

I think the reasoning of this opinion is in part applicable to your present question. Premium and accrued interest received from the sale of bonds is nevertheless money from the sale of bonds, and Section 2293-29, General Code, which you quote, provides that "Money from the sale of bonds shall be used for the purpose of paying such anticipatory notes." Obviously, if bonds are issued and sold at the time of the maturity of the notes, premium and accrued interest received from such sale not being required for the payment of the notes, must be paid into the bond retirement fund and used for the payment of the bonds. But I think it is clear that the language of Section 2293-29, requiring *all* money from the sale of bonds to be used for the payment of such notes, authorizes the prior application of all such moneys to this purpose in the event circumstances require it.

It may be observed that if bonds were issued at the same rate of interest as that borne by the anticipatory notes, it would only be necessary to use the accrued interest for the purpose of paying the past due interest on the notes, but if bonds are issued at a lower rate, as is usually the case, a portion of the premium would be required to pay this past due interest on the notes and, I think, would be properly applicable to this purpose. In the last analysis, the application of premium and accrued interest from the sale of bonds to the payment of past due interest on anticipatory notes in the event bonds have not been issued and sold until after the maturity of the notes, is in effect applying this money to the same purpose as provided by the legislature, viz. the redemption of the bonds, this for the reason that the amount which would have been needed to redeem the bonds, had they been issued on time, is proportionately reduced on account of the bonds having been sold later than contemplated. The only resultant loss which might occur would be the difference between the interest rate on the notes and the interest rate on the bonds for the past due period, when bonds are sold at a lower rate.

Specifically answering your question, it is my opinion that when notes issued in anticipation of the issuance of bonds are not paid at maturity on account of such bonds being issued and sold subsequent thereto, premium and accrued interest received from the sale of such bonds may be used to pay past due interest on such notes.

Respectfully,

GILBERT BETTMAN,
Attorney General.

3489.

STATE HIGHWAY—LOCATED IN MUNICIPALITY—DUTY OF COUNTY TO ERECT AND MAINTAIN APPROACHES AND GUARD RAILS TO BRIDGES THEREON.

SYLLABUS:

Erection of approaches to bridges discussed.

COLUMBUS, OHIO, August 7, 1931.

HON. O. W. MERRELL, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication in which you present the following inquiry:

"A bridge exists within a municipal corporation, the approaches of which are very steep. In the fall of 1929, a machine left the road and

ran down over an embankment, causing serious injury to persons and property. This was on a state highway within a municipality, as the case might be.

Under the provisions of Section 7563, of the General Code, as amended in 113 O. L. 67, and its related sections, is it the duty of the county or state to construct approaches and guard rail for bridges on state highways inside municipalities?"

In an opinion found in the Opinions of the Attorney General for 1928, page 2531, a comprehensive discussion was made with reference to the relative duties of counties, municipalities, and the state in connection with the maintenance of bridges. Under the facts considered in that opinion, it appeared that a bridge was situated on a state highway. Part of the bridge, which was the subject of inquiry, was located within a municipality and part without. There were other complicated facts which need not be mentioned herein. The following is quoted from the syllabus of said opinion:

“* * * *

2. The county is required to maintain and keep in repair the portion of said bridge situated within the limits of the municipality, except that portion thereof which the railroad is required to maintain.

* * * *

4. The state may co-operate with the county, as to the portion the county is required to maintain within the municipality.

5. The county may co-operate with the state in the reconstruction of that portion of said bridge which lies outside of the municipality.

6. The city may voluntarily co-operate with the county, or may co-operate with both county and state as to the portion of said bridge within the municipality which the railroad is not required to maintain.”

In the body of the opinion reference is made to other opinions wherein it is definitely concluded that it is the duty of the county to maintain bridges on state highways within municipalities and the duty of the state to construct and maintain such bridges outside of municipalities. It must be kept in mind that prior to the enactment of the so-called Norton-Edwards Act in 1927, it was the primary duty of the county to construct and maintain bridges on both state and county roads. Section 7557, General Code, reads:

“The county commissioners shall cause to be constructed and kept in repair, as provided by law, all necessary bridges in villages and cities 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, free turnpikes, improved roads, transferred and abandoned turnpikes and plankroads, which are of general and public utility, running into or through such village or city.”

While this section was modified by the Norton-Edwards Act with reference to bridges on state roads outside of municipalities it appears not to have been disturbed with reference to bridges within municipalities. However, your inquiry relates to approaches to bridges rather than the bridges proper.

Section 7563 of the General Code, as amended by the 88th General Assembly, reads:

"The board of county commissioners shall erect or cause to be erected and maintained where not already done, one or more guard rails on each end of a county bridge, viaduct or culvert more than five feet high. They shall also erect or cause to be erected, where not already done one or more guard rails on each side of every approach to a county bridge, viaduct or culvert if the approach or embankment is more than six feet high. They shall also protect, by suitable guard rails, all perpendicular wash banks more than eight feet in height, where such banks have an immediate connection with a public highway, *other than state highways*, or are adjacent thereto, in an unprotected condition, but in such cities and villages as by law receive part of the bridge fund levied therein, such guard rails shall be erected by the municipality, *and on state highways such guard rails shall be erected and maintained by the department of state highways.*"

The above section contains the same language as before amendment except the italicised portions which were added by the amendment. The history of the legislation will indicate that the purpose of the amendment was to make the law relating to the construction of approaches harmonize with the general law relative to the construction of bridges. In other words, since the law had been amended so as to require the state to construct roads and bridges on the state highway system it seemed inconsistent to require the county to construct bridges and guard rails thereon. While the last sentence of amended section 7563, General Code, standing alone, could be construed so as to require the state to construct approaches to all bridges on state highways, said section is in pari materia with a number of other sections which must be construed in connection therewith. By the terms of Section 1189-2, of the General Code, the state must acquire the consent of a municipality before it may make an improvement therein; and in Section 1189, General Code, as amended by the 88th General Assembly, it is stated that:

"When any road or street into or through a municipality is designated as a state highway, such action shall in no way relieve the county commissioners of their obligations for the construction or maintenance of bridges as set forth in section 7557 of the General Code."

It will be noted that Section 1189, General Code, above mentioned, was amended after the amendment of Section 7563, supra. It therefore appears that the legislature did not intend to shift to the state the primary obligation of constructing bridges within municipalities on state highways. The legislative intent is the pole star of all judicial interpretation and it is my opinion that in the amendment of Section 7563, supra, the legislature intended to provide that the state should construct approaches only to bridges on state roads outside of municipalities and there is no duty on the part of the state to construct approaches to bridges within municipalities.

In specific answer to your inquiry, it is my opinion that it is the duty of the county to erect and maintain approaches and guard rails to bridges located on state highways within municipalities.

Respectfully,

GILBERT BETTMAN,
Attorney General.