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BRIDGES, LOCATED ON STATE HIGHWAY WITHIN MUNICIPALITY, COUNTY COMMISSIONER OBLIGATION TO CONSTRUCT, BOND ISSUE, BORROWING FUNDS, PLEDGE OF FUNDS—§§5591.02, 5591.21, R.C.

SYLLABUS:

1. Pursuant to Sections 5591.02 and 5591.21, Revised Code, the board of county commissioners has the primary obligation for the construction of a necessary bridge on an existing state road located within a municipal corporation in the county.

2. Pursuant to Section 5591.21, Revised Code, the board of county commissioners may submit to the electors the question of issuing county bonds for the construction of a necessary bridge on an existing state road located within a municipal corporation in the county.

3. The board of county commissioners is without authority to pledge road, bridge or ditch funds for a period of years to enable them to borrow from local lending agencies without advertisement to provide funds for the construction of a necessary bridge on an existing state road located within a municipal corporation in the county.

Columbus, Ohio, January 21, 1960

Hon. Theodore Lutz, Prosecuting Attorney
Richland County, Mansfield, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“The Board of Commissioners of Richland County have requested that I inquire of you concerning their obligations or liabilities to construct and pay for a bridge over Rocky Fork Creek which passes through the City of Mansfield and empties into Mohican River outside Richland County.

“The source of Rocky Fork Creek is from several tributaries arising west and north of the City of Mansfield some of which are outside Richland County.

“For many years a bridge extended over Rocky Fork Creek on Wayne Street within the City of Mansfield. In recent months the bridge collapsed and Wayne Street in the City of Mansfield is now closed to traffic awaiting the reconstruction of the bridge. State Route 545 extends over and through Wayne Street and across the Rocky Fork Creek at the location of the collapsed bridge.

"In recent weeks a plan has been formulated by the State Highway Department for construction of new sub-structure and super-structure for the Wayne Street bridge at an estimated cost of \$65,234.00, to which cost it is understood that the Federal Government will contribute 50% and the local sub division the other 50%.

"The County Commissioners state that they have lately been advised that the county is not by law required to construct a bridge in such location but that it is an obligation of the municipal corporation. One other question in regard to this construction troubles the Commissioners: If the law is settled that the reconstruction of the Wayne Street bridge is an obligation of Richland County, how may the county's share of approximately \$33,000.00 of the estimated cost be provided?

"The general funds and the road and bridge fund of Richland County do not have sufficient balances to permit the county to make such expenditure of \$33,000.00.

"Must there be a voted bond issue or may the county pledge road and bridge funds or ditch funds for a period of years to enable them to borrow from local lending agencies without advertisement?

"Your opinion upon these questions will be of material help to us in solving this important matter."

The opinion of Sutliff, J. in the case of *Hunter v. Commissioners*, 10 Ohio St., 515, reads in part as follows:

"The county is * * * a mere political organization of certain of the territory within the state, particularly defined by geographical limits, for the more convenient administration of the laws and police power of the state, and for the convenience of the inhabitants * * *."

In considering the inquiries of responsibility for a bridge on an existing state route within a municipal corporation and the financing of same, the language of Sections 5591.02 and 5591.21, Revised Code, is plainly pertinent.

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.

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(The exception noted in Sections 5591.02 and 5591.21, Revised Code, does not apply in this instance.)

Section 723.01, Revised Code, pertaining to the general authority of a municipal corporation with regard to streets and bridges, reads as follows:

“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 nuisance.”

As to your first question of responsibility for a necessary bridge on an existing state road within a municipality, I direct your attention to Opinion No. 471, Opinions of the Attorney General for 1951, page 211, the second paragraph of the syllabus reading:

“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 it is stated:

“* * * 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.” (Emphasis added)

Another of my predecessors, in Opinion No. 790, Opinions of the Attorney General for 1957, page 312, held that the duty to maintain a sidewalk which is part of a bridge located in a municipality on a state highway rests *secondarily* on the municipality.

Allowing for the option to reconstruct bridges by municipalities as qualified by Sections 5591.02 and 5591.21, *supra*, the intent of the legislature appears to be indicated by the permissive language of Section 133.16, Revised Code, involving the question of issuing bonds for such bridges on state highways within municipalities, which language reads in part:

“When the director of highways finds it necessary to reconstruct, in whole or in part, the bridges on existing highways within any city, and the order of the board of tax appeals finds that the existing debt and tax limitations make it impossible to issue bonds for such purpose, the legislative authority of such city, in accordance with law, *may* place before the electors of such city the question of issuing bonds for the purpose of necessary reconstruction, in whole or in part, of bridges on existing highways, * * *.”
(Emphasis added)

It follows that, notwithstanding the general power given municipalities over the care, supervision and control of bridges as provided for by Section 723.01, *supra*, the county commissioners are not relieved of the duty of constructing necessary bridges in municipalities on existing state roads of general public utility running into or through such municipalities. *Interurban R. & Terminal Co. v. Cincinnati*, 94 Ohio St., 269.

Secondly, regarding the problem concerning the manner in which the county commissioners may share financing with the Federal Government for the construction of the necessary bridge on the existing state road within the municipality in order to fulfill the primary obligation of the county, Section 5591.21, Revised Code, provides in part as follows:

* * * * * * * *

“The board may submit to the electors the question of issuing county bonds for the construction of bridges on proposed state or county roads or connecting state or county roads, one or more of which may be proposed, but such bonds shall not be issued or sold until the proposed roads are actually established.

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In accordance with said Section 5591.21, *supra*, therefore, the county commissioners may submit to the electors the question of issuing county bonds for the construction of bridges on existing state roads. Further, the discretionary language of Section 5591.21, *supra*, appears not only to allow the submitting to the electors the question of issuing such bonds for a *total* financing of the construction of the bridges, but also, to allow *partial* financing by the county for such purpose.

Regarding your third question of whether the county may “pledge road and bridge funds or ditch funds for a period of years to enable them to borrow from local lending agencies without advertisement,” there appears to be a want of authority for such means of financing. It is well settled that a board of county commissioners may enter into financial transactions only where expressly authorized. On this point it is stated in 14 Ohio Jurisprudence 2d, Section 243, at page 390:

“While the board of county commissioners has the management and control of the financial interests of the county, with general supervisory power over all county funds, their authority in this respect extends only so far as is given by statute, or, as is sometimes otherwise expressed, only to such transactions as may be expressly authorized by statute. The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

Not having found any authority for the county commissioners to pledge road, bridge or ditch funds for a period of years to enable them to borrow from local lending agencies without advertisement for the purpose of construction of a necessary bridge on an existing state road located within a municipal corporation in the county, I must conclude that the commissioners are precluded from taking such action.

In specific answer to your questions, therefore, it is my opinion:

1. Pursuant to Sections 5591.02 and 5591.21, Revised Code, the board of county commissioners has the primary obligation for the construction of a necessary bridge on an existing state road located within a municipal corporation in the county.

2. Pursuant to Section 5591.21, Revised Code, the board of county commissioners may submit to the electors the question of issuing county bonds for the construction of a necessary bridge on an existing state road located within a municipal corporation in the county.

3. The board of county commissioners is without authority to pledge road, bridge or ditch funds for a period of years to enable them to borrow from local lending agencies without advertisement to provide funds for the construction of a necessary bridge on an existing state road located within a municipal corporation in the county.

Respectfully,

MARK McELROY
Attorney General