*" (Italics the writer's.)

2. The county commissioners are without authority to expend county funds in building bridges upon a street within the limits of a municipal corporation, unless such street be a continuation of a state or county road extending into or through such municipal corporation or forms a continuous road improvement."

As stated in the opinion last referred to, the county commissioners may, in the exercise of their discretion, lay out and establish a county road over a street within a

municipality leading onto and providing one of the approaches to a bridge within such municipality, provided, such road, when so laid out and established, will form a continuation of a state or county road extending into or through such municipal corporation.

The authority to lay out and establish county roads may be found under the provisions of Sections 6949, 6952 and 6954 of the General Code, and as heretofore held by this department, (Opinions, Attorney General, 1920, Vol. II, page 911) the series of sections beginning with Section 6906, General Code, "includes Sections 6949, et seq., relating to improvement by commissioners into, within or through municipalities," and also includes Section 6952, General Code.

Sections 6906 and 6949, General Code, provide as follows :

Section 6906. "The board of commissioners of any county shall have power, as hereinafter provided, to construct a public road by laying out and building a new public road, or by improving, reconstructing or repairing any existing public road or part thereof by grading, paving, draining, dragging, graveling, macadamizing, resurfacing or applying dust preventatives, or by otherwise improving the same. The county commissioners shall have power to alter, widen, straighten, vacate or change the direction of any part of such road in connection with the proceedings for such improvement."

Section 6949. "The board of county commissioners may construct a proposed road improvement into, within or through a municipality, when the consent of the council of said municipality has been first obtained, and such consent shall be evidenced by the proper legislation of the council of said municipality entered upon its records, and said council may assume and pay such proportion of the cost and expense of that part of the proposed improvement within said municipality as may be agreed upon between said board of county commissioners and said council. If no part of the cost and expense of the proposed improvement is assumed by the municipality, no action on the part of the municipality, other than the giving of the consent above referred to, shall be necessary; and in such event all other proceedings in connection with said improvement shall be conducted in the same manner as though the improvement were situated wholly without a municipality."

Section 6906, *supra*, was amended in House Bill No. 67, commonly known as the Norton-Edwards Act (112 O. L. 430) and by the terms of said act will become effective on the second day of January, 1928. However, under the provisions of Section 6906 of the General Code, as amended, the county commissioners still have general jurisdiction over the improvement of county and township roads and the laying out and establishing of additional county roads.

Section 6952, General Code, defines the word "road" as used in Sections 6906 to 6953, both inclusive, of the General Code, to include "any state or county road or roads, or any part thereof, or any state or county road or roads, and any city or village street or streets or any part thereof which form a continuous road improvement." Subsequent to the enactment of Section 6952 of the General Code, Section 6954 was enacted to read as follows :

"The board of county commissioners of any county may repair that portion of a county road extending into or through a municipal corporation, or a part of a county road and a city or village street or streets extending into or through a municipal corporation and forming a continuous road improvement,

when the consent of the council of said municipal corporation has been first obtained and such consent shall be evidenced by the proper legislation of the council of said municipal corporation entered upon its records."

From the foregoing discussion of statutes and authorities, it may be stated that at the present time the county commissioners of Muskingum County have no authority to construct a new bridge or to repair the existing one until such time as they may take such steps as may be necessary to lay out and establish a county road over the street or streets leading up to and over said bridge, and that if such steps are taken by said board of county commissioners it will be the duty of such board under the provisions of Sections 2421 and 7557, *supra*, to make such improvement.

It is important to bear in mind the provisions of Section 5638, General Code, providing the board of county commissioners decide to take such steps as may be necessary to establish the bridge on a county road within such municipality, in anticipation of their further action in either constructing a new bridge or in repairing the existing one. Under the provisions of said section, if the cost of such construction or repair will exceed the sum of \$18,000, it is necessary to submit to the voters of the county the question as to the policy of making such an expenditure.

Authority to construct or repair bridges and viaducts and to issue bonds for the cost thereof by township trustees may be found under the provisions of Sections 3295 to 3298, both inclusive, of the General Code. Attention is invited to the fact that Section 3295 of the General Code was amended by the last legislature in House Bill No. 1 (112 O. L. 383) and as amended, now reads :

"The trustees of any township in addition to other powers conferred by law shall have power to purchase, appropriate, construct, enlarge, improve, rebuild, repair * * * bridges and viaducts over streets, streams, railroads or other places where an overhead roadway or footway is necessary, and sites for any of the same."

Section 3298 of the General Code clearly reveals that the legislature has made provision for the cooperation of a township, through its board of township trustees, with a municipality or a county in the construction or repair of a viaduct over any street or other place where an overhead roadway or footway is deemed necessary.

The pertinent part of the above section reads as follows :

"When the voters of a township determine to issue bonds for the construction or repair of viaducts, * * * as authorized by law, the authority to make improvements is hereby conferred and the money arising from the sale of the bonds shall be expended in the same manner as provided in the preceding section. Provided, however, if a municipality or the commissioners of a county, determine to construct or repair a viaduct over any street * * * or other place, where an overhead roadway or footway is deemed necessary, under the provisions of any law authorizing the construction of bridges or viaducts * * * and the construction or repair of such viaduct will be of benefit to a township, the trustees of such township, may by agreement with such municipality or the commissioners of such county, pay such part of the cost and expense of such improvement including compensations for land taken and damages as shall, by such trustees be deemed just and equitable; that part of the cost and expense of such improvement, so assumed by such township, shall be paid into the treasury of such municipality or county, to the credit of such special improvement fund, out of any funds in the treasury of such township, provided for the construction or repair of

such viaduct ; or the trustees may issue the bonds of said township for such purpose in any manner provided by law."

It will be seen from a reading of the foregoing statute that the township trustees are authorized by law to enter into an agreement, with either the municipality or the county commissioners, for the construction or repair of bridges and viaducts located within a municipality.

There can be no doubt as to the right of the city, through its council, to construct or repair that portion of the bridge located within the corporate limits of the city.

Under the provisions of Section 3714, General Code, the council of the municipality is vested with the care, supervision and control of public highways, bridges, aqueducts and viaducts within the corporation, and shall cause them to be kept open, in repair and free from nuisance. Under the provisions of Section 3677, General Code, municipal corporations have power to appropriate real estate for bridges, aqueducts, viaducts or approaches thereto; by Section 3629 they have power to improve, keep in order and repair, light, clean and sprinkle bridges and viaducts within the corporation; by the provisions of Section 3939 of the General Code, enacted by the last legislature in lieu of former Section 3939 which was repealed, 112 O. L. 319, municipalities have power "to construct or improve viaducts;" by Section 4325 the duty of supervising the improvement and repair of bridges, viaducts and aqueducts in cities is charged to the Director of Public Service, and by Section 4364 of the General Code, this duty of supervision is charged to the street commissioner or engineer, under the direction of council.

From the foregoing discussion and authorities, and answering your questions specifically, it is my opinion that :

1. Where a bridge is located partly within and partly without a municipal corporation, and no part of said bridge is on an established road, as provided in Sections 2421 and 7557, General Code, a board of county commissioners is without authority to construct a bridge or repair an existing one, without first laying out and establishing a county road over a street or streets adjoining and forming one or more of the approaches to said bridge. In order to constitute a county road, within the provisions of Sections 6906 et seq., of the General Code, such road when so laid out and established must be a continuation of a state or county road extending into or through such municipal corporation, or must be a part of a continuous road improvement.

2. Where a bridge is established on a county road or upon one of the roads coming within the classification of roads, as provided in Sections 2421 and 7557, General Code, or where the county commissioners have laid out and established a county road within a municipality so that such bridge is on a county road, it is the duty of the county commissioners to construct and keep in repair such bridge.

3. Under the provisions of Sections 3295, et seq., of the General Code, the township trustees are authorized and empowered to co-operate with a municipality or a county in the construction or repair of a bridge, a part of which is located within and part of which is located without such municipality, such co-operation and participation in the improvement being subject to an agreement between the board of township trustees and the municipality, or the board of township trustees and the county commissioners.

4. Where a bridge over a stream lies partly within a municipality and partly within a township adjoining such municipality, and no part of such bridge is located upon a county road, free turnpike, improved road, abandoned turnpike or a plank road in common public use, which said road is of general and public utility running into or through such municipality, the duty of constructing that portion of such bridge located within such municipality is placed upon such municipality. However,

the board of township trustees of the township, in which a part of such bridge is located, and the municipality may by agreement undertake the construction or repair of such bridge.

Respectfully,
EDWARD C. TURNER,
Attorney General.

1335.

APPROVAL, BONDS OF THE VILLAGE OF WESTERVILLE, FRANKLIN COUNTY, OHIO—\$16,500.00.

COLUMBUS, OHIO, December 6, 1927.

Industrial Commission of Ohio, Columbus, Ohio.

1336.

RELIGIOUS ORGANIZATION—IF INCORPORATION NOT FOR PROFIT CANNOT SECURE THE BENEFITS OF SECTION 10011, GENERAL CODE.

SYLLABUS:

A religious organization incorporated under the general law as a corporation not for profit cannot, by amendment of its articles of incorporation, secure the benefits of the provisions of Section 10011 of the General Code.

COLUMBUS, OHIO, December 8, 1927.

HON. CLARENCE J. BROWN, *Secretary of State, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your communication, as follows:

“We are in receipt of an inquiry from the attorney for THE MISSION BOARD OF THE CHURCH OF THE BRETHREN OF THE SOUTHERN DISTRICT OF OHIO requesting advice as to whether or not the corporation named can at this time amend its articles of incorporation so as to avail itself of the benefits and provisions of House Bill 157, passed by the last session of our legislature amending G. C. 10011.

The corporation in question was incorporated by filing its articles of incorporation in this office November 18, 1915. The articles affirmatively state that the corporation is under the general corporation laws of the state.

Can a religious corporation so incorporated by amendment avail itself of the provisions of the section of the Code in question or will such an amendment effect a substantial change of purpose within the meaning of the general corporation act?”