

"The director may appoint additional clerks and stenographers, and such other engineers, inspectors and other employes within the limits of the appropriation as he may deem necessary to fully carry out the provisions of this act; \* \* \*"

Finding such bonds to have been properly executed in accordance with sections 1182-2 and 1182-3, General Code, I hereby approve the bonds and have endorsed my approval thereon.

All of said bonds and papers submitted therewith, are herewith returned.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

z459.

STATE HIGHWAY—ABANDONMENT BY DIRECTOR OF HIGHWAYS—  
REVERTS TO FORMER STATUS—EFFECTIVE DATE OF ABAN-  
DONMENT—PERSONAL INJURY.

*SYLLABUS:*

1. *When the Director of Highways, acting in pursuance to the provisions of section 1189 of the General Code, abandons a part of a state highway, the same reverts to its former status as a county or township road or municipal street.*

2. *Said abandonment becomes effective as of the date when all of the statutory steps have been taken by the Director and he has certified his action to the County Commissioners.*

COLUMBUS, OHIO, April 5, 1934.

HON. PAUL A. BADEN, *Prosecuting Attorney, Hamilton, Ohio.*

DEAR SIR:—Acknowledgment is made of your recent communication requesting my opinion upon the following:

"A State Highway known as US SR No. 127 runs between Hamilton and Eaton, Ohio; as this highway goes out of Hamilton it winds along the west side of the Miami River and then along what is known as Four-mile creek and finally crosses Four-mile creek at a little Village called New Miami.

There are a number of bad turns in this road and as it is heavily traveled it was decided some time in 1931 to reroute the highway according to the map which is herewith enclosed. In pursuance of an agreement with the State Highway Department, the County Commissioners of Butler County, Ohio, purchased the right of way for the new location of US No. 127 and some time before June 23, 1932, the Director of Highways proceeded, in accordance with provisions of Section 1189, to advertise the proposed new location of US No. 127 (known on the map of the Department of Highways as S. H. No. 180) and also the proposed abandonment as a state highway, the proposed abandonment being that portion of the highway designated on the map herewith enclosed as 'old US SR No. 127.'

The hearing was had at the office of the State Highway Depart-

- ment, one mile north of Middletown, Ohio, on June 23, 1932, and as customary at such hearing, no one except the representative of the Director of Highways was present. At the time of the hearing the negotiations for a right of way had not been completed and were not definitely completed until the middle of 1933. Also, at the time of the hearing no contract had been let for the construction of this highway, the first contract being let about August 19, 1932.

After the hearing the Director of Highways approved a Journal Entry setting out the description of the new location and a description of the part abandoned. A copy of this journal entry is herewith enclosed.

The part abandoned is marked on the map herewith enclosed as 'Old U.S. S.R. 127.' After the hearing and about July 15, 1932, a copy of this journal entry was certified to the Commissioners of this county.

On the proposals to bidders and also on the plans of this improvement there is the following certification:

I hereby certify that the making of this improvement will not require the closing to traffic of the present highway S. H. No. 180, Section H. Signed—O. W. Merrell, State Highway Director.'

While the new road was being constructed the State Highway Department maintained traffic over the old road, keeping all their signs in place and doing any work of maintaining that was necessary. The county at no time exercised any jurisdiction over the old road.

It might be stated at this point that the old road which the State Highway Director purported to have abandoned could not under any circumstances be said to be of minor importance nor did it traverse territory adequately served by another state highway.

The old U.S. No. 127 as it approaches the village of New Miami (designated on the map as CokeOtto) crosses Four-mile creek. On January 9, 1934, one Ernest Morrish was driving a Chevrolet tractor and trailer over this bridge when it collapsed, the bridge and truck falling into the creek. Fortunately, neither the driver nor the one riding with him were seriously injured.

At the time of this accident, the new road had not been opened to traffic. However, since the collapse of this bridge cut off all traffic over the old road, the State Highway Department rushed the completion of the new road and opened it to traffic about three or four days after the accident.

A claim has been made for the damages occasioned by the collapse of this bridge and presented to the Butler County Commissioners and the State Highway Department.

The question of the negligence of any one is not involved at this time, the questions upon which we would like your full opinion being as follows:

1. To whom did this highway and bridge belong at the time of the accident, to-wit: January 9, 1934?
2. Assuming that the owners of the truck could prove some negli-

gence in the maintenance of the bridge, who is responsible for the damages to the truck?"

Section 1189 of the General Code, to which you refer, specifies what shall constitute state highways, and provides the method of creation of additional state highways. Said section provides in part:

"\* \* \*

Before establishing any additional highways as part of the state highway system, or making any changes in existing highways comprising the state highway system, the director shall give notice by publication in one newspaper of general circulation in each of the counties in which the proposed highway to be established is located or in which it is proposed to make such changes, once each week for two successive weeks. Such notice shall state the time and place of hearing, which hearing shall be held in the county, or one of the counties, in which said proposed highway or some part thereof is situated, or in which it is proposed to make such changes, and which hearing shall be open to the public and which notice shall further state the route of the proposed highway or the change proposed to be made in an existing highway of the state highway system. The director or a deputy designated by him shall attend such hearing and hear any proof offered on such matter. Any changes made in existing highways by the director or any additional highways established by him following such hearing, shall be certified to the commissioners of the counties interested therein, and a report of such change or addition filed in the office of the director, and the report of the director making such change or establishing such highway shall be placed on file in the office of the department.

\* \* \*

The director shall be authorized, upon giving notice and holding a hearing as hereinbefore provided, to abandon a highway of the state highway system or part thereof which he may determine is of minor importance, or which traverses territory adequately served by another state highway, which abandoned highway shall revert to its former status as a county or township road or municipal street. A report covering such action of the director shall be filed in the office of the director, and the director shall certify his action to the commissioners of the county or counties in which such highway or portion thereof so abandoned is situated."

In your letter you state that a hearing was had in accordance with the provisions of section 1189, supra. You further enclose a copy of the certificate of the Director of Highways to the County Commissioners, dated July 15, 1932, certifying that the said Director put on a resolution on the same date making the change in the highway to which you refer. It also appears that in the same order the Director abandoned as a state highway all that portion of the highway between the points of beginning and ending of the change you mention. In other words, the hearing included both the change and the abandonment.

From the above it will be seen that the abandoned portion reverts to its former status when it is abandoned as a part of the state system. There is nothing definitely stated in the law as of what date the abandonment shall take effect,

and it follows that the abandonment must exist as a matter of law at such time each and all of the steps outlined in the statute have been taken. It further follows that when the Director of Highways complied with all of the requirements of the statutes, and certified his action to the County Commissioners, the old portion of the highway was abandoned as a matter of law. It would not seem that the use of the highway by the traveling public would have any bearing upon the question. Neither would the markings be determinative of the matter. The legislature has provided certain methods for establishing, changing and classifying highways. It further has provided what public authority shall have the responsibility of maintaining and keeping in repair the various highways. The manner of use on the part of the traveling public does not necessarily have any relation to the question as to whether or not a given road as a matter of law has been placed in a designated class.

In this connection, reference is made to section 7464, General Code, which defines state, county and township roads. Also, your attention is invited to section 7467, General Code, which provides that "the state, county and township shall each maintain their respective roads as designated" in the classification set forth in section 7464 and its related sections.

It is noted that in your letter you state that the abandoned portion of the highway could not be said to be of minor importance nor to traverse territory adequately served by another state highway. Without going into the merits of this contention, it would seem sufficient to point out that the statutory notice and procedure were followed and it would seem too late a date to collaterally attack the finding of the Director on such point.

Assuming that the road in question was formerly a county road, it is my opinion, in view of the facts stated, that as a matter of law the abandoned portion of the road you mention became a county road upon the receipt by the County Commissioners of the certification of the Director of Highways as to its being abandoned.

In reference to your second inquiry, it would seem clear that under section 2421, General Code, and its related sections, it is the duty of the County Commissioners to keep in repair bridges on county highways. Also section 2408, General Code, provides in part that the Board of County Commissioners "shall be liable in its official capacity for damages received by reason of its negligence or carelessness in not keeping any such road or bridge in proper repair."

From the above it is evident that if the party you mention can prove that there was negligence, and such negligence was the proximate cause of the injury to the truck, the liability would rest upon the county.

Respectfully,

JOHN W. BRICKER,

*Attorney General.*

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2460.

TOWNSHIP TRUSTEES—ENTITLED TO \$2.50 PER DAY FOR SERVICES  
IN ADMINISTERING POOR RELIEF LAWS—LIMITATIONS.

*SYLLABUS:*

1. *Under section 3294, General Code, the members of a board of township*