

OPINION NO. 94-025**Syllabus:**

1. Where the term "maintenance" has not been specifically defined in the Revised Code, it must be given its natural, literal, common, or ordinary meaning, and that definition must be applied with regard to that section of the Revised Code in which it appears.
2. A culvert is a structure that crosses under a road or an embankment for the passage of water from one side of the road or embankment to the other.
3. A board of township trustees is responsible for maintaining the bridges and culverts on township roads.
4. Under certain circumstances, the Revised Code confers upon other governmental entities the responsibility to maintain township roads, or permits those entities to assist or make financial contributions to a township in carrying out its road maintenance responsibilities.
5. A governmental entity performing maintenance on a bridge or culvert on a township road bears the financial responsibility for such maintenance unless a statutory provision to the contrary applies.
6. Motor vehicle license tax revenues and motor vehicle fuel excise tax revenues that form a portion of the operating budget of the county engineer pursuant to R.C. 315.12(A) may be used for any cost incurred in the operation of the office of county engineer, including the maintenance of bridges on township roads.

To: David L. Landefeld, Fairfield County Prosecuting Attorney, Lancaster, Ohio
By: Lee Fisher, Attorney General, May 17, 1994

You have requested an opinion concerning the maintenance of bridges and culverts. Specifically, you have asked the following:

- (1) What are the definitions of "maintenance" and "daily maintenance"?
- (2) What is the definition of culvert? Can a culvert also be a bridge?
- (3) Who assumes the financial responsibility for maintenance of bridges and culverts on township roads? If the county engineer accepts the responsibility on a township road to maintain structural integrity of a bridge, may he use funds from his distribution of motor vehicle taxes or should township funds be used for preserving such structural integrity?

The Definition of "Maintenance" for Purposes of R.C. Title 55

The term "maintenance" is used throughout R.C. Title 55 (roads -- highways -- bridges). *See, e.g.*, R.C. 5501.11; R.C. 5529.01; R.C. 5543.01; R.C. 5571.03; R.C. 5575.01; R.C. 5575.10. However, "maintenance" is not specifically defined for purposes of R.C. Title 55.¹ Where there is no specific definition for "maintenance," it must be given its natural, literal, common, or ordinary meaning. *State v. Dorso*, 4 Ohio St. 3d 60, 446 N.E.2d 449 (1983). The dictionary defines "maintenance" as "[t]he action of maintaining.... The work of keeping something in proper condition." *The American Heritage Dictionary* 757 (2d college ed. 1985).

"Maintenance" is often used in R.C. Title 55 in conjunction with the term "repair." *See, e.g.* R.C. 5571.02; R.C. 5571.03; R.C. 5571.05. There is often no sharp distinction between what is considered repair and what is considered maintenance. *See, e.g., Weiher v. Phillips*, 103 Ohio St. 249, 254, 133 N.E. 67, 68 (1921) (in discussing G.C. 7464, now R.C. 5535.01, the court said "[i]t should require no authority to show that the word 'maintain' includes the word 'repair'"); *Beal v. Erie Railroad Co.*, 51 Ohio App. 397, 401, 1 N.E.2d 328, 330 (Richland County 1935) (construing G.C. 1229-17, which prescribed under what circumstances the state or the railroad company shall bear the cost of maintaining a crossing, and holding that "[t]he word 'maintain' in this connection seems to us to mean to keep in repair, to keep in substantially the same condition in which it was constructed"); 1961 Op. Att'y Gen. No. 2210, p. 253. For example, at issue in 1961 Op. No. 2210 was that portion of R.C. 5571.02 that reads: "The board of township trustees shall have control of the township roads of its township and shall keep them in good repair." 1961 Op. No. 2210 viewed the foregoing language as evidence of "the positive duty of a board of township trustees to maintain and keep in good repair the township roads under its control," *id.* at 255. *See also* 1988 Op. Att'y Gen. No. 88-036 at 2-169 (employing the word "maintenance" to mean "repairs and maintenance that keep the roadway in usable condition").

¹ Although there is no general definition of "maintenance" for R.C. Title 55, there are several sections of the Revised Code that limit the meaning of the term for a particular purpose. For example, R.C. 5543.20, which requires the county engineer to inspect all bridges or portions thereof on the county highway system inside and outside municipalities, bridges on township roads, and other bridges or portions of bridges for which responsibility for inspection is by law or agreement assigned to the county, contains the following sentence: "'Maintenance' as used in this division means actual performance of maintenance work." For purposes of R.C. 5535.07, "maintenance does not include the construction of any new bridges or culverts or the replacement of any bridges or culverts destroyed by the elements or by natural wear, nor any construction work changing the type of construction existing on said roads at the time the same are taken over in accordance with this section." Neither R.C. 5543.20 nor R.C. 5535.07 offer a precise definition of the term "maintenance," however.

However, 1915 Op. Att'y Gen. No. 950, vol. III, p. 2042 at 2043-44 noted that the meanings of the terms "maintenance" and "repair" do not always coincide:

[T]here are certain slight distinctions which under some circumstances it might be proper and even important to observe ... between the meaning of the words "maintenance" and "repair" The shade of distinction between the words "maintenance" and "repair" may be best indicated by observing that while many operations may be properly classified either under the head of maintenance or under the head of repair, yet there are some operations of which this is not true. The application of oil or other dust preventatives furnishes an excellent illustration, for while such application properly falls under the head of maintenance, yet it could not be said to constitute a repair.

Clearly, the term "maintenance" cannot be more specifically defined without reference to the thing to be maintained. In order to determine what it means in any particular section of the Revised Code, therefore, its general definition must be applied with regard to the purpose of that section. See generally 1988 Op. Att'y Gen. No. 88-039; 1915 Op. No. 950 (syllabus, paragraph one) ("the meaning of the word [improvement] as used in any particular section must be determined from the context"). Thus, what constitutes "[t]he work of keeping something in proper condition," *The American Heritage Dictionary* at 757, depends upon the object to be maintained and the context in which such work is prescribed.

Because there is no generally applicable definition of "maintenance" in R.C. Title 55, the term "daily maintenance" also cannot be generally defined. Obviously, anything that takes place on a daily basis can be described as "daily." "Daily" is defined as "of, done, occurring, or issued each day or each weekday." *The Random House Dictionary of the English Language* 364 (1973). However, what constitutes "daily maintenance" will likewise depend on the object to be maintained and the context in which the maintenance is to be performed.

The Definition of the Term "Culvert"

You have also noted that the term "culvert" is not defined for purposes of R.C. Title 55. Because it is not specifically defined, it must be accorded its common or ordinary meaning. *State v. Dorso*. The dictionary defines culvert as "[a] sewer or drain crossing under a road or embankment." *The American Heritage Dictionary* at 348. Prior Attorney General opinions have applied a similar definition of culvert from *Bouvier's Law Dictionary*: "A waterway or water passage, whether of wood or stone, square or arched; a covered drain under a road designed for the passage of water from one side of the road to the other." 1945 Op. Att'y Gen. No. 603, p. 763, at 765; see also 1981 Op. Att'y Gen. No. 81-039 at 2-157. Thus, the ordinary or common meaning of the word "culvert" can be summarized as a structure that crosses under a road or an embankment for the passage of water from one side of the road or embankment to the other.

Neither the size, shape, or material of which the culvert is constructed affects its status as a culvert. The dictionary does not define culvert with reference to such qualities. Instead, it is the function of the structure that determines whether it is a culvert. If it functions as a passage for water to move beneath a road from one side to the other, then it is a culvert.²

² Nonetheless, in *Riley v. McNicol*, 109 Ohio St. 29, 141 N.E. 832 (1923), the court held that a structure that fits the dictionary definition of a culvert may *not* be a "culvert" for purposes

A Culvert Is Not a Bridge

With regard to the definition of "culvert," you have also asked whether a culvert may also be a bridge. "Bridge," like culvert, is not defined generally for purposes of R.C. Title 55. There are some instances in which the term is defined for a particular purpose. *See, e.g.*, R.C. 5501.47(B)(1)(c) (defining bridge for the purpose of inspection by the Director of Transportation); R.C. 5593.01(A) (defining bridge for the purpose of bridge commissions). Where the term "bridge" is not specifically defined, it must be understood in its common, ordinary, or plain sense. *State v. Dorso*. The dictionary defines bridge as "[a] structure spanning and providing passage over a waterway, railroad, or other obstacle." *The American Heritage Dictionary* at 208. A bridge, therefore, is a structure that spans and provides passage over a waterway or other obstacle, while a culvert provides for the passage of the water *beneath* a road or embankment.

Both "bridge" and "culvert" are defined according to their functions. Because the function of a culvert differs from the function of a bridge, a culvert is not a bridge. If water is flowing in a waterway, unimpeded, there is no need for a culvert. A culvert becomes necessary when there is some obstacle through which water cannot pass. For example, when dirt is filled into a portion of a waterway to create a road, thereby impeding the flow of water, a culvert must be placed beneath the road in order for the water to pass. The culvert does not thereby provide passage over the waterway, however, and cannot be described as a bridge.

A Board of Township Trustees Is Responsible for Maintaining Bridges and Culverts on Township Roads

R.C. 5535.01 classifies all roads as state, county, or township roads. "Township roads" include all public highways other than state or county roads. R.C. 5535.01(C). The term "road" includes bridges on such road. R.C. 5501.01(C).³ R.C. 5535.08 requires the state, counties, and townships to maintain their respective roads. With respect to townships in particular, R.C. 5571.02 provides that "[t]he board of township trustees shall have control of the township roads of its township and shall keep them in good repair." Since R.C. 5501.01(C) defines "road" to include all bridges on such road, a board of township trustees bears the responsibility of maintaining the bridges on township roads within its township. Furthermore, it was determined in 1981 Op. Att'y Gen. No. 81-039 that culverts on a highway system are to be treated as roads and bridges are treated. "Whichever political subdivision has the responsibility for repairing and maintaining the highway on which a particular culvert is located has the responsibility for maintaining and repairing that culvert." Op. No. 81-039 at 2-157.

of a particular statute. In that case, a 12-inch pipe inserted 13 feet under the level of the highway was not a culvert within the meaning of G.C. 7563, which required the erection of guardrails at the ends of certain culverts.

³ R.C. 5501.01 reads in relevant part as follows:

As used in Chapter 5501., 5503., 5511., 5512., 5513., 5515., 5516., 5517., 5519., 5521., 5523., 5525., 5527., 5528., 5529., 5531., 5533., and 5535. of the Revised Code:

...
(C) "Road" or "highway" includes bridges, viaducts, grade separations, appurtenances, and approaches on or to such road or highway.

Thus, a township bears the responsibility of maintaining the culverts on township roads. *But see* 1982 Op. Att'y Gen. No. 82-025 (a property owner who places a culvert in a preexisting ditch that is part of a public highway is responsible for maintenance of that culvert).

Other Entities that Are Responsible for Maintaining Township Roads, or Are Authorized to Assist a Township with Its Road Maintenance Responsibilities

In several instances, the Revised Code also confers upon other governmental entities the responsibility to maintain township roads, or permits those entities to assist or make financial contributions to a township in carrying out its road maintenance responsibilities. Those provisions include R.C. 307.15, R.C. 315.13, R.C. 5535.01(C), R.C. 5535.08, R.C. 5543.20 and R.C. 5591.21. R.C. 5535.01(C) provides that "[t]he board of county commissioners may assist the board of township trustees in maintaining [township] roads." The assistance of the board of county commissioners under this statute, however, is a matter of discretion. R.C. 5535.01(C) places no positive duty on the board of county commissioners to provide that assistance. *See generally Van Scyoc v. Roth*, 31 Ohio Op. 2d 382, 205 N.E.2d 617 (C.P. Monroe County 1964). R.C. 5535.08 also permits a board of county commissioners to contribute to the repair and maintenance of roads under the control of the township. It provides that "the county or township may, by agreement between the board of county commissioners and the board of township trustees, contribute to the repair and maintenance of the roads under the control of the other." *See also* 1990 Op. Att'y Gen. No. 90-097; 1976 Op. Att'y Gen. No. 76-074. A contribution under R.C. 5535.08 may take the form of a cash grant. Op. No. 90-097; 1979 Op. Att'y Gen. No. 79-045.

R.C. 5543.20 requires the county engineer to inspect all bridges on township roads and to furnish each board of township trustees with a report of the condition of bridges on the township road system. R.C. 5591.21 requires a board of county commissioners to, "[e]xcept as provided in [R.C. 5501.49],⁴ ... construct and keep in repair necessary bridges over streams and public canals on or connecting state, county, and improved roads." This authority is not discretionary; R.C. 5591.21 places a duty upon the board of county commissioners to construct and repair those bridges. *See* 1990 Op. Att'y Gen. No. 90-079. Thus, the county has a duty to construct and keep in repair necessary bridges over streams and public canals on the improved roads of a township.

Likewise, R.C. 315.13 mandates that "[t]he county engineer shall make all emergency repairs on *all roads, bridges, and culverts in the county*." (Emphasis added.) Thus, if an emergency repair of a bridge or culvert on a township road is necessary, the county engineer has the duty to make such repair. R.C. 307.15 permits a board of county commissioners to enter into an agreement with a board of township trustees whereby the "board undertakes, and is authorized by the [township], to exercise any power, perform any function, or render any service, in behalf of the [township] or its legislative authority."⁵ R.C. 307.15 thus permits a board of county commissioners and a township to enter into an agreement by which the county maintains the bridges and culverts on township roads, which would otherwise be the responsibility of the township. The precise authority and responsibility of the board of county

⁴ R.C. 5501.49 sets forth the responsibility of the Director of Transportation for the construction, reconstruction, major maintenance and repair, and operation of all lift bridges located on the state highway system within a municipal corporation.

⁵ R.C. 307.14 defines the "legislative authority" of a township as the board of township trustees.

commissioners to maintain such bridges and culverts under R.C. 307.15 will ordinarily be specified by the terms of the agreement.

A Governmental Authority Performing Maintenance on a Bridge or Culvert on a Township Road Bears the Financial Responsibility for Such Work Absent a Statutory Provision to the Contrary

You have asked which entity assumes the financial responsibility for the maintenance of bridges and culverts on township roads. The Revised Code does not specify a separate financial responsibility for the maintenance of bridges and culverts; the authority of a township or other entities to maintain bridges and culverts on township roads is expressed in general terms. *See, e.g.*, R.C. 5535.08 (requiring the board of township trustees to keep township roads in good repair); R.C. 5591.21 (requiring the board of county commissioners to keep in repair necessary bridges over streams and public canals). There are separate statutory provisions providing funds to enable townships and other entities to carry out their authority with respect to bridges and culverts. *See, e.g.*, R.C. 4501.04 (providing for distribution of a portion of the auto registration distribution fund to counties, townships, and municipal corporations for various purposes relating to roads, bridges, and viaducts); R.C. 5735.27 (providing for distribution of a portion of the revenues of certain motor vehicle fuel excise taxes to counties, townships, and municipal corporations for various road, bridge and viaduct purposes); R.C. 315.13 (county engineer's emergency repair fund for emergency repairs on all roads, bridges, and culverts in the county); R.C. 5555.92 (county maintenance and repair fund).

Thus, a township is authorized to use those funds of the township that are appropriated or are otherwise available for maintaining township roads to maintain bridges and culverts on township roads where it has the duty or the authority to carry out such maintenance. Similarly, other entities that are responsible for the maintenance of bridges and culverts on township roads are authorized to use those funds appropriated or otherwise available to them to carry out such maintenance.

There are instances in which one entity has the authority to contribute funds appropriated or otherwise available to it to another entity to assist it in maintaining its bridges and culverts. *See, e.g.*, R.C. 5535.08; *see* Op. No. 90-097; Op. No. 79-045. Additionally, a county, for example, may perform such work on behalf of another entity pursuant to contract under the terms of which the county is reimbursed for the work. R.C. 307.15. Absent such a specific statutory provision, however, the entity performing the maintenance work ordinarily will assume the financial responsibility for that work. *See generally* 1974 Op. Att'y Gen. No. 74-007 at 2-30 (modified in part by 1981 Op. Att'y Gen. No. 81-007) (discussing two separate statutory provisions that placed a responsibility upon both a municipal corporation and a county to maintain certain bridges, and determining that "while a county has the primary obligation to maintain and repair bridges such as the one in question, a municipal corporation within which the bridge is located, has no authority to recover from the county costs it incurs in performing the repairs itself").

The County Engineer May Maintain the Structural Integrity of a Bridge or Culvert on a Township Road Only Where There Exists Statutory Authority to Perform that Maintenance

You have also asked whether, if the county engineer accepts the responsibility to maintain the structural integrity of a bridge or a culvert on a township road, he may use funds from his distribution of motor vehicle taxes. You have not indicated under what authority the county engineer has accepted the responsibility to maintain a bridge or culvert on a township road. As

a creature of statute, a county engineer has only the authority expressly granted by statute and the authority necessarily implied therefrom. *AFSCME Local 1045 v. Polta*, 59 Ohio App. 2d 283, 284, 394 N.E.2d 310, 311 (Erie County 1977). Therefore, the county engineer may maintain the structural integrity of a bridge or culvert on a township road only where statutory authority to undertake that project exists.

There are several statutory provisions in which the authority of the county engineer to maintain the structural integrity of a bridge or culvert on a township road may be found. For example, R.C. 315.13 provides that the county engineer "shall make all emergency repairs on *all roads, bridges, and culverts* in the county." (Emphasis added.) If maintenance of the structural integrity of a bridge or culvert on a township road within the county takes the form of an emergency repair, then R.C. 315.13 provides the authority for the county engineer to undertake such work.⁶

R.C. 315.14 sets forth further duties of the county engineer, in part, as follows:

The county engineer shall be responsible for the inspection of all public improvements made under authority of the board of county commissioners. He shall keep in suitable books a complete record of all estimates and summaries of bids received and contracts for the various improvements, together with the record of all estimates made for payments on such work. He shall make all surveys required by law and perform all necessary services to be performed by a registered surveyor or registered professional engineer in connection with the construction, repair, or opening of all county roads or ditches constructed under the authority of the board and *shall perform such other duties as the board requires*, provided that the duties described in Chapters 343., 6103., and 6117. of the Revised Code shall be performed only pursuant to an agreement between the county engineer and the board. (Emphasis added.)

Thus, the county engineer may be called upon by the county commissioners to perform duties in addition to those specified in R.C. 315.14. *State ex rel. Mikus v. Roberts*, 15 Ohio St. 2d 253, 239 N.E.2d 660 (1968). In this regard, there are several statutes that grant a board of county commissioners the authority to assist a township in the maintenance of bridges or culverts on township roads. *See, e.g.*, R.C. 307.15; R.C. 5535.01(C); R.C. 5535.08; R.C. 5591.21. R.C. 315.14 permits the board of county commissioners to assign duties to the county engineer in furtherance of that assistance. For the purpose of this opinion, it is understood that the county engineer's assumption of the maintenance of a bridge or culvert on a township road is pursuant to statutory authority.

Ohio Const. art. XII, §5a Limits the Use of State Motor Vehicle License Tax and Motor Vehicle Fuel Excise Tax Revenues

Your final question asks specifically whether the county engineer may use funds from his distribution of motor vehicle taxes for maintaining the structural integrity of a bridge on a township road. Generally, the use of state motor vehicle license tax and motor vehicle fuel

⁶ Additionally, R.C. 315.13 provides for the annual appropriation by the board of county commissioners of a sum of money constituting the "county engineer's emergency repair fund" to enable the county engineer to carry out the requirements of this section.

excise tax revenues is controlled by the Ohio Constitution. Ohio Const. art. XII, §5a provides as follows:

No moneys derived from fees, excises, or license taxes relating to registration, operation, or use of vehicles on public highways, or to fuels used for propelling such vehicles, shall be expended for other than costs of administering such laws, statutory refunds and adjustments provided therein, payment of highway obligations, costs for construction, reconstruction, maintenance and repair of public highways and bridges and other statutory highway purposes, expense of state enforcement of traffic laws, and expenditures authorized for hospitalization of indigent persons injured in motor vehicle accidents on the public highways.

See Grandle v. Rhodes, 169 Ohio St. 77, 157 N.E.2d 336 (1959) (syllabus, paragraph one): "Section 5a, Article XII of the Constitution of Ohio, closely restricts the expenditure of the fees and taxes received in relation to vehicles using the public highways to purposes *directly connected* with the construction, maintenance and repair of highways and the enforcement of traffic laws...." (Emphasis added.) Additionally, statutory provisions describe the purposes for which the revenues of particular taxes relating to the registration, operation, or use of vehicles on public highways may be used. *See, e.g.*, R.C. 4503.02 (levy of an annual motor vehicle license tax and description of the purposes for which the revenues of the tax may be used); R.C. 4501.04 (distribution of a portion of the receipts of the tax levied by R.C. 4503.02 and specification of the purposes for which those moneys may be used); R.C. 5735.27 (distribution and use of the gasoline excise tax fund and highway operating fund). *See generally State ex rel. Walton v. Edmondson*, 89 Ohio St. 351, 106 N.E. 41 (1914) (where a statute limits the expenditure of public funds, the funds may not be spent for a purpose not specified in the statute).

R.C. 315.12 Requires a Portion of State Motor Vehicle License Tax and Motor Vehicle Fuel Excise Tax Revenues to Be Used to Fund the Cost of Operation of the Office of the County Engineer

Among the statutes addressing the purposes for which state motor vehicle license and fuel excise tax revenues may be used is R.C. 315.12, which states in relevant part that

[t]wo thirds of the cost of operation of the office of county engineer, including the salaries of all of the employees and the cost of the maintenance of such office as provided by the annual appropriation made by the board of county commissioners for such purpose, shall be paid out of the county's share of the fund derived from the *receipts from motor vehicle licenses*, as distributed under section 4501.04 of the Revised Code, and from the county's share of the fund derived from the *motor vehicle fuel tax* as distributed under section 5735.27 of the Revised Code. (Emphasis added.)

Thus, two-thirds of the cost of operation of the county engineer's office shall be paid from the county's share of state motor vehicle license and fuel excise tax revenues. *See Board of County Comm'rs v. Scioto County Budget Comm'n*, 17 Ohio St. 2d 39, 244 N.E.2d 888 (1969) (syllabus, paragraph four) (R.C. 315.12 "provides that *at least two-thirds* of the cost of operation of the office of the county engineer must be paid from motor vehicle license and fuel tax revenues, but that section does not require that any portion of the expense of operating the office, except the cost and expense of those items specifically described in [R.C. 315.11] be paid from the general revenue fund").

By virtue of the enactment of R.C. 315.12(A), the General Assembly has established two-thirds of the cost of operation of the county engineer's office as one of the "statutory highway purposes" for which motor vehicle license and fuel excise tax revenues may be expended under Ohio Const. art. XII, §5a. *See* 1994 Op. Att'y Gen. No. 94-019 (concluding that the cost of removal of underground fuel storage tanks that had been used to fuel equipment and vehicles of the county engineer's office was a "cost of operation of the office of county engineer"). *See also* 1942 Op. Att'y Gen. No. 4728, p. 32 at 37 (discussing G.C. 2782-2 (now R.C. 315.12(A)) and concluding that "[t]he county engineer's office operating allowance from the motor vehicle license and fuel tax distributions being general and without restriction, it must be construed as applying to all expenses of his office, including such expenses as might be allocated to ditch improvement work"). Accordingly, state motor vehicle license and motor vehicle fuel excise tax revenues that form a portion of the operating budget of the county engineer pursuant to R.C. 315.12(A) may be used for any cost incurred in the operation of the office of the county engineer, including the maintenance of bridges or culverts on township roads.

Conclusion

Based on the foregoing analysis, it is my opinion, and you are hereby advised, that:

1. Where the term "maintenance" has not been specifically defined in the Revised Code, it must be given its natural, literal, common, or ordinary meaning, and that definition must be applied with regard to that section of the Revised Code in which it appears.
2. A culvert is a structure that crosses under a road or an embankment for the passage of water from one side of the road or embankment to the other.
3. A board of township trustees is responsible for maintaining the bridges and culverts on township roads.
4. Under certain circumstances, the Revised Code confers upon other governmental entities the responsibility to maintain township roads, or permits those entities to assist or make financial contributions to a township in carrying out its road maintenance responsibilities.
5. A governmental entity performing maintenance on a bridge or culvert on a township road bears the financial responsibility for such maintenance unless a statutory provision to the contrary applies.
6. Motor vehicle license tax revenues and motor vehicle fuel excise tax revenues that form a portion of the operating budget of the county engineer pursuant to R.C. 315.12(A) may be used for any cost incurred in the operation of the office of county engineer, including the maintenance of bridges on township roads.