

In view of the foregoing, and in specific answer to your question, I am of the opinion that where an attorney of a village who is hired pursuant to section 4220, General Code, receives premiums from the said village for executing surety bonds to cover officials of the village, he is not violating the provisions of section 3808, General Code.

Respectfully,

JOHN W. BRICKER,
Attorney General.

4401.

STREET—COMPUTATION OF MILEAGE OF STREETS WITH-
IN MUNICIPALITIES TAKEN OVER BY HIGHWAY DE-
PARTMENT—SECTION 1189, G. C.

SYLLABUS:

No streets within the limits of a municipality which are taken over and added to the state highway system can be considered in computing the five thousand miles of county and township roads and highways which are required to be added to the state highway system during the period from July 1, 1935 to and including June 30, 1936, by the amendment of Section 1189, General Code, which becomes effective July 16, 1935, and no such streets can be considered in computing the minimum miles of such roads and highways required to be added to the state highway system in each county during said period.

COLUMBUS, OHIO, July 9, 1935.

HON. JOHN JASTER, JR., *Director of Highways, Columbus, Ohio.*

DEAR SIR:— I acknowledge receipt of your communication which reads as follows:

“House Bill No. 216, passed by the Ninety-first General Assembly and effective on or about July 15, 1935, requires the Director of Highways to add to the state highway system during the period between July 1, 1935, to and including June 30, 1936, ‘in the manner provided by law five thousand miles of county and township roads to be selected by him, provided that such roads and highways so taken over shall at such time have a duly established right of way of a width not less than fifty feet, and provided that not less than forty miles and not more than seventy-five miles, shall be taken over from each of the eighty-eight counties.’

The question has arisen as to the meaning of the terms 'county and township roads and highways'. You will note that the law makes it mandatory for the Director of Highways to add 'not less than forty miles and not more than seventy-five miles' from each county. In Cuyahoga County the mileage of roads and highways outside the limits of the various incorporated villages and cities totals between ten and fifteen miles. We therefore desire your opinion on the meaning of the above terms and whether or not county and township roads within the limits of municipal corporations retain their character as county and township roads within the meaning of House Bill No. 216 so that they may be included in the mileage which is added pursuant to the provisions of this bill.

Another question arises in this connection due to the language contained in Section 1189 of the General Code, both before and after its amendment by House Bill No. 216. This language is as follows: 'The state routes into or through municipal corporations as the same are now designated or indicated by state highway route markers erected thereon, or as the same may hereafter be designated or indicated as provided herein are hereby declared to be state highways and a part of the state highway system.' The following is a typical situation confronting us: Town A has a through street five miles long. The street connects at each end and county roads, also five miles long. If the Director were to add to the state system the two five-mile strips outside the limits of Town A, would the mileage added to the State Highway System be ten miles or fifteen miles?"

The pertinent part of Section 1189, General Code, as amended by House Bill No. 216 of the 91st General Assembly, which will become effective July 16, 1935, reads as follows:

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In no event shall the total mileage of the state highway system be increased under any of the above provisions to exceed two hundred miles in one year, except that, and in addition thereto, during the period from July 1, 1935 to and including June 30, 1936, the director of highways shall be and he is hereby authorized and directed to take over and add to the state highway system in the manner provided by law five thousand miles of county and township roads and highways to be selected by him, provided that such roads and highways so taken over shall at such time have a duly established right of way of a width not less than fifty feet, and provided that not less than forty miles and not more than seventy-five

miles shall be taken over from each of the eighty-eight counties.

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The state highway routes into or through municipal corporations, as the same are now designated or indicated by state highway route markers erected thereon, or as the same may hereafter be designated or indicated as provided herein, are hereby declared to be state highways and a part of the state highway system. Any routes of the state highway system into or through municipal corporations not now designated by the erection of state highway route markers thereon shall be so designated prior to the first Monday of January, 1930. The director of highways shall be authorized to make any changes which he may think proper in the present routes of the state highway system into or through municipal corporations without notice, provided such changes are made prior to the first Monday of January, 1930. The director is hereby authorized to erect state highway route markers and such other signs directing traffic as he may think proper upon those portions of the state highway system lying within municipal corporations, and the consent of such municipal corporations to such erection and marking shall not be necessary. Subsequent to the first Monday of January, 1930, no change in the route of any state highway through a municipal corporation shall be made except after notice and hearing as hereinbefore provided. No duty of constructing, reconstructing, maintaining and repairing such state highways within municipal corporations shall attach to or rest upon the director of highways; but such director shall be authorized to enter upon such state highways within any municipal corporation and construct, reconstruct, widen, improve, maintain and repair the same, in such manner as may be provided by law, provided the municipal corporation first consents thereto by resolution of its concil or other legislative body. The director shall place in the files of the department a record of the routes of all such state highways within municipal corporations, and shall from time to time cause the same to be corrected and revised to show all changes and additions to the date of such correction, and a copy of such record or any pertinent part thereof certified by the director to be true and correct copy shall be admissible in evidence in any court of the state for the purpose of proving the existence and location of any state highway within a municipal corporation.

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The question you raise is whether county and township roads and highways which have become a part of a municipality remain county or township roads within the meaning of this statute. It is to be assumed that this statute,

in referring to county and township roads, uses said terms as they are defined in Section 7464, General Code, which was originally enacted as part of the highway act, 106 O. L. 574. This section defines "county and township roads" as follows:

"(b) County roads shall include all roads which have been or may be established as a part of the county system of roads as provided for under sections 6965, 6966, 6967 and 6968 of the General Code, which shall be known as the county highway system, and all such roads shall be maintained by the county commissioners.

(c) Township roads shall include all public highways of the state other than state or county roads as hereinbefore defined, and the trustees of each township shall maintain all such roads within their respective townships; and provided further, that the county commissioners shall have full power and authority to assist the township trustees in maintaining all such roads, but nothing herein shall prevent the township trustees from improving any road within their respective townships, except as otherwise provided in this act."

In referring to this section, an opinion appearing in Opinions of the Attorney General for 1928, Vol. III, page 2286, says:

"Manifestly this section is comprehensive of all public highways in the state, except, of course, streets located within the boundaries of a municipality."

It is true that a county road which becomes a city street by reason of annexation of territory to a city retains its character as a county road within the meaning of Sections 2421 and 7557, General Code, with reference to the duty of the county commissioners to construct and maintain bridges thereon. *Terminal Co. vs. Cincinnati*, 94 O. S. 269; *Youngstown vs. Sturgess*, 102 O. S. 480; *State, ex rel. vs. Blakemore*, 116 O. S. 650; *State, ex rel. vs. County Commissioners*, 107 O. S. 465; *County Commissioners vs. Bradlyn*, 123 O. S. 392; and *State, ex rel. vs. Zangerle*, 43 O. App. 30.

However, these sections expressly provide that they shall apply to county roads within municipalities and therefore plainly show that such term is not used as it is defined in Section 7464. Section 7464 makes it the duty of the county commissioners to maintain all county roads and the duty of the township trustees to maintain all township roads. To hold that these roads retain their character within the meaning of this section would be to make the county commissioners and township trustees liable for the maintenance of county roads and township roads within municipalities. This clearly is not the law.

In the case of *Sroka vs. Green Cab Co.*, 35 O. App. 438, the following was held:

“There is no provision that it is the duty of county commissioners to maintain public streets or county roads in proper repair, but they are liable, however, in their official capacity for neglect wherever it is proper to keep the roads in repair. The duties are set forth in Section 7464, General Code, which provides that county roads shall be maintained by the county commissioners, and from it we observe that the roads applicable to this maintenance by the county commissioners are all roads which have been or may be improved by the county or heretofore built by the state and not a part of the state system, together with such roads as may be constructed by the township to conform to the standard for county roads.

From a reading of the petition we find no relationship to the roads in question, and thus there does not appear any duty on the part of the county commissioners to maintain the road in repair, and thus appears the deficiency of the petition and for which the demurrer lies.

In the consideration of the question we cannot pass without noticing that the road in question was within the village of Garfield Heights. A county road loses its character as such as soon as it becomes located within the limits of an incorporated village. Thereafter it must be treated as one of the streets of the village. *City of Steubenville vs. King*, 25 Ohio St., 610, cited with approval in *Harkness & Cowing Co. vs. Village of St. Bernard*, 6 Ohio App., 369.”

I am of the opinion therefore that no streets within the limits of a municipality which are taken over and added to the state highway system can be considered in computing the five thousand miles of county and township roads and highways which are required to be added to the state highway system during the period from July 1, 1935 to and including June 30, 1936 by the amendment of Section 1189, General Code, which becomes effective July 16, 1935, and that no such streets can be considered in computing the minimum miles of such roads and highways required to be added to the state highway system in each county during said period. Of course, where a county does not have forty miles of county and township roads which are not already on the state highway system, it would not be necessary to add the minimum requirement for that county since the law does not require an impossible thing to be performed.

Respectfully,

JOHN W. BRICKER,
Attorney General.