

vided that "council shall provide for such other ordinary or extraordinary expense as it may deem advisable or necessary for the proper operation or administration," the Legislature intended that such an expense as the one here being considered should be paid by the city council of Alliance, if council deemed it advisable or necessary. While this part of the section must be read with that which precedes it, yet the words "*ordinary or extraordinary*" seem to me to indicate an intention to vest the council with a wide discretion in determining what expenses it may deem advisable or necessary. Having authorized the payment of the ordinary or extraordinary expenses, which to council seems advisable or necessary for the proper operation or administration of the Municipal Court, and having at the same time made provision for the appointment of a substitute judge, which in the ordinary course of events would entail certain expenses, I believe it reasonable to conclude that such expenses were intended to be embraced in the language of Section 1579-226, supra.

As you point out, it was held in Opinion No. 2042, rendered to your Bureau under date of May 1, 1928, that the council of the City of Newark, for want of statutory authority so to do, has no power to fix the compensation of the acting judge of the Municipal Court or to appropriate money to pay the same. The act creating and relating to the Municipal Court of the City of Newark, however, contains no such provision as that above quoted from Section 1579-226.

In view of the foregoing and in specific answer to your question, it is my opinion that upon the facts stated in your letter payment of compensation to a substitute judge from the city treasury of the City of Alliance is legal.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

2267.

ROAD IMPROVEMENT—ZANESVILLE—DISCUSSION OF PROCEDURE—  
OPINION NO. 1334, DISCUSSED.

*SYLLABUS:*

*Further consideration of procedure incident to improvement discussed in Opinion No. 1334, rendered December 6, 1927.*

COLUMBUS, OHIO, June 22, 1928.

HON. CLARENCE J. CROSSLAND, *Prosecuting Attorney, Zanesville, Ohio.*

DEAR SIR:—Acknowledgment is made of the receipt of your communication, as follows:

"Referring to your Opinion No. 1334, and with particular reference to the situation detailed in my communication and drawing which said opinion answered, I wish to ask you your opinion further respecting the following general procedure in the improvement, repair and maintenance of the said Monroe Street bridge.

1. May the council of Zanesville and the commissioners of Muskingum County co-operate in establishing a continuation of a county road into said city and over the west approach of said bridge to a point where the corporation line of Zanesville runs through the middle portion of said bridge?

2. Thereafter may the Muskingum County Commissioners and the City of Zanesville council each separately award a contract to the same bidder for the improvement and repair of that portion of said bridge then being within their respective jurisdictions, and also separately issue their own bonds therefor, assuming that each can issue bonds without exceeding the total bond limitations for such purpose?

3. May the action referred to in the preceding questions be prefaced by an original undertaking and agreement between the commissioners and council to act in accordance with the foregoing methods, and likewise to maintain their respective portions of said bridge afterward?"

In my previous opinion, to which you refer, it was held that the bridge in question could not be constructed by the county commissioners in view of the fact that there was apparently no established road leading from the western terminus of the bridge into the city limits. As was pointed out, the authority and duty of county commissioners to construct bridges is prescribed by Sections 2421 and 7557, General Code, and includes the right and obligation to construct bridges on "state and county roads, free turnpikes, improved roads, abandoned turnpikes and plank roads in common public use." By the terms of Section 2421, bridges on roads of these kinds must be constructed within cities and villages, with an exception not here applicable.

Your first question is whether the council of Zanesville and the commissioners may cooperate in establishing a continuation of a county road into the said city and over the west approach of a bridge to a point where the corporation line of Zanesville runs through the middle portion of said bridge. General authority is conferred upon county commissioners to improve roads under Section 6906 of the Code, which is quoted in the prior opinion. By Sections 6949, et seq., of the Code, the commissioners are authorized to extend any road into or through a municipality when the consent of the council has been first obtained. Accordingly, if it is desired to make the improvement extend into the City of Zanesville, in this instance, I see no reason why the county commissioners cannot proceed under Section 6906, et seq., to improve this road and extend it into the corporation limits on both the east and west. The cooperation of council is apparently only necessary in case a portion of the proposed improvement is actually to be done within the city. In this instance, as I understand the situation, probably the only portion of the improvement to be within the City of Zanesville is the east half of the bridge. I believe it within the power of the council and the commissioners to agree to the establishment and improvement of the road and its continuation into the city in the way indicated.

Your second question is whether the commissioners and council may separately award a contract to the same bidder for the improvement and repair of the portion of the bridge in their respective jurisdictions and also separately issue their bonds therefor.

The duty of maintaining bridges on improved county roads within municipalities is placed upon the county commissioners by Section 2421 of the Code, subject to an exception not applicable here. This duty does not, however, in my opinion, prevent the municipality from also undertaking the construction of bridges located therein.

In Opinions of the Attorney General for 1925, at page 471, it was held that a city was authorized to construct bridges over streams and public canals on state and county roads within the city limits. The conclusion reached by my predecessor was that while the duty is also enjoined upon county commissioners to construct such bridges, the general authority granted to municipalities is such that they clearly have the right, if they so desire, to expend public funds for this purpose. That opinion also held that the city might issue bonds for the purpose of constructing such bridges.

In this instance the bridge lies partly within and partly without the municipality. In so far as that portion which is within the municipality is concerned, I am of the opinion that the City of Zanesville has the authority to issue bonds and make the improvement and since the county commissioners are authorized, if it is necessary, to construct the whole of the bridge, I believe it follows that they have the right to improve that portion not within the municipality and issue bonds to provide funds therefor.

While there is some awkwardness attendant upon the letting of two separate contracts for the same improvement, I do not believe that there will be any insuperable obstacle encountered in so proceeding. Bids can be received concurrently and the awards made, as you suggest, to the same bidder. I accordingly am of the opinion that the county commissioners and the council may each separately award a contract to the same bidder for the proposed improvement and repair of that portion of the bridge within their respective jurisdictions. I am of the opinion that each of such authorities has the right to issue bonds for such improvement. I am, of course, not passing upon any question of bond limitations, since you have stated that I may assume that such limitations will not be exceeded.

It may be suggested that it would be easier for the City of Zanesville to contribute an agreed amount to the county commissioners and then permit the county commissioners to assume entire charge of the contract, but such a course would be of doubtful validity, especially in view of the fact that the issuance of bonds apparently is necessary. While the commissioners could doubtless receive contributions and devote them to the improvement in question, there is no specific authority in law authorizing the city to issue bonds for the purpose of contributing toward the cost of a county improvement. I am, therefore, of the opinion that the award of separate contracts is preferable.

Your third question is whether or not the action of the two authorities hereinabove described can be preceded by an agreement between the two to act in accordance with the procedure outlined and also to maintain the respective portions of the bridge thereafter.

While there is no specific statutory authority for such a course, I can see no objection thereto. While the primary duty of keeping the bridge in repair would, in the absence of contract, rest upon the county commissioners under Section 2421 of the Code, it is also proper for the municipal authorities to provide for such repair under the general powers of a municipality. Accordingly, if council deems it advisable to undertake by contract to assume the obligation of repairing that portion of the bridge located within the municipality, I believe there is power so to do.

Respectfully,

EDWARD C. TURNER,  
*Attorney General.*

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2268.

SCHOOLS—TRANSPORTATION OF PUPILS—BOARD OF EDUCATION  
FUNDS CONFINED TO PUBLIC SCHOOL SYSTEM.

*SYLLABUS:*

*A board of education has no authority to provide and pay from public funds for transportation for pupils who attend high schools other than public high schools; and any payments made for such purpose by a board of education are illegal.*