

of this department that it is the mandatory duty of the board of education of the district in which a crippled child resides to provide for his transportation to the school to which he has been or should be assigned, either within or without the district, if the child is so crippled that he is unable to walk to school.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3227.

BRIDGES AND CULVERTS—COUNTY COMMISSIONERS AUTHORIZED TO REPLACE BRIDGES WITHIN A CONSERVANCY DISTRICT—SECTIONS 2432-1 ET SEQ. (109 O. L. 348) INDEPENDENT OF PROVISIONS OF SECTION 2421 G. C.—MAY REPLACE BRIDGES ON CITY STREETS NOT CONSTITUTING PART OF STATE OR COUNTY ROAD.

Sections 2432-1 et seq. G. C. (109 O. L. 348), authorizing the construction by county commissioners of bridges within a conservancy district to replace those bridges which were removed in the carrying out of the conservancy project, are to be read as independent of the provisions of previously existing section 2421 G. C. Accordingly, county commissioners in proceeding under sections 2432-1 et seq. G. C. are not, in the construction of bridges, limited to city streets forming part of a state or county road, but may replace bridges which were removed from city streets not constituting part of a state or county road.

COLUMBUS, OHIO, June 16, 1922.

HON. FOSTER E. KING, *Prosecuting Attorney, Kenton, Ohio.*

DEAR SIR:—You have submitted for the consideration of this department the following:

“Under and by virtue of section 2421 G. C. the board of county commissioners is limited in the construction and repairing of bridges over streams to state and county roads.

The supreme court in 59 O. S. 163 held that the county commissioners are not required to construct or keep in repair bridges on streets established by the city and not a part of a state or county road, even though the city receives no part of the bridge fund.

There is and has been established in Hardin county a conservancy district under and by virtue of 104 O. L. 13. In the carrying out of the official plan of the district it became necessary to remove all the bridges across the Scioto river and in the conservancy district and in this county. The work of the district consisted of widening, deepening and straightening the Scioto river.

On account of the increased width of the river and the plan of the said district it became impossible to use the present bridges across the river. A part of these bridges are located in the city of Kenton and in the conservancy district and across the Scioto river. A part of these bridges in the city connect up state and county roads. Some of the bridges in the city are used solely to connect up city streets from one side of the river to the other.

House Bill 395 (109 O. L. 348) was passed to take care of the emergency particularly in Hardin county caused by the creating of a conservancy district.

Can the commissioners under House Bill 395 construct and replace all the bridges in the city of Kenton under this act or are they limited in the construction of bridges to section 2421 G. C.?"

Section 2421 G. C. reads as follows:

"The commissioners shall construct and keep in repair necessary bridges over streams and public canals on state and county roads, free turn-pikes, improved roads, abandoned turnpikes and plank roads in common public use, except only such bridges as are wholly in cities and villages 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 commissioners shall construct and keep in repair all bridges in such cities and villages. The granting of the demand, made by any city or village for its portion of the bridge tax, shall be optional with the board of commissioners."

Said section has been the subject of discussion in several recent opinions of this department. See Opinions 1919, Vol. II, p. 1622; 1920, Vol. II, p. 1075; 1921, Vol. I, p. 484. See also the recent case of *Youngstown vs. Sturgess*, 102 O. S. 480. These several opinions deal rather with the keeping in repair of bridges than with original construction. However, the general tenor of all said opinions is in line with the views embodied in the first two paragraphs of your letter to the effect that the limit of the authority of the county commissioners as a general rule is to construct and keep in repair only those bridges within cities on state and county roads, etc., and that it is the duty of the city to construct and keep in repair bridges on those streets which are not part of the line of a state or county road, etc.

Your question is in brief whether the terms of said section 2421 as thus construed are to be read as a limitation upon sections 2432-1 to 2432-4 G. C., comprising the act described in your letter as House Bill 395, appearing in 109 O. L. 348. The title of the latter act is:

"An act to authorize county commissioners to repair, replace and reconstruct bridges removed from rivers, creeks and water courses by reason of the removal thereof in conservancy districts and to authorize county commissioners to borrow and expend money therefor and to exempt the issue of bonds and levies of taxes made for such purposes from certain requirements and limitations."

Section 1 of said act, designated section 2432-1, reads as follows:

"That in all counties in which there has been or may hereafter be established a conservancy district under the act of February 5th, 1914, known as the 'Conservancy Act of Ohio' wherein the official plan for the improvement of rivers, creeks or other water courses required the removal of bridges across such rivers, creeks or water courses in any such conservancy district, and public travel is or will be closed or greatly interfered with in such district and such an urgent and immediate public necessity exists for the repairs, alteration and replacement of bridges or the construction of new bridges over such rivers, creeks or water courses, the county commissioners are hereby authorized to enter into contracts under the

general laws of this state, to remove, alter, repair, replace and construct new bridges over such rivers, creeks or water courses that have been or will be removed therefrom in the process of improvement under said Conservancy Act and appropriate money, levy taxes, borrow money, or issue bonds for such purposes."

Further sections of the act need not be quoted here. It is sufficient for present purposes to say that the remaining sections of the act are consistent with the first section in that they make no distinction whatever on the score of the location of a bridge as between state or county roads on the one hand and municipal streets on the other.

The Conservancy Act which you refer to as appearing in 104 O. L., p. 13, is the same as that described in above quoted section 1 as the act of February 5th, 1914. Moreover, your letter indicates that the entire conservancy district which you refer to is located within Hardin county; and you have stated on a personal call at this office that such is the fact.

It is very clear that said sections 2432-1 to 2432-4 do not deal with the question of bridge construction from the usual standpoint of whether the county or city is to carry out the work. Said sections are dealing with a special situation created by the doing of work in a conservancy district. Therefore, the terms of said sections 2432-1 et seq. are to be dealt with as being special in their nature and from the standpoint of the purpose of the act of which they are a part, as shown by the title of that act above quoted.

It is quite true that the tax levy for the provision of funds with which to erect bridges under sections 2432-1 et seq. is to be made on all the taxable property within the county, as is the case with the construction of bridges, in accordance with section 2421. That fact, however, cannot prevail against the fact as already stated that sections 2432-1 et seq. deal with a conservancy district. In the case at hand, the bridges on the city streets not forming part of a state or county road are within the conservancy district exactly as are those bridges on the streets which do form a part of a state or county road.

From the foregoing considerations it is the opinion of this department and you are accordingly advised that the terms of sections 2432-1 to 2432-4 are to be read as independent of and not subject to any limitation found in section 2421 G. C.

Respectfully,

JOHN G. PRICE,
Attorney-General.

3228.

ADOPTION LAW—NEW YORK CHILD—SOCIETY FOR CARING AND PLACING OF CHILDREN PLACES CHILD WITH FAMILY RESIDING IN CLEVELAND, OHIO, WHICH FAMILY NOW DESIRES TO ADOPT SAID CHILD—PROCEDURE TO BE FOLLOWED.

A minor child is surrendered by its parents, non-residents of Ohio, to a society incorporated under the laws of New York for the purpose of caring for and placing children. Said New York society placed said child with a family residing in Cleveland, Ohio, which family now desires to adopt said child in accordance with the adoption laws of Ohio.