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HIGHWAYS, DIRECTOR OF— HAS MANDATORY DUTY TO MAINTAIN, REPAIR AND CENTER LINE PAINT ANY SECTION OF STATE HIGHWAY, INCLUDING BRIDGES AND CULVERTS WITHIN VILLAGE—REQUEST MUST BE MADE BY COUNCIL OR OTHER LEGISLATIVE AUTHORITY OF VILLAGE AND BE APPROVED.

SYLLABUS:

Upon the request by and approval of the council or other legislative authority of a village, the director of highways has the mandatory duty to maintain, repair and center line paint any section of a state highway, including the bridges and culverts thereon, within the village.

Columbus, Ohio, May 8, 1946

Hon. Ray Bradford, Prosecuting Attorney  
Batavia, Ohio

Dear Sir:

In your request for my opinion you state that in the village of Milford, Ohio, there is a steel bridge on State Highway No. 50 which needs painting and other repairs, and you ask if Section 1178-42, General Code, is applicable to this situation.

Section 1178-42, General Code, in so far as is necessary in answering your question, reads:

*“The director, upon the request by and the approval of the council or other legislative authority of a village, shall maintain, repair and center line paint or the director at his discretion may establish, construct, reconstruct, improve or widen, any section of a state highway within the limits of a village and the director may at his discretion, establish, construct, reconstruct, improve, widen, maintain or repair any section of state highway within the limits of a city, including the elimination of railway grade crossings, and pay the entire or any part of the cost and expense thereof from the state funds; but in all cases he shall first obtain the consent of the council or other legislative authority of such municipal corporation. Any such municipal corporation may cooperate with the director in such work and may pay such portion of the cost thereof as may be agreed upon between the municipality and the director. \* \* \*”* (Emphasis added.)

Section 1178-2, General Code, deals with the powers and duties of the Director of Highways. The last paragraph of that section is in pari materia with Section 1178-42 and should be considered with it. It reads:

*“Except in the case of maintaining, repairing, or center line painting of state highways within villages, which shall be mandatory as required by section 1178-42 of the General Code, no duty of constructing, reconstructing, widening, resurfacing, maintaining or repairing state highways within municipal corporations, or the bridges or culverts thereon, shall attach to or rest upon the director, but he shall be authorized to construct, reconstruct, widen, resurface, repair and maintain the same, with or without the cooperation of any municipal corporation, or with or without the cooperation of county commissioners, upon each municipal corporation consenting thereto, and such work within municipal corporations shall be done as is otherwise provided by law.”* (Emphasis added.)

From the foregoing it plainly is the mandatory duty of the director of highways, upon the request by and approval of the council or other legislative authority of a village, to maintain, repair and center line paint any section of a state highway within that village.

The last sentence of Section 1178, General Code, reads as follows:

*“The word ‘road’ or ‘highway’ when used in this act shall be deemed to include bridges, viaducts, grade separations, appurtenances and approaches on or to such road or highway.”*

The three sections of the General Code hereinbefore mentioned were all enacted as a part of Amended Senate Bill 204, passed by the 96th General Assembly, effective October 11, 1945. The language which appears therein making it the mandatory duty of the director of highways, upon the request by and approval of the council or other legislative authority of a village to maintain, repair and center line paint any section of a state highway within the limits of a village, is new material. This language is plain and unambiguous in imposing this duty upon the director of highways.

In specific answer to your inquiry, it is therefore my opinion that if the council or other legislative authority of the village of Milford desires to make it the duty of the director of highways to maintain, repair and center line paint the state highways within the village of Milford, including the bridges thereon, it may do so by invoking the provisions of Section 1178-42 of the General Code.

Respectfully

HUGH S. JENKINS  
Attorney General