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BRIDGE—RESPONSIBILITY FOR CONSTRUCTION AND REPAIR WHEN
BRIDGE ON STATE OR COUNTY ROAD WHICH BECOMES CITY
STREET BY ANNEXATION.

SYLLABUS:

Where a state or county road becomes a city street by reason of annexation of territory to a city, such street continues to exist as a state or county road within the intendment of sections 2421 and 7557, General Code, and it is the primary duty of the county commissioners to construct and keep in repair necessary bridges on such street over streams and public canals, but municipalities are not thereby relieved from their obligation to keep such bridges open, in repair and free from nuisance.

COLUMBUS, OHIO, MARCH 22, 1935.

HON. LOUIS J. SCHNEIDER, *Prosecuting Attorney, Cincinnati, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication which reads as follows:

“On January 2, 1935, Mr. Ed. F. Alexander, Acting City Solicitor of the City of Cincinnati, requested an opinion from you on the subject of the Kellogg Avenue Bridge over the Little Miami River in Cincinnati, Ohio. We received from you a copy of your letter dated January 4th, addressed to Mr. Alexander.

We hereby respectfully request your opinion on the question as to whose duty it is to keep in repair the Kellogg Avenue Bridge over the Little Miami River in Cincinnati, Hamilton County, Ohio.

Prior to 1909 Kellogg Avenue was a county road and since that time has been a city street. On both sides of the Bridge, Kellogg Avenue extends for three or more miles within the city limits of Cincinnati. It is the main street to the suburb of California where the Water Works plant is located and also to the suburb of Mt. Washington, all within the limits of Cincinnati. It is the most direct and important street to these suburbs. The City of Cincinnati built Kellogg Avenue, and also paved it throughout its entire length. It may assist you in answering the above question to know that Kellogg Avenue is also Inter-county Highway No. 7.

There is a controversy between the City of Cincinnati and the County of Hamilton as to whose obligation it is to repair this bridge. Our purpose in asking for this opinion is not so much as to the controversy existing at the present time, as the fact that there are numerous other bridges in Cincinnati over city streets which were formerly county roads, and it is therefore important to know whose duty it is to keep these bridges in repair within the limits of the City.

We are enclosing herewith a copy of an opinion rendered by this office to the County Commissioners of Hamilton County, Ohio, on this same subject.”

Section 7557, General Code, reads as follows:

“The county commissioners shall cause to be constructed and kept in repair, as provided by law, all necessary bridges in villages and cities 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, free turnpikes, improved roads, transferred and abandoned turnpikes and plankroads, which are of general and public utility, running into or through such village or city."

Section 2421, General Code, reads in part as follows:

"The commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property therein. * * * "

The exception as to cities and villages that demand and receive a portion of the bridge fund is no longer of any effect, since now there is no statute authorizing a municipality to demand and receive any portion of the bridge fund created by a county levy. It appears from your letter that Kellogg Avenue was a duly established county road and became a city street by reason of annexation of territory to the city.

In the case of *Railway and Terminal Company vs. Cincinnati*, 94 O. S. 269, the following was held:

"It is the duty of county commissioners to construct and keep in repair necessary bridges in cities and villages on state or county roads of general public utility running into or through such cities or villages."

The court said in its opinion:

"It must be borne in mind, however, that there has been no change whatever in the obligation which the law places upon the county commissioners with respect to the care and maintenance of such bridge. Notwithstanding the annexation to the city of the territory which includes the bridge in question, the duty still remains upon the county commissioners to make repairs of the bridge and when necessary or advisable to construct a new bridge in its place.

The provisions of Section 2421, General Code, impose upon the county commissioners the obligation to '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 public use,' and the provisions of Section 7557, General Code, specifically require the county commissioners to construct and keep in repair 'all necessary bridges 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.'

Both of the above sections make exception of bridges within cities and villages having the right to demand, and which do demand and receive, a portion of the bridge fund levied upon property within such corporation. Such exception, however, is no longer of any force or effect for the reason

that there is now no statute authorizing any city or village to demand or receive any portion of the bridge fund created by county levy. Provision is made by Section 5635, General Code, for making a levy on the taxable property within the county for road and bridge purposes, and the county commissioners are required to set aside such portion as they deem proper to be applied for the building and repair of bridges, which is called a 'bridge fund.'

It is quite manifest from a consideration of these several sections of the General Code that the county commissioners are required to construct and maintain bridges, such as the one in question in this case, even though they be in cities and villages, and that, therefore, notwithstanding the annexation by the city of Cincinnati of the territory including said bridge, it is still the duty of the board of county commissioners of Hamilton county to maintain and keep in repair and, when necessary or advisable, construct another bridge in that location. The county commissioners of Hamilton county were relieved of no duty whatever with respect to the care and maintenance of such bridge by virtue of the annexation proceeding, nor did that proceeding serve to terminate the contract between the county commissioners and the inter-urban company or take away from either party any of the obligations imposed or rights secured thereby."

In the case of *Youngstown vs. Sturgess*, 102 O. S. 480, the following was held:

"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, * * * ."

Referring to section 7557, General Code, the court in the case of *State, ex rel., vs. Blakemore*, 116 O. S. 650, said:

"The latter section, as does also Section 2421, General Code, requires the county commissioners to construct and keep in repair all necessary bridges on all state and county roads of general and public utility running into or through such village or city."

See also *State, ex rel., vs. County Commissioners*, 107 O. S. 465; *County Commissioners vs. Bradlyn*, 123 O. S. 392; *State, ex rel., vs. Zangerle*, 43 O. A. 30. Of course, this does not apply to city streets which are not a part of the county or state highway system. As to such streets, the county commissioners have no duty to construct or keep in repair bridges thereon. *Piqua vs. Geist*, 59 O. S. 163; *Newark vs. Jones*, 16 C. C. 565; Opinions of the Attorney General for 1927, Volume III, page 2016.

I am therefore of the opinion that where a state or county road becomes a city street by reason of annexation of territory to a city, such street continues to exist as a state or county road within the intendment of sections 2421 and 7557, General Code, and it is the primary duty of the county commissioners to construct and keep in repair necessary bridges on such street over streams and public canals, but municipalities are not thereby relieved from their obligation to keep such bridges open, in repair and free from nuisance.

Respectfully,
 JOHN W. BRICKER,
Attorney General.