

OPINION NO. 90-079**Syllabus:**

1. The phrase "improved roads which are of general and public utility, running into or through the municipal corporations," as used in R.C. 5591.02 and incorporated thereby in R.C. 5591.21, includes improved roads located entirely within the municipality, if such roads have utility to the general public and are not used primarily by local municipal traffic.
2. When an improved road located entirely within a municipality connects two state highways, the improved road may be of general and public utility, if the fact that it connects the state highways results in general, as opposed to local, use of the improved road. (1971 Op. Att'y Gen. No. 71-030, syllabus, paragraph two, approved and expanded.)
3. R.C. 5591.02 and 5591.21 place a duty on the county commissioners to repair a bridge located on an improved road of general and public utility running into or through a municipal corporation within the county, which road is not a state or county road. The determination of whether a particular road is an improved road of general and public utility is a question of fact to be determined in the first instance by the county commissioners. (1981 Op. Att'y Gen. No. 81-007 syllabus, paragraph two, and 1957 Op. Att'y Gen. No. 811, p. 316, syllabus, paragraph two, approved and followed.)

To: Terry L. Hord, Hardin County Prosecuting Attorney, Kenton, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 9, 1990

I have before me your request for my opinion regarding the county's responsibility for repair of a bridge located within a municipality. You have provided the following factual background to your request. The bridge, which crosses a river, is located on a municipal street that begins and ends within the city limits. This street is neither a state nor county road. The street intersects two state highways, however, and the bridge is located on that portion of the street which lies between these two highways. You ask, specifically, whether the county has the responsibility to repair and maintain a bridge located within a municipal corporation, where the bridge is located on an improved road which begins and ends within the limits of the corporation and is not a state or county road.¹ In answering this question, you ask that I address whether such a road runs "through" the municipal corporation as that term is used in R.C. 5591.02.

I note first that the duty of a county with respect to bridges located in municipalities is governed by two statutes. R.C. 5591.21 states, in pertinent part, that "the board of county commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state,² county, and improved roads." (Emphasis and footnote added.) The pertinent provisions of R.C. 5591.02 state that "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 the municipal corporations." (Emphasis added.) It has been held that, although the term "improved roads" in R.C. 5591.21 stands alone, it must be read *pari materia* with the use of that term in R.C. 5591.02, and is, therefore, also limited by the words "which are of general and public utility, running into or through the municipal corporations," which appear in R.C. 5591.02. *State ex rel. City of Moraine v. Bd. of County Comm'rs*, No. 10033, slip op. at 5-6 (Ct. App. Montgomery County Feb. 12, 1987) (unreported); *City of Washington Court House v. Dumford*, 22 Ohio App. 2d 75, 77, 258 N.E.2d 261, 263 (Fayette County 1969); *City of Hamilton v. Van Gordon*, 12 Ohio Op. 2d 37, 39, 164 N.E.2d 463, 466 (C.P. Butler County 1959), *aff'd* 109 Ohio App. 513, 159 N.E.2d 778 (Butler County 1959); 1981 Op. Att'y Gen. No. 81-007, p. 2-25 n.5; 1957 Op. Att'y Gen. No. 811, p. 316 at 319. *See also City of Newark v. Jones*, 16 Ohio C.C. 563, 569, 9 Ohio Cir. Dec. 196, 199-200 (Licking County 1898) ("[t]here is no direct authority anywhere that the county commissioners have the right to build a bridge on a street as such. If it is a state or county road, or any of those denominated in [R.S. 4938 and 860, predecessors of current R.C. 5591.02 and R.C. 5591.21], passing through a city, then they have that right under the statute; but not because it is a street as such...").³

¹ With your approval, your original question has been rephrased to facilitate analysis.

² I note in passing that the reference to "connecting" in R.C. 5591.21 is construed to apply to bridges which connect the specified types of roads. The bridge you describe is on a street which connects two state highways, but the bridge itself does not connect these highways. It is not, therefore, a bridge connecting state roads within the meaning of R.C. 5591.21. *See City of Hamilton v. Van Gordon*, 12 Ohio Op. 2d 37, 39, 164 N.E.2d 463, 465 (C.P. Butler County 1959), *aff'd*, 109 Ohio App. 513, 159 N.E.2d 778 (Butler County 1959); 1957 Op. Att'y Gen. No. 811, p. 316 (syllabus, paragraph one); *see also State ex rel. Bushnell v. Bd. of County Comm'rs*, 107 Ohio St. 465, 140 N.E. 81 (1923) (construing the statute, prior to inclusion of the word "connecting," as limiting construction of a bridge to bridges located "on" established roads).

³ I note that, while predecessor statutes of R.C. 5591.02 and R.C. 5591.21 listed additional types of non-state and non-county roads on which the county was responsible for bridge repair, the responsibility for bridges on "improved roads...of general and public utility running into or through" municipalities has existed since at least 1872. *See* 1872 Ohio Laws 61 (act, eff. March 30, 1872).

Thus, pursuant to both R.C. 5591.21 and R.C. 5591.02, the county's duty to repair a bridge on an improved road in a municipality when the road is neither a state nor a county road depends upon whether the improved road is one of general or public utility running into or through the municipality.

The phrase "of general and public utility, running into or through the municipal corporations" has long been construed as creating a distinction based on the type of traffic using the street on which the bridge is located. In the syllabus of *City of Piqua v. Geist*, 59 Ohio St. 163, 52 N.E. 124 (1898), the court held that "county commissioners are not required to construct and keep in repair bridges over natural streams and public canals, on streets established by a city or village for the use and convenience of the municipality, and not part of a state or county road." Later, in *Interurban Railway & Terminal Co. v. City of Cincinnati*, 94 Ohio St. 269, 277-78, 114 N.E. 258, 260 (1916), the court further elaborated that "it is the exclusive duty of the municipal authorities to construct and keep in repair any bridge which forms a part of a street established by a city, which is not part of a state or county road" and which is "for the use and convenience of a municipality," but that the county commissioners have the duty to repair bridges on roads "of general and public utility running into or through such cities or villages." As explained by the court in *Dumford*, "the county's obligation to provide for bridges on roads running into and through a municipal corporation is related to the general, as distinguished from local, use of such bridges." *Id.* 22 Ohio App. 2d at 77, 258 N.E.2d at 263; accord Op. No. 81-007 at 2-25; 1955 Op. Att'y Gen. No. 6030, p. 653 (syllabus); 1951 Op. Att'y Gen. No. 471, p. 211 at 215-16; 1925 Op. Att'y Gen. No. 2634, p. 471 (syllabus, paragraphs one through four); 1919 Op. Att'y Gen. No. 900, vol. II, p. 1622 (syllabus, paragraphs one and two). None of the above authorities, however, specifically discuss the meaning of the requirement that the bridges be on improved roads that run "into or through" the municipalities.

The word "through" is capable of several meanings depending on its use. Construed narrowly, "through" can mean "from end to end" or "in one side and out the other" or it can be construed more broadly to mean "within," "in the midst of," "to various places in." *Webster's New World Dictionary* 1483 (2d college ed. 1984); *Black's Law Dictionary* 1328 (5th ed. 1979). See also *Provident Life Insurance Co. v. Mercer County, Ky.*, 170 U.S. 593, 603 (1898) ("word 'through' does not always mean from end to end or from side to side but frequently means 'within'"); accord 1918 Op. Att'y Gen. No. 1419, vol. II, p. 1128. Thus, when both ends of a road are located inside the municipal limits the road can be said to go "through" the municipality if the word "through" is construed broadly, but not if it is construed narrowly.

The Montgomery County appellate court has directly addressed the meaning of the word "through" in R.C. 5591.02 as follows:

The purpose of R.C. 5591.21 and 5591.02 is to place responsibility for bridge construction and maintenance upon a city where the bridge is situated on a city street and is meant to facilitate local traffic primarily.

It is undisputed that Sellers Road is neither a state highway nor a county road. Unquestionably it is an improved road, but it does not run into or through the City of Moraine from boundary line to boundary line.

Black's Law Dictionary defines "through" as "by means of, in consequence of, by reason of; in, within; over; from end to end, or from one side to the other."

Because we perceive the purpose of the legislation is to determine whether the bridge in question serves to facilitate "general" or "local" traffic, and to delineate responsibility for its maintenance to the political body based upon its general or local use, we find the word "through" should be given as broad an interpretation as possible consistent with that purpose.

State ex rel. City of Moraine, slip op. at 9-10. Other authorities also support a broad interpretation of the word "through" although they do not address the issue as directly. In the case of *Van Gordon*, the Butler County Common Pleas Court held that repair of a bridge on a street which connected two state routes but which was located entirely within a city was the responsibility of the county commissioners. The street was "used by the general public and vehicles other than those of the residents of the City of Hamilton frequently travel on 'B' Street...." *Van Gordon*, 12 Ohio Op. 2d at 37, 164 N.E.2d at 464. Although the court did not discuss the various meanings of the word "through," it summarily stated that "[t]here is no question that the street does run through the municipal corporation...." *Id.* at 39, 164 N.E.2d at 465. Thus, in finding the county responsible for repair of the bridge, the court clearly did not view the meaning of "through" as requiring that the road run from end to end or from one side of the municipality to the other. The same broad construction can be inferred from the result in 1957 Op. No. 811. At least one of the bridges at issue therein was a street with both ends inside the city limits. My predecessor held that, pursuant to R.C. 5591.02 and R.C. 5591.21, the county's responsibility to repair the bridges depended on a factual determination of the type of traffic using the bridges. *Id.* at 319-20.

Although using a different analytical approach, which interpreted the bridge statutes in conjunction with the road maintenance statutes,⁴ another of my predecessors came to substantially the same conclusion in 1927 Op. Att'y Gen. No. 1147, vol. III, p. 2016, the second syllabus of which states: "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." The term "continuous road improvement" was construed as including municipal streets located entirely within the municipality, if used as "the natural and shortest route," "the logical right of way," "the logical and no doubt the most traveled connecting link" between state and county highways. *Id.* at 2020-21. This analysis is clearly compatible with the general as opposed to local use test of *Dumford*, which was applied in *State ex rel. Moraine* and *Van Gordon* to streets clearly identified as being located entirely within municipalities.⁵

I have found only two authorities from which a more restrictive interpretation of the word "through" might be inferred. In the case of *City of Jackson v. Littlejohn*, No. 435, slip op. (Ct. App. Jackson County Nov. 16, 1981) (unreported), the majority opinion simply stated that it agreed with the trial court, which had "found that Huron Street is strictly a connecting local street and applied the *Dumford* rationale." *Littlejohn*, slip op. at 2. In a concurring opinion, Judge Grey attempted to explain this admittedly terse opinion by stating "[s]ince under the facts herein, the bridge is on a road which neither 'runs into or through such municipality', it follows no duty of repair rests upon the appellee [county]...." *Id.* slip op. at 3. The majority's reference to the "*Dumford* rationale," however, suggests that the court relied on a use analysis rather than depending solely on the fact that the street's termini were both inside the city limits. See *Dumford*, 22 Ohio App. 2d at 77, 258 N.E.2d at 263 ("county's obligation...is related to the general, as distinguished from local, use of such bridges). I cannot, therefore, view the concurring opinion as placing the *Littlejohn* case in conflict with *City of Moraine* with respect to its interpretation of the word "through."

⁴ The specific road maintenance statutes considered were G.C. 6949, 6952 and 6954, the pertinent provisions of which appear in substantially the same form in current R.C. 5557.02, 5557.01 and 5557.08.

⁵ I note that the facts in *Dumford* did not include the location of the ends of the roads involved. The court simply referred to the trial court's ruling that "the county was responsible for the four bridges on roads running into or through the municipality and that the city was responsible for the other eight bridges within the corporate limits of the municipality." *City of Washington Court House v. Dumford*, 22 Ohio App. 2d 75, 76, 258 N.E.2d 261, 262-63 (Fayette County 1969).

A second possibly restrictive analysis appears in the third syllabus paragraph of 1971 Op. Att'y Gen. No. 71-030, which states that "[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 part of the county road system." Both ends of the street involved were located within the city. One might infer that the underlying reasoning was that the street did not run "through" the city and, therefore, the county could only become responsible for repairing the bridge by first establishing a county road over the same route. A careful reading of the opinion, however, shows this not to be the case. The street involved was unquestionably one of general and public use, connecting several state and county roads in a manner that provided a much used by-pass of the main intersection of these routes in the center of the city. Op. No. 71-030 at 2-93. The county wished to repair not only the bridge, but the entire municipal street. *Id.* at 2-93. Having found that the county could assume responsibility for the entire street by establishing it as a county road, my predecessor found that the county would then also be responsible for repair of the bridge under the provisions of R.C. 5591.02 relating to county roads. *Id.* at 2-97. Thus, there was no need to consider whether the county might have had an independent duty to repair the bridge under the provisions of R.C. 5591.02 relating to "improved roads...running into or through the municipal corporations."

Based on the above, the weight of authority is that the word "through" in R.C. 5591.02 should be interpreted broadly. I find, therefore, that for purposes of R.C. 5591.02, an improved road running "through" a municipality is any such road which traverses a portion of the municipality and includes streets located entirely within the municipal limits. *See State ex rel. City of Moraine; Van Gordon*. The determinative factor in establishing whether the county or the municipality has the duty of repairing bridges on such streets is "related to the general, as distinguished from local, use of such bridges." *Dumford*, 22 Ohio App. 2d at 77, 258 N.E.2d at 263.

Whether a particular bridge located on an improved road located entirely within a municipality is of general and public use, is a question of fact to be determined in the first instance by the board of county commissioners, subject to judicial review. *Van Gordon*, 12 Ohio Op. 2d at 39, 164 N.E.2d at 466; *accord* Op. No. 81-007 (syllabus, paragraph two); Op. No. 71-030 at 2-97; 1957 Op. No. 811 (syllabus, paragraph two). The fact that such a road connects state or county roads may result in general, as opposed to local, use of the road, but it is not determinative. Op. No. 71-030 (syllabus, paragraph two). Should the board of county commissioners determine that the road you have described is one of general and public utility, the county commissioners have a duty to repair the bridge thereon.

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

1. The phrase "improved roads which are of general and public utility, running into or through the municipal corporations," as used in R.C. 5591.02 and incorporated thereby in R.C. 5591.21, includes improved roads located entirely within the municipality, if such roads have utility to the general public and are not used primarily by local municipal traffic.
2. When an improved road located entirely within a municipality connects two state highways, the improved road may be of general and public utility, if the fact that it connects the state highways results in general, as opposed to local, use of the improved road. (1971 Op. Att'y Gen. No. 71-030, syllabus, paragraph two, approved and expanded.)
3. R.C. 5591.02 and 5591.21 place a duty on the county commissioners to repair a bridge located on an improved road of general and public utility running into or through a municipal corporation within the county, which road is not a state or county road. The determination of whether a particular road is an improved road of general and public utility is a question of fact to be determined in the first instance by the county commissioners. (1981 Op. Att'y Gen. No. 81-007 syllabus, paragraph two, and 1957 Op. Att'y Gen. No. 811, p. 316, syllabus, paragraph two, approved and followed.)