

2141.

BRIDGES AND CULVERTS—COUNTY COMMISSIONERS HAVING ERECTED A BRIDGE WITHIN MUNICIPALITY ON STREET NOT CONSTITUTING PART OF STATE ROAD NOT REQUIRED TO MAKE REPAIRS ON SUCH BRIDGE—COUNTY COMMISSIONERS NOT AUTHORIZED TO DO MAINTENANCE AND REPAIR WORK ON BRIDGES WITHIN MUNICIPAL CORPORATIONS—EXCEPTION.

1. *The fact that a board of county commissioners may have heretofore erected a bridge within a municipality on a municipal street not constituting a part of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road (sections 2421 and 7557 G. C.) does not operate to charge such board of county commissioners with the making of repairs on such bridge.*

2. *Boards of county commissioners are not authorized to do maintenance and repair work within municipal limits on bridges other than those which the county by virtue of sections 2421 and 7557 G. C. is required to maintain and repair.*

(Previous opinions of this department, opinion 1919, Volume II, p. 1622; opinion 1920, Volume II, p. 1075 referred to.)

COLUMBUS, OHIO, June 6, 1921.

HON. F. M. CUNNINGHAM, *Prosecuting Attorney, Lebanon, Ohio.*

DEAR SIR:—Your letter of recent date is received, reading:

“Will you kindly furnish me with the following information?

First: Whether or not, county commissioners are required to erect or repair bridges on streets within a municipality, which streets are not a part of any county road?

Second: Would the fact that boards of county commissioners had in past years erected such bridges require them to make necessary repairs thereon, at this time?

Third: If not required to make or repair such bridges are boards of county commissioners permitted by law to do so?”

Your three questions have in principle already been answered by this department in an opinion of date December 24, 1919 (Opinions Attorney-General, 1919, Vol. II, p. 1622), of which the first two headnotes read:

“1. County commissioners are by virtue of sections 2421 and 7557 under the duty of keeping in repair those necessary bridges within the cities of the state which are over streams and public canals on state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use; and they are under a like duty as to similar bridges within those villages which do not demand and receive a portion of the bridge fund as authorized by section 2421-1 (108 O. L. 259). If a village does demand and receive a portion of the bridge fund from the county, then the village is under the duty of maintaining such of the bridges mentioned as are wholly within the village.

2. Municipal corporations, both cities and villages, are under the duty of maintaining bridges on streets established by the city or village for the use and convenience of the municipality and not a part of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road.”

And see, also, opinion of this department of date November 9, 1919, appearing Opinions 1920, Vol. II, page. 1075.

Of course, the conclusions of the opinion first referred to, as shown by the summary above quoted, make unnecessary any further discussion of your first question.

Coming to your second question, it is to be observed that in view of the clear division of authority as between county and municipality, as pointed out in the opinion first above referred to, the fact that a board of county commissioners may have in past years erected a bridge on a municipal street not constituting a part of a state road, county road, free turnpike, improved road, abandoned turnpike or plank road cannot operate to charge such county commissioners at this time with repairs on such bridge, and your second question is accordingly answered in the negative.

Similarly, your third question is answered in the negative. Citation of authority is unnecessary to the point that county commissioners have such authority only as is conferred on them by statute in express terms or by necessary implication. No statute has been found on the subject of repair of bridges within municipalities other than those discussed in the opinions of this department above noted; and assuredly the fact that municipalities are fully empowered by statute to erect, maintain and repair bridges within their limits forbids the inference that counties are *permitted* to do maintenance and repair work within municipal limits on bridges other than those within such limits as the county is required to maintain and repair.

In connection with the foregoing, the case of *State ex rel. Sherman vs. Carlisle, et al.*, 2 N. P. (N. S.) 627; 15 O. D. 165, has not been overlooked. In that case, the common pleas court of Franklin county refused to enjoin the county commissioners from expending funds for the repair of a bridge in the city of Columbus not on the line of a state or county road, free turnpike, etc. It was pointed out by the court that the bridge had been originally erected and thereafter at all times kept in repair by the county, and that the entire bridge, substructure and superstructure rested upon property owned by the state of Ohio. It is possible that the conclusion of the court was justified for the reason last given,—that the bridge rested upon property of the state; but however that may be, the case is clearly not to be accepted as general authority, because the construction given by the court to section 860, R. S. (now section 2421, G. C.) is directly contrary to the construction given said section by the supreme court in the case of *Piqua vs. Geist*, 59 O. S., 163.

Respectfully,
JOHN G. PRICE,
Attorney-General.