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SEWER — WHEN NECESSARY TO ALTER EXISTING COMBINATION SANITARY AND STORM WATER SEWER, DIRECTOR OF HIGHWAYS MAY ASSUME ENTIRE COST OF SUCH RE-ARRANGEMENT — REQUISITES, IMPROVEMENTS BE IN CONNECTION WITH ROAD IMPROVEMENT TO PROVIDE ADEQUATE HIGHWAY DRAINAGE, WHERE SEWER FUNCTIONS FOR SUCH PURPOSE — OPINIONS ATTORNEY GENERAL, 1941, OPINION 3757, MAY 8, PAGE 351 DISCUSSED.

**SYLLABUS:**

When it becomes necessary to alter an existing combination sanitary and storm water sewer, in connection with a road improvement, for the purpose of providing adequate drainage of the highway, and such sewer functions for said purpose, the Director of Highways may assume the entire cost of such rearrangement. Opinions Attorney General, 1941, opinion 3757, May 8, page 351 discussed.

Columbus, Ohio, September 8, 1944

Hon. Hal G. Sours, Director, Department of Highways  
Columbus, Ohio

Dear Sir:

Acknowledgment is made of your communication in which you request a clarification of Opinion No. 3757 of the Attorney General, dated May 8, 1941, page 351, opinions Attorney General. Said letter reads:

“The above opinion has been adequate up until the present time, when the planning of limited access highways or freeways in metropolitan areas has confronted us with the need of clarification thereof.

These freeways are normally on new locations with extensive widths of right of way to provide the necessary safety features for the handling of large volumes of express traffic.

Intersections of existing streets with the new improvement are frequently wiped out in the provision of new interchange facilities or in the elimination of those existing, as economical need may dictate.

It is quite evident that existing surface and subsurface utili-

ties require radical rearrangement, whether they be privately or municipally owned. There is no question in our minds about the application of Opinion No. 3757 in such cases, except as it may apply to the rearrangement of combined sewer lines so affected.

Sanitary sewer lines in existing public streets or ways are undoubtedly a municipal obligation, since such facilities are in no way utilized by the traveling public.

Municipally owned storm water sewer lines have a different status, in that rearrangement costs are our obligation since such facilities are used in taking care of storm drainage collected in the highway.

Combined sewers are designed for the purpose of carrying both storm water and sanitary sewage in the same sewer. They will be frequently encountered in our freeway improvements in metropolitan areas.

Technically, it is not advisable to attempt to separate the cost of a combined sewer line into sanitary and storm collection facilities for the purpose of requiring the municipality to pay for the sanitary portion and the State the storm portion, hence it appears not unreasonable, under the circumstances, that the State should assume the entire cost of combined sewer rearrangements, particularly when such facilities have most likely been constructed through assessments and would be entirely adequate for many years were it not necessary to disturb them by reason of our freeway improvement.

It is requested that Opinion No. 3757 be clarified in this regard.”

The first branch of the syllabus of the opinion to which you refer reads:

“1. When in the improvement of a portion of a highway, which is a part of the state highway system located within the limits of a municipality, the Director of Highways determines that lines, pipes, mains, conduits or other objects or structures of a public utility located within the limits of such highway, by virtue of a franchise, license or otherwise, constitute obstructions to or interfere with the reconstruction of such highway or will interfere with the use of such highway when reconstructed, he may direct the owner of such utility property to remove or relocate the same at its own expense and if such direction is not complied with he may, as authorized by Section 1199, General Code, remove or relocate such property at the expense of such owner.”

It is apparent from your letter that the question you desire answered is

whether or not the conclusion in the opinion referred to prohibits the state from bearing the cost of readjusting combined sanitary and storm sewers made necessary by a road improvement. It is understood that such sewers function so as to provide necessary drainage for the highway. Of course, the conclusion in said opinion was predicated upon the theory that the easement for highway or street purposes has the dominant right and any other occupancy must be subservient to the interests of the traveling public. Said opinion did not specifically consider the question now propounded.

Since the sewers to which you refer function to drain the highway, it is believed that there is no difficulty in reaching the conclusion that the state may properly provide for the construction or re-adjustment of them. In my Opinion, No. 7004, dated June 23, 1944, it was held, as disclosed by the first branch of the syllabus:

"1. The proceeds of the funds distributed to municipalities under the provisions of Sections 6309-2, 5537 and 5541-8 of the General Code may be used for the maintenance of storm sewers in connection with a street improvement or which are utilized to drain a street, including the salaries of employees engaged exclusively in such maintenance."

In the body of said opinion reference is made to an opinion of the Supreme Court in the case of *Roebling v. Cincinnati*, 102 O. S., 461, wherein it was pointed out that the provision for drainage is one of the most essential elements of street construction.

Under the circumstances you describe, the paramount purpose in changing the drainage condition is to enable the state to satisfactorily protect its construction, and the fact that such a sewer incidentally carries sanitary sewage, would not inhibit such an expenditure.

Accordingly you are specifically advised that when it becomes necessary to alter an existing combination sanitary and storm water sewer, in connection with a road improvement, for the purpose of providing adequate drainage of the highway, and such sewer functions for said purpose, the Director of Highways may assume the entire cost of such re-arrangement.

Respectfully,

THOMAS J. HERBERT  
Attorney General