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1. BRIDGE ON PRIVATE RIGHT OF WAY—VILLAGE CAN NOT EXPEND PUBLIC FUNDS TO MAINTAIN OR RECONSTRUCT SUCH BRIDGE.
2. COUNTY NOT AUTHORIZED TO MAINTAIN OR RECONSTRUCT BRIDGE ON PRIVATE RIGHT OF WAY—FACT COUNTY BUILT BRIDGE SOME YEARS AGO CAN NOT OPERATE TO CHARGE COUNTY WITH DUTY TO MAINTAIN BRIDGE.

## SYLLABUS:

1. A village cannot expend public funds to maintain or reconstruct a bridge on a private right of way.
2. A county is not authorized to maintain or reconstruct a bridge on a private right of way, and the fact that the county had built the bridge some years prior thereto cannot operate to charge the county with the duty to maintain the bridge.

Columbus, Ohio, March 11, 1949

Hon. William G. Batchelder, Jr., Prosecuting Attorney  
Medina County, Medina, Ohio

Dear Sir:

I have received your request for an opinion, which reads as follows:

"A county ditch passes through the Village of Lodi, this county, in a northerly and southerly direction. A north-south village street runs about thirty feet east of said ditch, and paralleling it. A. owns land situate west of said ditch, and street, the eastern boundary of which land is the center line of the ditch. Between the village street and A.'s land is a strip of land owned by a railroad. The only means of ingress to and egress from A.'s property to the village street is via an old driveway which, by means of a small bridge, crosses the ditch and railroad property.

"More than twenty-five years ago this bridge was constructed by the then Medina County Surveyor, at the expense of Medina County solely. For years thereafter the County maintained the bridge, and it was used by A. and others living to the west of the ditch. Several years ago a finding was made by a state examiner, for such maintenance, on the basis that the driveway to and from said bridge was a private right-of-way.

"The bridge is now unsafe for traffic, and A. is demanding that either the Village of Lodi or the County of Medina construct a new bridge or repair the old one, at no cost to him. Both the solicitor of the village and myself take the view that neither the village nor the county can do either.

"While the village, several years ago, hung some red lanterns on the bridge when its condition became unsafe, at no time has the Council ever accepted the drive as a village alley or street. Neither has the county nor the township ever established this drive as a public highway, at least as far as any road records indicate.

"Will you please advise me whether either the Village of Lodi or the County of Medina can expend any funds to reconstruct or repair this bridge."

Your request can be broken down into two questions:

First: Can the Village of Lodi expend any money to reconstruct or repair a bridge crossing a county ditch on a driveway which is not a dedicated street but which is the property owner's only method of ingress and egress to and from the street.

Second: Can the County of Medina expend any money to reconstruct or repair a bridge crossing a county ditch on a driveway which is not a dedicated street, when the county surveyor originally built the bridge and maintained it for a number of years?

Taking up the first question, the powers of a municipality with respect to bridges are set out in the following statutes:

Section 3629:

“To lay off, establish, plat, grade, open, widen, narrow, straighten, extend, improve, keep in order and repair, light, clean and sprinkle, streets, alleys, public grounds, places and buildings, wharves, landings, docks, bridges, viaducts, and market places, within the corporation, including any portion of any turnpike or plank road therein, surrendered to or condemned by the corporation.”

Section 3714:

“Municipal corporations shall have special power to regulate the use of the streets, to be exercised in the manner provided by law. The council shall have the care, supervision and control of public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts, within the corporation, and shall cause them to be kept open, in repair, and free from nuisance.”

The former is contained under a chapter entitled “Enumeration of Powers—Municipal Corporations,” under the heading “Streets and Parks.” The latter is in a chapter entitled “Streets and Public Grounds.” Although these two statutes do not specifically so provide, it is my opinion that the word “bridges” in each of the above statutes refers to bridges on public grounds or connecting public streets. This is borne out by the following quotation from McQuillen on Municipal Corporations, Section 2323:

“All expenditures of public money by municipalities and indebtedness created by them, must be for a public and corporate purpose, as distinguished from a private purpose, \* \* \*.”

Therefore, to come within the statute it must be shown that the driveway in question is a public street. The following statute is in point:

## Section 3723:

“No street or alley dedicated to public use by the proprietor of ground in any corporation, shall be deemed a public street or alley, or under the care or control of the council, unless the dedication is accepted and confirmed by an ordinance specially passed for such purpose.”

In interpretation of the above statute, I quote the syllabus from a leading case, *Wisby v. Bonte* (1869), 19 O. S., 238:

“2. Section 63 of the municipal corporation act is not intended as a limitation upon the general powers of the corporation for opening and improving streets, but as a restriction to prevent proprietors, who may lay out ground into lots within the limits of the corporation, from vesting in the corporation the title to streets and alleys, and thus charging the corporation, without its consent, with the duty of keeping them open and in repair.”

Numerous other authorities endorse this interpretation. Some of them are:

- 24 O. C. C. (N. S.) 20;
- 1920 A. G. Opns., Vol. 1, p. 782;
- 31 O. O. 369;
- 40 O. S. 332.

Therefore, since the council never accepted this driveway as a public highway, it is my opinion that the Village of Lodi cannot expend any funds to reconstruct or repair this bridge.

With regard to the second question, the powers of the county commissioners to construct or repair bridges are outlined by statute in Sections 2421 and 7557 of the General Code, which read as follows:

## Section 2421:

“The commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting 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 cities and villages having by law the right to demand, and do demand and receive part of the bridge fund levied upon property therein. \* \* \*”

## Section 7557:

“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 plank roads, which are of general and public utility, running into or through such village or city.”

These statutes set out the full power of the county commissioners with respect to bridges, and restrict such powers to bridges on public roads or connecting public roads. The method of creating county roads by the county commissioners is outlined in Section 6965 and Section 6966, General Code. These statutes require that a road be designated as a county road by the county commissioners before it shall become one. Since you state in your letter that the drive was never established by the county as a public highway, it cannot come within Sections 2421 and 7557 of the General Code. In interpretation of those two sections, I quote from the case of *The State ex rel. Bushnell v. The County Commissioners of Cuyahoga County* (1923), 107 O. S. 465, at 474:

“The conceded facts being that no state or county road exists between the termini of the proposed bridge, it therefore follows that until such time as the board of county commissioners had laid out and acquired a road according to law between such termini it is without power to construct the bridge upon such site.”

The fact that the bridge in question was constructed by the county and was maintained by the county until a finding was made adverse to that maintenance, is answered in the following quotation from 1921 Opn. A. G. No. 2141, Vol. 1, p. 484:

“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.”

“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.”

Therefore, it is my opinion that neither the village of Lodi nor the county of Medina can expend any funds to reconstruct or repair the bridge in question which is located on private property.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.