

"Whoever gives a public dance, roller skating or like entertainment in a building, hall, room or rink in a city or village without having previously obtained a permit from the mayor thereof, or permits another so to do, or, being the owner or lessor of a building containing a dance hall, room or rink fails to post in a conspicuous place therein a copy of this section, shall be fined not less than fifteen dollars nor more than one hundred dollars or imprisoned not more than sixty days, or both."

The court in its opinion also says that:

"It should be observed that the statute in a general way outlaws "a public dance."

The section as amended is more specific in outlawing a public dance than the original section because the original section commenced with "Whoever gives a public dance" and the section as amended reads: "No person shall give a public dance."

The court further says in its opinion:

"The mayor did not arbitrarily say that Rowlands was an unfit and unsuitable person or that the place was unfit or unsuitable for a public dance, but held under the statute, that no public dance should be given at the time and place in question."

I am therefor, of the opinion that if a permit is granted under this section to hold a public dance no conditions can be attached thereto but the granting officer has power to refuse a permit to hold a public dance at such places and for such times as he thinks best.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*

2557.

**ROADS—TOWNSHIP TRUSTEES MAY USE TOWNSHIP ROAD FUNDS  
IN CONSTRUCTION AND MAINTENANCE OF BRIDGES AND CULVERTS ON TOWNSHIP ROADS.**

**SYLLABUS:**

*In performing the mandatory duty of keeping township roads in good repair, imposed by the provisions of sections 3370 and 7464 of the General Code, township trustees may appropriate and use township road funds in the construction and maintenance of bridges and culverts on township roads within their respective jurisdictions.*

*Opinion found in volume 2, page 1813 of the opinions of the attorney general for 1917, modified.*

COLUMBUS, OHIO, June 10, 1925.

HON. FRED E. CHERRINGTON, *Prosecuting Attorney, Gallipolis, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication in which, in substance, you submit the following inquiry:

"May township trustees appropriate township road funds for the construction and maintenance of bridges and culverts on township roads?"

Section 7464 of the General Code of Ohio divides the highways of the state into three classes, namely: state roads, county roads and township roads.

Section 7467, General Code, in substance provides that the township trustees shall maintain the township roads within their jurisdiction.

Section 3370 of the General Code reads:

"The township trustees shall have control of the township roads of their township and shall keep the same in good repair. The township trustees may, with the approval of the county commissioners or state highway commissioner, as the case may be, maintain or repair a county road or inter-county highway or main market road within the limits of their township. In the maintenance and repair of roads, the township trustees may proceed in any one of the following methods as they may deem for the best interest of the public, to-wit:

"1. They may designate one of their number to have charge of the maintenance and repair of roads within the township, or

"2. They may divide the township into three road districts, in which event each trustee shall have charge of the maintenance and repair of roads within one of such districts, or

"3. They may appoint some competent person, not a member of the board of trustees, to have charge of the maintenance and repair of roads within the township which persons shall be known as township highway superintendent, and shall serve at the pleasure of the township trustees. The method to be followed in each township shall be determined by the township trustees by resolution duly entered on their records."

The sections noted impose upon the trustees of a township the mandatory duty of maintaining and repairing township roads within their respective jurisdictions.

It is noted that your inquiry goes to authority on the part of trustees in connection with the construction of bridges and culverts, as well as to the maintenance and repair thereof. However, it is not deemed necessary, for the purposes of this opinion, to give consideration to the difference between construction on the one hand and maintenance and repair on the other hand, inasmuch as it is believed that the legislature used the terms "maintenance," "repair," and "good repair" synonymously and in their broad and general meaning, thereby imposing the duty of putting and keeping township roads in a good, usable and safe condition for travel.

The question then is, does the term "road," as used in the sections referred to, include within its definition the bridges and culverts on the road?

As was pointed out in a recent opinion of this department, rendered under date of May 16, 1925, to the bureau of inspection and supervision of public offices, the word "road" is synonymous with the word "highway" and has no fixed meaning in the law, the meaning to be given it being dependent upon the context in which the word appears; that in its popular sense it is a generic term for all kinds of ways and, unless the context in which the word appears shows a different legislative intention, it may, and usually does, include all parts within the bounds thereof.

The question involved in the opinion referred to was whether or not the term "public roads" as used in section 6906 of the General Code included within its meaning bridges and culverts, and it was held therein, after a consideration of all legislation upon the subject of roads, bridges and culverts, that the term did not include bridges within its meaning, but did include culverts within its meaning. This

conclusion was reached from the fact among others, that the legislature, in accordance with a legislative policy as old as any legislation upon the subject, had provided a separate, distinct and detailed administrative and quasi-legislative proceeding for the construction of bridges under the jurisdiction of the county commissioners, while, on the other hand, there was no such legislative dealing with the subject of culverts.

While there is no separate, distinct and detailed legislative, administrative and quasi-legislative proceeding for the construction of bridges and culverts on township roads, nevertheless there is, as hereinbefore pointed out, a mandatory duty on the part of the township trustees to keep the township roads in good repair.

This conclusion is strengthened when consideration is given to the provisions of section 5649 of the General Code, which section provides that road taxes in the hands of the township treasurer shall be expended on the public roads and in *building and repairing bridges* in the township, and to section 7214 of the General Code which, among other things, provides that "the county commissioners and township trustees may contract for and purchase such material as is necessary for the purpose of *constructing, improving, maintaining or repairing any highways, bridges, or culverts* within the county."

Attention should be directed to an opinion of my predecessor, found in the reports for the year of 1917, volume II, at page 1813, and to the fourth and fifth parts of the syllabus, which read:

"In the construction of bridges and culverts located on county and township roads, as well as the maintenance and repair of bridges so located, the county commissioners have jurisdiction."

"In the maintenance and repair of culverts located on county and township roads, both the county commissioners and township trustees have jurisdiction, in their respective townships and counties."

In reading this opinion, it will be noted that my predecessor repeatedly expressed extreme doubt as to the correctness of the conclusion reached. Without quoting from the opinion, it may be said generally that the reasoning upon which the conclusion was based was founded upon the provision relating to the duties of the county surveyor and in which statute the county surveyor was given general charge and supervision of the construction, maintenance and repair of all bridges in the county and resultant thereof it was the duty of the county commissioners to construct and maintain bridges located on township roads, and that both county commissioners and township trustees had jurisdiction in the maintenance and repair of culverts on such roads.

In conclusion, I am of the opinion, and you are advised, that township trustees may appropriate and use township road funds in the construction and maintenance of bridges and culverts on township roads.

The opinion of my predecessor referred to, in so far as the same is in conflict with this conclusion, is modified.

Respectfully,  
C. C. CRABBE,  
*Attorney General.*