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SIDEWALK ALONG STATE HIGHWAY—CONSTRUCTED BY STATE HIGHWAY DEPARTMENT—BOARD OF TRUSTEES OF TOWNSHIP WHERE SIDEWALK LOCATED UNDER NO DUTY TO MAINTAIN STRUCTURE.

SYLLABUS:

Where the state highway department has constructed a sidewalk along a state highway, the board of trustees of the township in which such sidewalk is located is under no duty to maintain such structure.

Columbus, Ohio, August 24, 1955

Hon. Calvin W. Hutchins, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

I have your request for my opinion reading as follows:

“The State Highway Department has constructed a sidewalk along Route 20, in Geneva Township, Ashtabula County. Route 20 is, of course, a State Highway.

“This sidewalk is now in need of repair and the Township Trustees have been requested to make such repairs.

“Will you please advise whether or not the Township Trustees are, in any way, responsible for the maintenance of such a sidewalk.”

Requests concerning similar situations were previously presented to this office. In Opinion No. 2209, Opinions of the Attorney General for 1928, page 1420, it was held that where sidewalks were originally con-

structed by order of the township trustees along a state road, said sidewalks may properly be maintained and repaired by said township trustees. In Opinion No. 4712, Opinions of the Attorney General for 1942, p. 11, it was held that township trustees are required to maintain and repair sidewalks along township roads where such sidewalks are within the limits of such township roads and the dedication of such township roads, including the sidewalks, was accepted by the county commissioners.

Neither of the situations covered in the previous opinions just cited apply to your inquiry. Briefly restated, your inquiry raises the question of whether the state highway department, by the construction of sidewalks along a state highway, can impose the duty of maintaining and repairing such sidewalks on the local board of township trustees.

In 39 Words and Phrases, 344, numerous cases are cited in which it is held that a sidewalk is a portion of a highway designed for use by pedestrians. See also, Black's Law Dictionary for similar definitions. Thus it would appear that the authority to construct a sidewalk is an incident of the power to construct highways, the sidewalk being merely a portion of the roadway concerned. Such being the case, it would seem to follow that where a particular public agency has the duty to maintain a highway a portion of which consists of a sidewalk, there is a duty to maintain such sidewalk as well as that portion of the highway designed for vehicular traffic. Because we are here concerned with a state highway, it would seem that the duty to maintain it rests with the state highway director under the provisions of Section 5535.08, Revised Code.

You will observe that Section 5535.08 *authorizes* a township to contribute, by agreement, to the cost of maintenance of a county road, but I find no similar provision in the law as to state highways. Your use of the expression "responsible for the maintenance" indicates that the precise question sought to be raised is whether the trustees can be compelled to maintain, or contribute to the maintenance, of the sidewalks in question. I find nothing in the statutes which in any way suggests any such responsibility, and since the board of township trustees is a creature of statute and is under only such duties as are imposed upon it by statute, I must conclude that the duty to act is lacking in the case you describe.

Accordingly, in specific answer to your inquiry, it is my opinion that where the state highway department has constructed a sidewalk along a

state highway, the board of trustees of the township in which such sidewalk is located is under no duty to maintain such structure.

Respectfully,
C. WILLIAM O'NEILL
Attorney General