

OPINION NO. 88-039

Syllabus:

1. Pursuant to R.C. 307.15, a city and county may enter into a cooperative agreement concerning repairs on a bridge on a county road within municipal limits, whereby the city authorizes the county to perform repairs on behalf of the city, and the city agrees to reimburse the county for a portion of the cost of the repair.
2. A county and municipality may enter into an agreement pursuant to R.C. 153.61 for repair of a bridge on a county road within municipal limits, whereby the county has exclusive charge of all details of the repair work and the cost is apportioned between the county and municipality.
3. A city and county may enter into a cooperative agreement pursuant to R.C. 5557.02 whereby the city assumes part of the cost of repairing a bridge on a county road within municipal limits if the repairs contemplated constitute "road improvements" as that term is used in R.C. 5555.06.
4. Proposed repairs on a bridge on a county road within municipal limits constitute "road improvements" as that term is used in R.C. 5555.06, when the bridge repairs are part of a larger road improvement project involving the county road, as well as the bridge itself, and the repairs are of such a nature as to require prior approval by the board of county commissioners of surveys, plans, profiles, cross sections, estimates and specifications.

To: Gregory A. White, Lorain County Prosecuting Attorney, Elyria, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, June 15, 1988

I have before me your request for my opinion regarding whether a city and county may, through a cooperative agreement, share the cost of repairing a bridge located on a county road within a municipality. A member of your staff has indicated that the repairs contemplated by the agreement involve major structural work upon the bridge and are beyond the scope of routine maintenance. The agreement provides that the city will assume part of the cost, while the county will be responsible for all other aspects of the work involved.

It is a well established principle that a board of county commissioners, being a creature of statute, may exercise only those powers expressly conferred on it by statute or necessarily implied therefrom. See *State ex rel. Shriver v. Board of Commissioners*, 148 Ohio St. 277, 74 N.E.2d 248 (1947); 1985 Op. Att'y Gen. No. 85-058. A municipality is not limited solely to statutory authority, but draws its primary authority from the home rule provisions of the Ohio Constitution. *Village of Perrysburg v. Ridgway*, 108 Ohio St. 245, 140 N.E. 595 (1923) (syllabus, paragraph one) ("all municipalities derive all their 'powers of local self-government' from the Constitution direct, by virtue of Section 3, Article XVIII, thereof"); Ohio Const. art. XVIII, §3 ("[m]unicipalities shall have authority to exercise all powers of local self-government...").

A municipality has constitutional and statutory authority to maintain, improve and repair a bridge on a county road within the municipal limits. *Perrysburg*, (syllabus, paragraph two) ("power to establish, open, improve, maintain and repair public streets within the municipality...is included within the term 'powers of local self-government' "); R.C. 717.01(P) ("municipal corporation may...improve...public highway"¹); R.C. 717.01(R) ("municipal corporation

¹ The term "public highway" includes a county road. R.C. 5535.01 ("[t]he public highways of the state shall be divided into three classes: state roads,

may...improve...bridges..."); R.C. 723.01 ("legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways...[and] bridges...within the municipal corporation, and the municipal corporation shall cause them to be kept open, in repair, and free from nuisance"). See also *Union Sand & Supply Corp. v. Village of Fairport*, 172 Ohio St. 387, 176 N.E.2d 224 (1961) (syllabus) (municipal powers with respect to streets derive from Ohio Const. art. XVIII, §3, fortified by statutes).

A county also has authority to repair a bridge on a county road within a municipality. R.C. 5591.02 states: "The board of county commissioners shall construct and keep in repair all necessary bridges in municipal corporations on all state and county roads...running into or through such municipal corporations." I note that as a general rule the county's obligation to repair a county road stops at the municipal limits. See, e.g., *Village of Peninsula v. Summit County*, 27 Ohio App.3d 252, 500 N.E.2d 884 (Summit County 1985) (county roads incorporated into a municipality become a municipal responsibility under R.C. 723.01), *motion to certify overruled*, Case No. 85-1337 (Ohio Sup. Ct. Oct. 16, 1985). Pursuant to R.C. Chapter 5557, the county retains discretionary authority to maintain and improve county roads in municipalities provided that the municipality consents. R.C. 5557.02 (board of county commissioners may construct road improvement in municipality with prior municipal consent); R.C. 5557.08 (board of county commissioners may repair part or all of a county road in municipality with consent of municipality); R.C. 5557.01 ("road" includes county road or any part thereof). Thus, R.C. 5591.02 imposes a duty upon the board of county commissioners to construct and keep in repair bridges on county roads within municipal limits and R.C. Chapter 5557 provides the board of county commissioners with a method of accomplishing the work necessary to discharge that duty. Although the county's duty to repair a bridge on a county road within municipal limits relieves the municipality of its duty to repair under R.C. 723.01, see *Carney v. McAfee*, 35 Ohio St.3d 52, 517 N.E.2d 1374 (1988) (city not liable under R.C. 723.01 for bridges which the state is required to repair, also noting county's duty under R.C. 5591.02); 1981 Op. Att'y Gen. 81-007 (county has actual duty of repair under R.C. 5591.02), the county's duty does not abrogate the municipality's discretionary authority to repair such bridges pursuant to Ohio Const. art. XVIII, §3 and R.C. 717.01(P), (R).²

As both the county and the municipality have authority to repair a bridge on a county road within municipal limits, the issue your question presents is whether they have authority to cooperate and to share the costs of such repair. A municipality's constitutional home rule powers, Ohio Const. art. XVIII, §3, authorize it to enter into agreements related to otherwise authorized municipal functions.³ However, in order for a county to participate, it is necessary to find specific statutory authority allowing it to enter into such an agreement.

county roads, and township roads"). The term "county road" is defined at R.C. 5535.01(C) as "all roads...established as a part of the county system of roads." This definition includes any bridges on the road. R.C. 5501.01(C) ("[a]s used in Chapters...5535...'[r]oad' or 'highway' includes bridges...on...such road or highway"). See also 1981 Op. Att'y Gen. No. 81-083 ("[i]n most instances, a bridge is considered to be a part of the road which passes over it. *Hanks v. Board of County Commissioners*, 35 Ohio App. 246, 172 N.E. 423 (Adams County 1929); *Van Scyoc v. Roth*, 2 Ohio Misc. 155, 205 N.E.2d 617 (C.P. Monroe County 1964)").

² See, e.g., *Carney*, 35 Ohio St. 3d at 55, 56, 517 N.E.2d at 1377, 1378 (actual performance of work by city not improper, although city assumes no responsibility thereby); R.C. 4504.03-.05 (city may spend its portion of motor vehicle license tax on cooperative repairs of roads, including county roads); 1974 Ohio Att'y Gen. Op. No. 74-007 (municipality cannot recover costs from county incurred when the municipality itself repairs a bridge which the county is obligated to repair under R.C. 5591.02).

³ I note that the municipality's constitutional authority to enter into agreements with other political subdivisions is subject to applicable

R.C. 5557.02 states, in pertinent part:

The board of county commissioners may construct a proposed *road improvement* into, within, or through a municipal corporation, when the consent of the legislative authority of such municipal corporation has been first obtained. Such consent shall be evidenced by the proper action of the legislative authority, entered upon its records, *and the legislative authority may assume and pay such proportion of the cost of that part of the proposed improvement within the municipal corporation as agreed upon between the board and legislative authority.* If no part of the cost of the proposed improvement is assumed by the municipal corporation, no action on its part, other than the giving of the consent above referred to, shall be necessary, and all other proceedings in connection with such improvement shall be conducted in the same manner as though the improvement were situated wholly outside a municipal corporation. (Emphasis added.)

One of my predecessors held that a road improvement in which a municipality assumes part of the cost under R.C. 5557.02 is also governed by R.C. 5555.06, and, pursuant to R.C. 5557.02, a municipality may assume part of the cost of a bridge improvement if the bridge improvement falls within the scope of a "road improvement" under R.C. 5555.06. 1932 Op. Att'y Gen. No. 4522, vol. II, p. 886 (construing predecessor statutes G.C. 6911 and G.C. 6949). R.C. 5555.06 states, in pertinent part: "The board of county commissioners may by resolution...find that the

restrictions on the use of municipal funds. The provisions of Ohio Const. article VIII, §6 (limitations on raising money and lending aid and credit) do not prevent a municipality from raising money for or lending credit to a county; however, such funds must be used for a public purpose. *Bazell v. City of Cincinnati*, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968), *appeal dismissed sub nom. Fosdick v. Hamilton County*, 391 U.S. 601 (1968). My predecessor stated in 1977 Op. Att'y Gen. No. 77-049, at 2-175, that the public purpose limitation "is commonly recognized to be a doctrine based on due process of law...that the taking of one's money by taxation is lawful only when the expenditure of those monies fulfills a public purpose." Viewed in this light, the public purpose is the consideration which supports the expenditures. Thus the municipality may not simply donate funds to the county, but must achieve some public purpose by making the funds available. This public purpose must consist of some benefit to the municipality beyond that which it shares generally with the entire county. *City of Cleveland v. Public Library Board*, 94 Ohio St. 311, 316, 114 N.E. 247, 249 (1916) ("[w]hile...[a city and a school district] are substantially the same in population and territory, yet they are nevertheless separate and distinct political subdivisions. Therefore the city...cannot make a gift to the [school district], notwithstanding such a gift is for the benefit of substantially the same public"). Given this, it may appear that no consideration or public purpose supports the expenditure of municipal funds for repair of a bridge which R.C. 5591.02 requires the county to repair. However, a county may not be compelled to repair any particular bridge. The need for repairs at a particular time or in a particular fashion is an administrative decision within the discretion of the board of county commissioners, based on time, means, and the number of other bridges in the county needing repair. *State ex rel. Emerson v. Commissioners*, 49 Ohio St. 301, 304-5, 30 N.E. 785, 786 (1892) (construing R.S. 4938, predecessor statute of R.C. 5591.02). Further, the municipality acquires authority to approve plans and specifications by assuming part of the cost. See R.C. 5557.03. See also *State ex rel. Ellis v. Blakemore*, 116 O.S. 650, 157 N.E. 330 (1927) (a city which does not assume part of the cost of a bridge repair is limited to consent to or refusal of county repairs). Thus the municipality may derive a public benefit from its expenditure of funds. The adequacy of that benefit as a public purpose, or as consideration, is a matter which rests within the sound discretion of the legislative body of the municipality. *Bazell, supra*, (syllabus, paragraph two); *Cleveland v. Public Library Board, supra*; *Beal v. City of Elyria*, 26 Ohio Misc. 282, 271 N.E. 571 (C.P. Lorain County, 1971).

public convenience and welfare require the improving of any public road...and constructing or *reconstructing any bridges* and culverts necessary for such improvement." (Emphasis added.) In 1929 Op. Att'y Gen. No. 521, vol. I, p. 790 (syllabus, paragraph two), this language was construed to mean that bridge construction may be categorized as a "road improvement" for purposes of R.C. 5555.06, if the bridge construction is part of a larger road improvement project on a county road. I note that while R.C. 5557.02 governs "road improvements" within municipal limits, R.C. 5557.08 governs the "repair" of all or part of a county road within a municipality. R.C. 5557.08 contains no provision for the municipality to assume part of the cost of a repair. Your question thus requires closer analysis of the distinction between the terms "improvement" and "repair." One of my predecessors, considering a similar juxtaposition of "improvement" and "repair" in the previous General Code sections dealing with county roads, found that "the meaning of the word ['improvement'] as used in any particular section must be determined from the context." 1915 Op. Att'y Gen. No. 950, vol. III, p. 2042 (syllabus, paragraph one). 1915 Op. No. 950 stated that, although in some contexts "improvement" means totally new construction, in other contexts, "improvement" may imply work on a road "so extensive as not to be fairly denominated a repair" or "any sort of road work requiring the making of surveys, plats, profiles, specifications and estimates, and the word therefore may include not only the building of a new road, but also the making of a repair if the repair be of such a character as to require the making of surveys, plats, profiles, specifications and estimates." 1915 Op. No. 950, at 2043, 2044. R.C. 5557.03 provides that the legislative authority of a municipality may consider assumption of part of the cost of a proposed road improvement "after the approval by [the board of county commissioners] of the surveys, plans, profiles, cross sections, estimates, and specifications...." Submission of such materials to the board of county commissioners for work on bridges, including existing bridges, is required by the procedures established for county approval and contracting for "road improvements" under R.C. 5555.06-13. I note that not all work on existing bridges or roads requires that specifications, estimates, etc. be submitted to or approved by the board of county commissioners. For example, R.C. 315.13 states that "[t]he county engineer shall make all emergency repairs on all roads, bridges, and culverts in the county....such engineer shall...proceed at once to make such repair by force account, without preparing plans, specifications, estimates of cost, or forms of contract." Construing R.C. 5557.06-13 *in pari materia* with R.C. 315.13 and R.C. 5555.06-13,⁴ I conclude that the term "repair" as used in R.C. 5557.08 is intended to cover types of repair work that do not involve the specific approval of the board of county commissioners, while "road improvement," as used in R.C. 5557.02, includes both new construction of a bridge and bridge repair work which, pursuant to R.C. 5555.06, is part of a road improvement project involving both the county road and the bridge and which requires prior approval of "surveys, plans, profiles, cross sections, estimates and specifications" by the board of county commissioners. Therefore the county and municipality may enter a cost sharing agreement pursuant to R.C. 5557.02, if the bridge repairs are part of a larger road improvement on the county road requiring prior approval of "surveys, plans, profiles, cross sections, estimates and specifications" by the board of county commissioners under R.C. 5555.06. If the bridge repairs are not part of additional work on a county road, the board of county commissioners must follow the approval, bidding, and contracting requirements of R.C. Chapter 153, and R.C. 5555.06 does not apply. 1929 Op. No. 521 (syllabus, paragraph three) (construing predecessor statutes G.C. 2343, *et seq.*).

R.C. 153.61 states:

Any county or counties and any municipal corporation or municipal corporations may enter into an agreement providing for the joint construction, acquisition, or improvement of any public work,

⁴ "Statutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent." *State ex rel. Pratt v. Weygandt*, 164 Ohio St. 463, 132 N.E.2d 191 (1956) (syllabus, paragraph two).

public building, or improvement benefiting the parties thereto and providing for the joint management, occupancy, maintenance, and repair thereof. Any such agreement shall be approved by resolution or ordinance passed by the legislative authority of each of the parties to such agreement, which resolution or ordinance shall set forth the agreement in full and shall authorize the execution thereof by designated official or officials of each of such parties, and such agreement, when so approved and executed, shall be in full force and effect.

Any agreement entered into under authority of this section shall contain the following provisions:

(A) *The method by which the work, building, or improvement, to be specified therein, shall be constructed, acquired, or improved, and specifically a designation of one of the parties to take and have exclusive charge of any and all details of construction, acquisition, or improvement, including any advertising for bids and the award of any construction or improvement contract.* Except as otherwise provided in this division, the procedure generally applicable to the party so designated shall be followed in the use of force account or the advertising for bids and awarding of a contract. Section 153.36 of the Revised Code does not apply to the building or the addition to or alteration, repair, or improvement of a jail undertaken pursuant to a joint agreement provided for in this section.

(B) The manner in which the title to the public work, building, or improvement including the site and interests in real estate necessary therefor, is to be held;

(C) The manner in which the public work, building, or improvement is to be managed, occupied, maintained, and repaired, and specifically a designation of the person, officer, or body to be responsible for such management, maintenance, and repair. If the public work, building, or improvement involves only a multicounty, municipal-county, or multicounty-municipal jail, workhouse, or correctional facility, the agreement may delegate management, maintenance, and repair responsibilities to a corrections commission established pursuant to section 307.93 of the Revised Code.

(D) *An apportionment among the parties of the cost of jointly constructing, acquiring, or improving such work, building, or improvement and of jointly managing, maintaining, and repairing the same.*

Each party to such an agreement may issue bonds for its portion of the cost of such construction, acquisition, or improvement if sections 133.01 to 133.65 of the Revised Code would authorize the issuance of such bonds by such party alone for the purpose for which it then intends to use the work, building, or improvement.

As used in this section, "construction, acquisition, or improvement" includes acquisition of real estate and interests in real estate therefor, site improvements, and furniture, furnishings, and equipment therefor.

The authority granted under this section shall not extend to the construction, acquisition, improvement, or management of any public utility facility.

Public works, public buildings, or improvements constructed, acquired, or improved under this section may be used for any lawful purpose by each party so long as the use thereof is an authorized proper use for that party. (Emphasis added.)

R.C. Chapter 153 contains no general statutory definition of the terms "public works" or "improvements." *Webster's New World Dictionary* 1148 (2d college ed. 1972) defines "public works" as "works constructed by the government for public use or service, as highways or dams." See n. 1, *supra* (discussing inclusion of a bridge in the term "public highway"). Further, because R.C. Chapter 153 sets out the bidding and contract procedures for several types of governmental construction projects, and because R.C. Chapter 153 is entitled "Public Improvements," I infer

that those types of construction expressly named therein are included within the meaning of the term "improvements."⁵ R.C. 153.35 states, in pertinent part:

When it is necessary to alter, repair, or make an addition to a *bridge*, the board of county commissioners in making contracts therefor, shall conform to sections 153.01 to 153.60, inclusive, of the Revised Code, in relation to the erection of bridges as nearly as the nature of the case will permit. (Emphasis added.)

I conclude that a bridge repair is a public work or improvement for purposes of R.C. Chapter 153.⁶ Thus pursuant to R.C. 153.61, a county and municipality may enter into an agreement for joint repair of a bridge on a county road within municipal limits, whereby the county has exclusive charge of the repair work and the cost is apportioned between the county and municipality.

The General Assembly has also given counties and municipalities broad authority to enter into agreements pursuant to R.C. 307.15. That section states, in pertinent part:

The board of county commissioners may enter into an agreement with the legislative authority of any municipal corporation...and such legislative authorit[y] may enter into agreements with the board, *whereby such board undertakes, and is authorized by the contracting subdivision, to exercise any power, perform any function, or render any service, in behalf of the contracting subdivision or its legislative authority, which such subdivision or legislative authority may exercise, perform, or render;* or whereby the legislative authority of any municipal corporation undertakes, and is authorized by the board, to exercise any power, perform any function, or render any service, in behalf of the county or the board, which the county or the board may exercise, perform, or render. (Emphasis added.)

Since a municipality and a county have authority to repair, maintain, and improve a bridge on a county road located within the municipality, it would appear that R.C. 307.15 provides authority for both to enter into a joint agreement to undertake such a project. However, because cooperative agreements are authorized with more specific language in R.C. 153.61 and R.C. 5557.02, it is necessary that I consider whether the more general language of R.C. 307.15 also authorizes such an agreement.

In considering the relationship between R.C. 153.61, R.C. 5557.02 and R.C. 307.15, I am guided by two statutes. R.C. 1.51 states:

If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to *both*. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later adoption and the manifest intent is that the general provision prevail. (Emphasis added.)

⁵ I note that the General Assembly deliberately changed the title of R.C. Chapter 153 from "Public Buildings" to "Public Improvements" in 1982. 1981-1982 Ohio Laws, Part II, 3118, 3123 (Am. Sub. H.B. 538, eff. July 26, 1982), section 3 (uncodified). See also *Lexa v. Zmunt*, 123 Ohio St. 510, 176 N.E. 82 (1931) (syllabus, paragraph two) ("[t]he title of the act...indicates the purpose which induced the enactment of such law, and must be considered in arriving at a correct interpretation of its terms").

⁶ The language in R.C. 153.35 requiring conformity to "sections 153.01 to 153.60, inclusive" indicates which provisions of R.C. Chapter 153 are mandatory. I do not construe this language to exclude bridge repair from being a public work or improvement for purposes of other sections of R.C. Chapter 153. An R.C. 153.61 agreement is clearly permissive, rather than mandatory.

R.C. 307.19 states:

Sections 307.14 to 307.19, inclusive, of the Revised Code, do not repeal or abrogate other sections of the Revised Code authorizing contracts or agreements among particular classes of subdivisions, or modify or impair the force of such sections in respect of contracts or agreements entered into under such sections. *Nor shall such other sections control or limit the making of agreements under sections 307.14 to 307.19, inclusive, of the Revised Code; it being intended that such sections [307.14 to 307.19] shall be applied as fully as though such other sections did not exist.* (Emphasis added.)

I find no conflict between R.C. 307.15, and the special provisions of R.C. 153.61 and R.C. 5557.02. The fact that an agreement is made under R.C. 307.15 does not relieve either the county or municipality of other procedural requirements or legislative steps applicable to approval and performance of bridge repairs. *See, e.g.,* 1938 Op. Att'y Gen. No. 2660, vol. II, p. 1292. In view of the legislative intent expressed in R.C. 307.19 and the rule of statutory construction expressed in R.C. 1.51, I conclude that R.C. 307.14-19 provide an alternative means by which a county and municipality may make agreements. *See generally* 1952 Op. Att'y Gen. No. 1330, p. 284 (the contracting authority provided by G.C. 2450-2, the statutory predecessor of R.C. 307.15, encompasses any power, function, or service that the contracting subdivision or its legislative authority may exercise, perform, or render). A municipality has the authority to perform repair work on a bridge on a county road within the municipality. Therefore, pursuant to R.C. 307.15, the board of county commissioners may undertake, and be authorized by the legislative body of the municipality to perform such repairs on behalf of the municipality pursuant to the terms of an agreement entered into under the authority of that section.

It is therefore my opinion, and you are hereby advised as follows:

1. Pursuant to R.C. 307.15, a city and county may enter into a cooperative agreement concerning repairs on a bridge on a county road within municipal limits, whereby the city authorizes the county to perform repairs on behalf of the city, and the city agrees to reimburse the county for a portion of the cost of the repair.
2. A county and municipality may enter into an agreement pursuant to R.C. 153.61 for repair of a bridge on a county road within municipal limits, whereby the county has exclusive charge of all details of the repair work and the cost is apportioned between the county and municipality.
3. A city and county may enter into a cooperative agreement pursuant to R.C. 5557.02 whereby the city assumes part of the cost of repairing a bridge on a county road within municipal limits if the repairs contemplated constitute "road improvements" as that term is used in R.C. 5555.06.
4. Proposed repairs on a bridge on a county road within municipal limits constitute "road improvements" as that term is used in R.C. 5555.06, when the bridge repairs are part of a larger road improvement project involving the county road, as well as the bridge itself, and the repairs are of such a nature as to require prior approval by the board of county commissioners of surveys, plans, profiles, cross sections, estimates and specifications.