

OPINION NO. 66-008**Syllabus:**

Although a board of township trustees, the division of parks and recreation, or the director of highways may repair an existing bridge or build a new bridge, on that part of a county or township road which lies within a state park, the duty to repair or construct such bridges is clearly imposed upon a board of county commissioners by Section 5591.21, Revised Code.

To: John O. Crouse, Highland County Pros. Atty., Hillsboro, Ohio
By: William B. Saxbe, Attorney General, January 7, 1966

In your letter requesting my opinion, you ask the following question:

"Is it the duty of a county under the laws of Ohio to repair an existing bridge, or to build a new bridge, on that part of a county or township road which lies within a state park?"

Section 5591.21, Revised Code, provides:

"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, * * *."

This section, which has remained substantially the same since the amendment of Section 860, Revised Statutes, in 1886, clearly requires a county, acting by its board of commissioners, to construct and keep in repair all necessary bridges on state, county and improved roads. No exception is made as to bridges in a state park.

Section 5535.01, Revised Code, divides the public

highways of the state into three classes: state, county and township roads. Subdivision (C) thereof provides: "Township roads include all public highways other than state or county roads." Hence, a township road is an "improved" road, as that phrase is used in Section 5591.21, Revised Code. Further, in Opinion No. 1651, Opinions of the Attorney General for 1947, page 92, the phrase, "improved roads," was held to include township roads.

Boards of township trustees, the state division of parks and recreation, and the director of highways have also been given power by the Legislature to build or repair bridges in certain instances, but the grant of power is permissive rather than mandatory in each case.

Section 505.26, Revised Code, provides that a "board of township trustees may * * * construct, * * * rebuild, repair * * * bridges and viaducts over streets, streams, railroads or other places where an overhead roadway or footway is necessary, * * *." This statute is clearly directory, however, and imposes no duty upon a board of township trustees to construct or repair bridges.

Section 1541.03, Revised Code, empowers the state division of parks and recreation to construct and maintain certain roads, and provides as follows:

"The division shall have the following powers over all such lands and waters:

* * * * *

"(C) To construct and maintain such roads and drives in, around, upon and to such lands and waters as shall make them conveniently accessible and useful to the public: * * *."

This provision, when first enacted in 1915, reads in part:

"The superintendent of public roads shall have the power to * * * construct and maintain roads and drives in, upon and around such parks, and to the nearest improved public highways to afford reasonable and convenient access of the public thereto, * * *."

It is reasonable to conclude that this grant of authority to the division of parks and recreation also includes, by necessary implication, the power to construct or repair bridges in conjunction with park roads and drives, but the language used appears to be directory and does not warrant the conclusion that the Legislature intended to impose upon the state division of parks and recreation the duty to build or repair all bridges, within the bounds of a state park, located on state, county or township roads.

Section 5511.05, Revised Code, authorizes the director of highways to construct or repair roads, or bridges thereon, leading from a state highway to a state park, or roads

or bridges within a state park. However, the language is permissive rather than mandatory, and imposes no duty upon the director of highways. He "may establish, construct, reconstruct, improve, repair, and maintain" roads, including bridges by legislative definition, but the exercise of this authority is clearly discretionary.

In conclusion, therefore, it is my opinion that, although a board of township trustees, the division of parks and recreation, or the director of highways may repair an existing bridge or build a new bridge, on that part of a county or township road which lies within a state park, the duty to repair or construct such bridges is clearly imposed upon a board of county commissioners by Section 5591.21, Revised Code.