

601.

PRIVATE BRIDGES AND CULVERTS—ABUTTING OWNERS  
DUTY — COUNTY ENGINEER — FROM PUBLIC ROADS  
OVER COUNTY DITCHES—REBUILDING AT PUBLIC EX-  
PENSE, WHEN.

*SYLLABUS:*

*It is the duty of the abutting owners and occupants of land under the direction of the county engineer to construct and keep in repair bridges and culverts for private approaches or driveways from the public roads over county ditches which have been located upon the right of way of said public roads, unless in the construction or improvement, maintenance and repair of such public roads or county ditches a bridge or culvert for an existing approach or driveway of an abutting property owner is destroyed, in which event the authorities constructing, improving, maintaining or repairing such public road or ditch, either shall compensate such abutting property owner of said lands for the destruction of such bridge or culvert for the approach or driveway, or shall authorize the county engineer to reconstruct the same at public expense.*

COLUMBUS, OHIO, May 15, 1937.

HON. FREDERIC R. PARKER, *Prosecuting Attorney, Bryan, Ohio.*

DEAR SIR: I have your communication of recent date requesting an opinion, which reads as follows:

“I enclose herewith request for an opinion which I have received from the county engineer. The statute does not appear to be clear on this question. I would appreciate your opinion.”

The enclosed request from your county engineer reads as follows:

“Is it the duty of the county commissioners to construct and maintain bridges and culverts for private approaches or driveways from the public roads under the direction of the county engineer, over county ditches which have been located on the right of way of such public roads?”

Section 7212, General Code, provides as follows:

“The owners of land shall construct and keep in repair all approaches or driveways from the public roads under the direction of the county surveyor, provided, however, that if, in the construction or improvement, maintenance and repair of any road the approach or driveway of an abutting

property owner is destroyed, the authorities constructing, improving, maintaining or repairing such road shall compensate such abutting property owner of said lands for the destruction of such approach or driveway, or in lieu thereof authorize the county surveyor to reconstruct the same at public expense.

In the construction of a road improvement the state highway commissioner or county surveyor may in all cases where the approaches of the owners of abutting real estate are unsuitable to a projected improvement or so constructed as not to afford proper drainage after its completion, include in the plans for such improvement plans for proper approaches. The entire cost of constructing such approaches may be assessed against the lands along which they are constructed."

It is not stated specifically whether or not the county ditch located upon the right of way of a public road is one long established or just recently so located and established, or just recently reconstructed or improved.

It will be noted that this section naturally divides itself into three sub-divisions:

1. The owners of land shall construct and keep in repair all approaches or driveways from the public roads under the direction of the county surveyor.

2. If, in the construction or improvement, maintenance and repair of any road the approach or driveway of an abutting property owner is destroyed, the authorities constructing, improving, maintaining or repairing such road shall compensate such abutting property owner of said lands for the destruction of such approach or driveway.

3. In lieu thereof, such authorities shall authorize the county surveyor to reconstruct the same at public expense.

I quote from O. A. G., Vol. I, 1917, pages 525 and 526, in which opinion Section 7212, General Code was under consideration:

"\* \* \* let us notice what interpretation should be placed upon the words 'approach or driveway' as used in Section 7212 G. C. You ask in your communication as to whether said words should be interpreted to mean just one approach or driveway or whether they should be interpreted to mean more than one. The practical side of this question has to do with the fact that many land owners have not

only a way or drive which leads naturally and directly to the farm buildings located upon the farm, but they have ways or drives leading from the public highway into different fields upon the farm. These ways or drives are used for hauling grain from the fields onto the public highway, and thence to the farm buildings, and in hauling manure, etc., from the farm buildings onto the public highway, and thence into the field or fields. That is, instead of the farmer driving over his own land to where a certain field is, he will drive out onto the highway from his barn or house and then back into a field, over a drive from the public road which he maintains. Or he may maintain driveways or approaches over which he drives in leaving one field of his farm to go on the public road and then from the public road back into another field of his farm.

Now, the question is as to whether the words 'approach or driveway' as used in Section 7212 G. C., apply merely to the approaches or driveways which lead naturally and directly to the premises as a whole of the abutting property owner, or whether they apply to all the approaches and driveways which he maintains and uses in order that he may have the full enjoyment of his rights and privileges as a property owner.

It must be remembered that the abutting property owner has title to the land to the center of the public road, subject, however, to the easement of the public to use the same for travel and matters incident thereto. He has a right to plant trees and use the sides of the public road so long as he does nothing to interfere with the easement which the public has in the public highway. He has the right to use and maintain driveways and approaches from the public road to his premises or any part of his premises, so long as he does nothing to interfere with the rights of the public in and to said public road. All these rights he enjoys as a property owner.

If the public, in the construction or repair of the traveled portion of the public road, destroys any of these approaches and driveways so maintained and used by an abutting property owner in the enjoyment of his rights and privileges as an abutting property owner, why should not the public either replace them in such a manner to enable the property owner to use them to the same extent and in the same manner as he enjoyed them before their destruction? Or

if the public does not care to reconstruct them, then compensate the owner so that he may reconstruct them? This would seem to be right. It would seem to be just; and it is my opinion that such was the intention of the legislature in enacting this section; that the legislature intended that all abutting property owners should be protected in the rights and privileges which they enjoyed as property owners before the construction or improvement, maintenance or repair of any public road.

Hence, answering your question specifically, it is my opinion that the words 'approach or driveway', as used in said section, apply to all approaches or driveways which lead from the public road to the premises of an abutting property owner, or to any part of the premises, and which the property owner maintains and uses in the full enjoyment of his rights and privileges as a property owner. The same principle would control in the matter, whether the county commissioners or township trustees reconstruct the approaches or driveways so described, or whether they compensate the abutting property owner for such destruction.

In passing, however, let me say that under the provisions of said Section 7212, abutting property owners or occupants must keep in repair all approaches or driveways under the direction of the county highway superintendent. This is provided for under the first part of said section. And all said approaches or driveways constructed by occupants or owners since the taking effect of the provisions of said Section 7212 must be constructed under the direction of the county highway superintendent. \* \* \*

In the last paragraph of the above quotation it will be noted that the title "county engineer" should now be substituted for the title "highway superintendent".

I further quote applicable to the general proposition stated in your inquiry, from O. A. G., Vol. I, 1916, p. 891, which was in answer to an inquiry, as follows:

"Can a property owner who fails to maintain an approach to his land be prosecuted for obstructing a ditch if the failure to repair the approach becomes an obstruction to the ditch?"

"Under the provisions of Section 13421-7, General Code, it is a misdemeanor for any person to wrongfully obstruct any ditch along a public highway and this is true without

reference to the character of the obstruction. Under Section 7212 G. C., it is the duty of the owners or occupants of land to keep in repair all approaches from the public roads. If a property owner fails to keep in repair an approach from a public road, as required by Section 7212 G. C., and by reason of his failure to keep such approach in repair, the same becomes an obstruction to a side ditch along the public highway, it is my opinion that such owner is guilty of a violation of the provisions of Section 13421-7 G. C., and that he may be prosecuted for such violation. \* \* \*

It is my opinion that the same would apply in like manner to a bridge or culvert over an existing county ditch as a part of the approach or driveway of an abutting property owner, which county ditch has been located on the right of way of a public road.

Coming now to a specific answer to your inquiry, in my opinion it is the duty of the abutting owners and occupants of land under the direction of the county engineer to construct and keep in repair bridges and culverts for private approaches or driveways from the public roads over county ditches which have been located upon the right of way of said public roads, unless in the construction or improvement, maintenance and repair of such public roads or county ditches a bridge or culvert for an existing approach or driveway of an abutting property owner is destroyed, in which event the authorities constructing, improving, maintaining or repairing such public road or ditch, either shall compensate such abutting property owner of said lands for the destruction of such bridge or culvert for the approach or driveway, or shall authorize the county engineer to reconstruct the same at public expense.

Respectfully,

HERBERT S. DUFFY,  
*Attorney General.*

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602.

APPROVAL—LEASE OF CERTAIN CANAL LANDS TO ONE  
BURLEY TINNEMAN OF ST. MARYS, OHIO.

COLUMBUS, OHIO, May 15, 1937.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus,  
Ohio.*