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BRIDGES—TERM "ALL BRIDGES" RELATES TO AND INCLUDES ONLY BRIDGES OF FIRST CLASS ENUMERATED IN SECTION 5591.21 RC—DOES NOT INCLUDE BRIDGES ON STREET ESTABLISHED BY CITY OR VILLAGE FOR USE AND CONVENIENCE OF MUNICIPALITY, NOT PART OF STATE OR COUNTY ROAD.

SYLLABUS:

The term "all bridges" as employed in Section 5591.21, Revised Code, relates to and includes only bridges of the classes first enumerated in that section, and does not include bridges on streets established by a city or village for the use and convenience of the municipality, and not a part of a state or county road.

Columbus, Ohio, December 8, 1955

Hon. Joseph W. McNerney, Prosecuting Attorney
Muskingum County, Zanesville, Ohio

Dear Sir:

Your request for my opinion reads in part as follows:

"At the November 7, 1950, election, Muskingum County passed a bond levy under the provisions of General Code sections 2293-2, 19 to 23, the purpose of which was, 'The construction and improvement of bridges in Muskingum County.' This issue was in the sum of \$2,500,000.

"Recently the Village of South Zanesville, Ohio, filed a resolution under Revised Code Section 5591.22 with the auditor of Muskingum County demanding some portion of the aforesaid bridge fund to repair a bridge entirely inside the municipality of South Zanesville, the bridge being located on a village street which was not on a state route or county road.

"A hearing was requested for October 15, 1955, with the Muskingum county commissioners. The solicitor for South Zanesville did not attend this meeting, although some of the members of the South Zanesville village government were present. At the hearing, I as Prosecuting Attorney for Muskingum County, informed them that according to law this fund could only be applied to state and county bridges. * * *

“Since this is a dispute between the county and the village of South Zanesville, I would like to join the solicitor of South Zanesville in asking for an official opinion on this matter from your office.”

Because you indicate that the funds here in question are the proceeds of bonds issued under the provisions of the Uniform Bond Act, we may note the following provision in Section 2293-2, General Code, in effect at the time the issue here in question was authorized :

“The taxing authority of any subdivision shall have power to issue the bonds of such subdivision for the purpose of acquiring or constructing, any permanent improvement which such subdivision is authorized to acquire or construct. * * *”

There is, however, a special provision authorizing the issuance of bonds for bridge construction in Section 5591.21, Revised Code, formerly Section 2421, General Code, reading as follows :

“The 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, except only such bridges as are wholly in municipal corporations having by law the right to demand, and do demand and receive, part of the bridge fund levied upon property therein. If they do not demand and receive a portion of the bridge tax, the board shall construct and keep in repair all bridges in such municipal corporations. The granting of the demand made by any municipal corporation for its portion of the bridge tax is optional with the board.

“The board may submit to the electors the question of issuing county bonds for the construction of bridges on proposed state or county roads or connecting state or county roads, one or more of which may be proposed, but such bonds shall not be issued or sold until the proposed roads are actually established.”
* * *

It will be observed that in the first section quoted above the *purpose* of the issue is limited to those improvements which the subdivision, in this case the county, “is authorized to acquire or construct.”

Under the latter section bonds may be issued to finance only “bridges on proposed state or county roads or connecting state or county roads.”

If the issue here in question is deemed to have been made subject to the limitation above noted in Section 2293-2, General Code, the question is raised whether the county is authorized to construct a bridge which

you state is not located "on a state route or county road." In this connection Section 5591.02, Revised Code, provides:

"The board of county commissioners shall construct and keep in repair all necessary bridges in municipal corporations 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 and improved roads which are of general and public utility, running into or through such municipal corporation."

We have already noted in Section 5591.21, Revised Code, the provision that if the municipality concerned does not demand and receive a share of the "bridge fund," then the "board shall construct and keep in repair *all bridges* in such municipal corporation."

This language was under consideration in *Piqua v. Geist*, 59 Ohio St., 163, and in the opinion "By the Court" in that case it was said, pp. 163, et seq.:

"* * * The bridge was over a natural stream of water, but not on a state or county road, free turnpike, improved road, abandoned turnpike or plank road, in common public use. It was simply on a street that had been laid out and established for the use and convenience of the municipality. The city for a defense, claimed that, under section 860, Revised Statutes, as amended February 8, 1894 (91 Laws, 19), it was the duty of the commissioners of the county to keep the bridge in repair, as it received no portion of the bridge fund; and that it cannot, for this reason, be made liable to any one for the bridge being out of repair. The court below held otherwise. We are of the opinion that there is no error in the judgment. The amended section reads as follows:

"Section 860. The commissioners shall construct and keep in repair all necessary bridges over streams and public canals *on all 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 such cities and villages having by law the right to demand, and do demand and receive, part of the bridge fund levied upon property within the same; and when they do not demand and receive said portion of bridge tax the commissioners shall construct and keep in repair *all bridges* in such cities and villages. Provided, that in all cases, except counties containing a city of the first grade of the first class, the granting of the demand, made by any city or village for its portion of the bridge tax, shall be optional with the said board of commissioners." (The italics are ours for the purpose of indicating important words.)

“It was not, as we think, intended by this amendment to extend the duty of county commissioners to the construction or repair of bridges which before the amendment they were not required in any case to construct or keep in repair. The phrase ‘all bridges’ employed in the amendment, simply relates to and includes all the necessary bridges over streams and public canals, on all state and county roads, etc., first enumerated in the section, being the bridges that it is the general duty of county commissioners to construct and keep in repair, except where a city or village receives a portion of the bridge fund authorized to be raised by section 2824, Revised Statutes; * * *”

See also *Ry. v. Cincinnati*, 94 Ohio St., 269.

Although these decisions are to the effect that there is no *duty* on the county to construct or maintain bridges located on municipal streets which are not state or county roads, I find, neither in these statutes nor in any other, any provision which would authorize such construction or maintenance. It may be concluded, therefore, that (1) a board of county commissioners is not authorized to construct or maintain bridges located wholly within a municipal corporation on streets which are not “state and county roads and improved roads which are of general and public utility, running into and through such municipal corporation,” and (2) such board is not authorized to issue bonds for such purpose.

In your inquiry you have stated that the bridge here in question is not located on a “state route or county road,” and I assume that it is the position of the county commissioners also that it is not located on an “improved road” of “general and public utility” within the meaning of Section 5591.02, Revised Code. Such classification, if disputed, would present a question of fact on which it would be wholly inappropriate for me to express an opinion.

In Section 5705.10, Revised Code, there are the following provisions:

“All proceeds from the sale of a bond, note, or certificate of indebtedness issue, except premium and accrued interest, shall be paid into a special fund for the purpose of such issue. The premium and accrued interest received from such sale and interest earned on such special fund shall be paid into the sinking fund or the bond retirement fund of the subdivision. * * *

“Money paid into any fund shall be used only for the purposes for which such fund is established.”

From this it follows that the “fund” in which the proceeds of the bond issue here in question have been placed cannot be regarded as the

“county bridge fund” to which reference is made in Section 5591.22, Revised Code, especially as the language of that section suggests a fund to which the proceeds of tax levies are directly credited.

Although it was suggested, as you note, in Opinion No. 471, Opinions of the Attorney General for 1951, at page 214, that no legislation had been enacted to reestablish the county bridge fund since the repeal of Section 2824, Revised Statutes, it may be noted that the tax levies authorized as provided in Section 5555.91, Revised Code, appear to be related to the purposes described in Section 5543.02, Revised Code, and that among such purposes are the construction, maintenance and repair of “bridges * * * required within the county.” If, therefore, a demand for funds under the provisions of Section 5591.22, Revised Code, can be met from any source, it would appear to be from this fund, if any such fund has been established, rather than from the bond proceeds fund here in question.

Accordingly, in specific answer to your inquiry, it is my opinion that the term “all bridges” as employed in Section 5591.21, Revised Code, relates to and includes only bridges of the classes first enumerated in that section, and does not include bridges on streets established by a city or village for the use and convenience of the municipality, and not a part of a state or county road.

Respectfully,

C. WILLIAM O'NEILL

Attorney General