

**OPINION NO. 81-083****Syllabus:**

R.C. 5591.02 requires the board of county commissioners to repair a bridge within a village, where the bridge was built by the state, in conjunction with the state's construction of a limited access highway, to carry an existing county road over such highway. Pursuant to R.C. 723.01, the village has certain responsibilities with respect to such bridge, but does not have the duty of actual repair. Upon request and approval by the legislative authority of the village, R.C. 5521.01 requires the state to carry out the limited duties imposed upon the village by R.C. 723.01.

**To: John T. Corrigan, Cuyahoga County Pros. Atty., Cleveland, Ohio**  
**By: William J. Brown, Attorney General, December 16, 1981**

I have before me your opinion request in which you ask who must repair a bridge located within a village which is not a "joint bridge" as defined in R.C. 5591.01, and which carries a county road over a limited access highway constructed by the state. It is my understanding that the state furnished approximately ninety-five percent of the funds necessary to build the bridge in conjunction with the state's construction of a limited access highway; the bridge was needed to carry a county road over the newly constructed state route.

R.C. 5535.01 divides the public highways of the state into three categories: state roads, county roads, and township roads. Generally, the duty to repair a road carries with it the duty to repair a bridge which is part of the road. See R.C. 5535.08. See generally R.C. 5501.01(C). In order to determine which entity must repair the bridge in the situation you pose it is first necessary to determine whether the bridge is part of a state, county, or township road.

In most instances, a bridge is considered to be a part of the road which passes over it. Hanks v. Board of County Commissioners, 35 Ohio App. 246, 172 N.E. 423 (Adams County 1929); Van Scyoc v. Roth, 2 Ohio Misc. 155, 205 N.E.2d 617 (C.P. Monroe County 1964) (a bridge over a stream is part of the road on which the bridge is located).

There appears to be some question, however, as to whether a bridge which carries a road over an intersecting freeway is part of the road it connects or part of the freeway over which it passes. R.C. 5535.02 defines a "limited access highway" or "freeway" as a specific type of road, highway, or street. R.C. 5501.11 makes the establishment of state highways in new locations one of the functions of the Department of Transportation. Pursuant to R.C. 5511.02, the Director of Transportation has the same authority relative to the construction of limited access highways as to other state highways. When the state constructs a limited access highway, such highway, therefore, becomes a state highway as defined in R.C. 5535.01(A). As used in R.C. Chapters 5501, 5511, and 5535, "road" or "highway" includes bridges "on or to such road or highway." R.C. 5501.01(C). It appears, therefore, that where the state builds a bridge in conjunction with construction of a state limited access highway and such bridge carries a county road over the state highway, the bridge is part of the state highway system. See Kekic v. Linzell, 60 Ohio Op. 235, 137 N.E.2d 581 (C.P. Cuyahoga County 1956);<sup>1</sup> 1960 Op. Att'y Gen. No. 1841, p. 667.

As stated above, R.C. 5535.01 classifies the public highways of the state as state, county, or township roads. The general duty to maintain public highways is set forth in R.C. 5535.08, which makes it the duty of the state and each county and township to maintain its own roads.

Pursuant to R.C. 5511.02, the Director of Transportation has the same authority relative to the construction and maintenance of limited access highways as to other state highways. That authority is set forth in R.C. 5501.11, which reads in part as follows: "The functions of the department of transportation with respect

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<sup>1</sup>In Kekic, the state appropriated property to use as a detour route during construction of a bridge which would carry a city street over a highway being built by the state. The property owners objected to the appropriation stating that R.C. 5501.11 (currently at R.C. 5501.31) authorized the state to appropriate property to construct only state roads and bridges along such roads; because a city street, and not a state highway, would pass over the bridge, the state had no authority to appropriate property for or incident to the construction of the bridge. The court held that construction of the bridge and the detour thereto was incident to the construction of the state road, and, therefore, R.C. 5501.11 authorized the state to appropriate property necessary for the detour.

to highways shall be: (A) To establish state highways on existing roads, streets, and new locations and to construct, reconstruct, widen, resurface, maintain, and repair the state system of highways and the bridges and culverts thereon. . ." (emphasis added).<sup>2</sup>

There are, however, certain exceptions to the general rule set forth in R.C. 5535.08 and R.C. 5501.11.<sup>3</sup> R.C. 5591.02 reads as follows: "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 such municipal corporation." (Emphasis added).<sup>4</sup> See also R.C. 5501.31. R.C. 5591.02 clearly requires the county to repair a bridge which is on a state or county road and which is located within a municipal corporation. See 1974 Op. Att'y Gen. No. 74-007. I note that R.C. 5591.02 does not appear to limit the county's duty of repair to only those bridges constructed by the county. The county must, therefore, repair the bridge in the situation you pose.

You have also asked whether the county's duty of repair, as set forth in R.C. 5591.02, is limited to the repair of "joint bridges," as defined in R.C. 5591.01.<sup>5</sup> R.C.

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<sup>2</sup>R.C. 5501.11 must be read in conjunction with R.C. 5501.31, which states:

Except in the case of maintaining, repairing. . .of state highways within villages, which shall be mandatory as required by section 5521.01 of the Revised Code, no duty of constructing, reconstructing. . .maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon, shall attach to or rest upon the director. . . .

<sup>3</sup>See State ex rel. City of Cleveland v. Masheter, 8 Ohio St. 2d 11, 221 N.E.2d 704 (1966). In that case, an appropriations bill specifically required the Director of Highways to maintain, repair, and light interstate highways within municipal corporations, notwithstanding R.C. 5501.14 (currently R.C. 5501.41) (which required the director to obtain a municipality's consent prior to removing snow and ice from a state highway within the municipality) and R.C. 5511.01 (which discusses the state highway system generally). The court concluded that although the city had agreed pursuant to a contract with the state to pay for lighting the portion of the highway within the city, the action of the General Assembly had waived or released the city's obligation to the state to pay for the lighting. The state was, therefore, liable for maintaining, repairing, and lighting the interstate highways within the city. It appears, however, that there is no language similar to that cited in Masheter in any current appropriations bill which would impose a duty upon the state to repair the bridge in the situation you pose.

<sup>4</sup>R.C. 5591.21, which states in part that, "[t]he 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," refers only to bridges over streams or public canals, and, therefore, does not apply to the bridge in the question you pose. See 1960 Op. Att'y Gen. No. 1841, p. 667, 672 ("[R.C. 5591.21] clearly refers to bridges 'over streams and public canals,' and a bridge over a road does not fall in this category").

<sup>5</sup>R.C. 5591.01 defines a joint bridge as follows:

"Joint bridge" as used in sections 5591.01 to 5591.17, inclusive, of the Revised Code, means a bridge constructed, used, or maintained or to be constructed, used, or maintained for general highway traffic, above, below, or at the grade of any bridge constructed or to be constructed by any railroad or union depot company, and in connection therewith.

5591.02 does not use the term "joint bridge" in defining the county's duty of repair under that section, but rather describes the types of bridges which the county must repair as "all necessary bridges in municipal corporations" on certain roads running into or through the municipality. It is a well-settled rule of statutory construction that the intent of the legislature in enacting a statute should be discerned from the plain language of the statute. Slingsluff v. Weaver, 66 Ohio St. 621, 64 N.E. 574 (1902). It is, therefore, clear that because the legislature has defined "joint bridge," as used in R.C. 5591.01 though .17, and has used only the term "bridge" in setting forth the county's duty under R.C. 5591.02, the county's obligation to repair bridges, pursuant to R.C. 5591.02, is not limited to the repair of joint bridges. Furthermore, the fact that R.C. 5591.02 is placed between R.C. 5591.01, which defines "joint bridges," and R.C. 5591.03 though .17, which discuss joint bridges, does not required reading R.C. 5591.02 as applying only to joint bridges. See In re Kline, 6 Ohio C.C. 215, 216 (Franklin County 1892) ("[t]he connection in which a statute is placed, may aid in determining its meaning where that is otherwise doubtful, but it cannot defeat a competent and clearly expressed legislative purpose"). It is clear, therefore, that the county's obligation to repair bridges, as set forth in R.C. 5591.02, is not limited to the repair of "joint bridges." See State ex rel. Howell v. Eirick, 14 Ohio C.C. (n.s.) 577 (Cuyahoga County 1911) (G.C. 7557 (currently R.C. 5591.02) authorizes the county commissioners to construct a high level bridge or viaduct across a river valley).

In 1974 Op. Att'y Gen. No. 74-007, I discussed the duties of the state, county, and village in regard to the repair of a bridge constructed by the state within a village. In that situation, the bridge was built to carry a state road, which was also a city street, over a state limited access highway. I concluded that R.C. 5591.02 placed the primary duty of repair on the county and that R.C. 723.01 placed a secondary duty on the village to keep the bridge "open, in repair, and free from nuisance." Pursuant to R.C. 5521.01, however, the village could request that the state perform the village's statutory obligation, and upon approval by the legislative authority of the village, "both the state and the county would be under an obligation to repair the bridge." Op. No. 74-007, at 2-30. 1981 Op. Att'y Gen. No. 81-007 modified the scheme set forth in Op. No. 74-007 regarding the relative duties of counties under R.C. 5591.02 and 5591.21 and municipalities pursuant to R.C. 723.01. Op. No. 81-007 concluded generally that where R.C. 5591.02 or 5591.21 imposes a duty upon the county to repair a bridge within a municipality, the county must perform the actual repairs. The duty imposed upon a municipality by R.C. 723.01 in regard to the maintenance of bridges within the municipality is merely a duty to keep such bridges "open, in repair, and free from nuisance," but not to perform permanent repairs.

Pursuant to R.C. 5591.02, the county must, therefore, repair a bridge within a municipality which is on either a state or county road. Op. No. 81-007. R.C. 723.01, however, requires the municipal corporation within which the bridge is located to keep the structure "open, in repair, and free from nuisance." I note that, as stated in Op. No. 81-007, the municipality's duty pursuant to this section is not the duty of actual repair.

Because the bridge in the question you have asked is part of the state highway system, it is necessary to examine the provisions of R.C. 5521.01. According to that section, upon request and approval by the legislative authority of a village, the director of transportation "shall maintain [and] repair. . .any section of a state highway within the limits of a village" (emphasis added). See also R.C. 5501.31 ("[e]xcept in the case of maintaining [or] repairing. . .of state highways within villages, which shall be mandatory as required by section 5521.01 of the Revised Code, no duty of. . .maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon, shall attach to or rest upon the director") (emphasis added). See also Op. No. 74-007 ("a village, which is required by R.C. 723.01 to keep certain bridges in repair, may pursuant to R.C. 5521.01 request the director of transportation to perform such repairs"). Thus, the state must, upon request and approval by the legislative authority of the village in which the bridge is located, perform the village's duty under R.C. 723.01 of keeping the

bridge "open, in repair, and free from nuisance." Of course, the state's obligation under R.C. 5521.01 with respect to that bridge is no greater than the obligation imposed upon the village by R.C. 723.01. Thus, as I stated in Op. No. 81-007, such obligation does not include the duty of actual repair.

In your opinion request you specifically mentioned 1960 Op. Att'y Gen. No. 1841, p. 667, which discussed the duty to repair a particular bridge. The opinion concluded that because the state built the bridge in conjunction with its construction of a limited access highway to carry a county road over the highway, the bridge was part of the state highway. The opinion also concluded that R.C. 5535.08, which provides that the state, counties, and townships shall each maintain their own roads, required the state to repair the bridge as part of its duty to repair the road. I note, however, that the opinion did not mention whether the bridge was located within a municipality and thus did not discuss the county's possible duty to repair under R.C. 5591.02. 1960 Op. No. 1841 does not, therefore, resolve the question presented in your request.

Based on the foregoing, it is my opinion, and you are advised, that R.C. 5591.02 requires the board of county commissioners to repair a bridge within a village, where the bridge was built by the state, in conjunction with the state's construction of a limited access highway, to carry an existing county road over such highway. Pursuant to R.C. 723.01, the village has certain responsibilities with respect to such bridge, but does not have the duty of actual repair. Upon request and approval by the legislative authority of the village, R.C. 5521.01 requires the state to carry out the limited duties imposed upon the village by R.C. 723.01.