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SIDEWALK ON BRIDGE, LOCATED IN MUNICIPALITY ON COUNTY OR STATE HIGHWAY, IS A PART OF SUCH BRIDGE —DUTY TO MAINTAIN PRIMARY AS TO BOARD OF COUNTY COMMISSIONERS, SECONDARY AS TO MUNICIPALITY.

SYLLABUS:

A sidewalk on a bridge located in a municipality on a state or county highway is a part of such bridge and a duty to maintain such sidewalk rests primarily on the board of county commissioners and secondarily on the municipality.

Columbus, Ohio, July 12, 1957

Hon. James I. Shaw, Prosecuting Attorney
Auglaize County, Wapakoneta, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Are the County Commissioners required under Ohio Revised Code Section 5591.02 to construct and keep in repair the sidewalks on the bridges in municipal corporations or must the

municipal corporation construct and keep in repair the sidewalks on county bridges under Ohio Revised Code Section 729.01 et seq.?"

I do not feel that Section 729.01, Revised Code, is applicable in situations which involve the repair of sidewalks on a county bridge. Section 729.01, Revised Code, authorizes a municipality to provide for the repair of sidewalks by ordinance and to assess the cost of such repair against the owner or occupants of land or lots which abut the sidewalk. You will note that the language of the statute is clearly permissive in character, and relates to the exercise of municipal legislative power in making assessments, and does not of itself impose responsibility or liability for repair upon the municipality. Such liability is described in Section 723.01, Revised Code, which reads in part as follows:

"* * * The legislative authority of such municipal corporation shall have the care, supervision and control of * * * sidewalks, * * * bridges, * * * within the municipal corporation, and shall cause them to be kept open in repair, and free from nuisance."

This statute is general in application, however, and when the specific question of responsibility for county bridges in municipal corporations arises, the provision of Section 5591.02 and 5591.21, Revised Code, must be examined.

Section 5591.02, Revised Code, provides:

"The board of county commissioners shall construct and keep in repair all necessary bridges in municipal corporations not having the right to demand and receive a portion of the bridge fund levied upon property within such corporations, on all state and county roads and improved roads which are of general and public utility, running into or through such municipal corporation."

Section 5591.21, Revised Code, provides in part:

"The board of county commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state, county, and improved roads, except only such bridges as are wholly in municipal corporations 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 board shall construct and keep in repair all bridges in such municipal corporations.

The granting of the demand made by any municipal corporation for its portion of the bridge tax is optional with the board.
* * *.”

Your attention is invited to the statement in *Cooper v. Bradlyn*, 123 Ohio St., 392, wherein the court states:

“Since the sidewalk, including the metal strip, was a part of the bridge superstructure, the legal principles announced in *City of Youngstown v. Sturgess*, 102 Ohio St., 480, 132 N. E., 17, apply, and both cases will be affirmed on authority of that case.”

In this case the plaintiff was injured on the defective sidewalk of the bridge. The court allowed him to recover a judgment against the county commissioners and the city on the precedent established in the *City of Youngstown v. Sturgess*, 102 Ohio St., 480, wherein the court states:

“The county primarily is obligated to construct and repair bridges upon state or county roads and the approaches thereto over streams within the limits of municipalities, but municipalities are not thereby relieved from their obligation to keep such bridges and the approaches thereto ‘open, in repair and free from nuisance;’ neither are such municipalities relieved from the duty to safeguard travelers upon such structures within the limits of municipalities against dangerous defects amounting to a nuisance.”

I also invite your attention to the case of *Lengyel v. Brandmiller, et al.*, 139 Ohio St., 478, wherein the court states:

“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.”

After considering these decisions and others my predecessor said in *Opinion No. 471*, *Opinions of the Attorney General for 1951*, page 211, reading the second paragraph of the syllabus:

“A county primarily is obligated to keep in repair necessary bridges over streams and public canals on or connecting state and county roads within the limits of municipal corporations.”

At page 219 he said :

“* * * although the repair of bridges erected on state and county highways within municipal corporations is a joint obligation of the county and the municipality, particularly where one seeks to impose upon either or both liability for neglect to keep in repair such bridges, existing statutes affix the primary obligation to repair such bridges upon the counties.”

Accordingly, it is my opinion that a sidewalk on a bridge located in a municipality on a state or county highway is a part of such bridge and a duty to maintain such sidewalk rests primarily on the board of county commissioners and secondarily on the municipality.

Respectfully,
WILLIAM SAXBE
Attorney General