

December 19, 2006

Gordon Proctor, Director  
Ohio Department of Transportation  
Central Office  
1980 West Broad Street  
Columbus, Ohio 43223

SYLLABUS:

2006-051

1. When the Ohio Department of Transportation (ODOT) constructs a bridge to carry a county or township road or municipal street over a limited access state highway, the bridge structure is part of the state highway system; however, the road or street that passes over the bridge may be included in the county highway system, the township road system, or the system of municipal streets. (1960 Op. Att’y Gen. No. 1841, p. 667, followed in part and overruled in part, and 1958 Op. Att’y Gen. No. 1605, p. 29, reaffirmed in part).
2. Pursuant to R.C. 5501.11(A)(1), ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of a bridge structure not located in a municipal corporation if the road that passes over the bridge is a county or township road and the road running beneath the bridge is a limited access state highway. ODOT is not responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge; instead, this responsibility rests with the county or township, as determined pursuant to state law.
3. When, as part of the construction of a state highway that is not a limited access highway, ODOT constructs a bridge not located in a municipal corporation to carry a county or township road over the state highway, the bridge is appurtenant to the state highway and ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of the bridge structure pursuant to R.C. 5501.11(A)(1); however, ODOT is not responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge, for this responsibility rests with the county or township, as determined pursuant to state law. When a bridge carrying a county or township road over a state highway that is not a limited access highway is not located in a municipal corporation and is not part of ODOT’s construction of the state highway, the bridge is not appurtenant to the state highway and responsibility for the rehabilitation, reconstruction, maintenance, and repair of both the bridge structure and the wearing surface of the road that passes over the bridge rests with the county or township, as determined pursuant to state law.

4. Except as provided in R.C. 5501.49, R.C. 5517.04, and R.C. 5521.01, ODOT is not responsible for the rehabilitation, reconstruction, maintenance, or repair of a bridge structure that carries a county or township road or a municipal street over a limited access state highway or other state highway within a municipal corporation, or for the maintenance or repair of the wearing surface of the county or township road or municipal street that passes over that bridge structure; instead, this responsibility rests with the county, township, or municipality, as determined pursuant to state law.



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December 19, 2006

OPINION NO. 2006-051

Gordon Proctor, Director  
Ohio Department of Transportation  
Central Office  
1980 West Broad Street  
Columbus, Ohio 43223

Dear Director Proctor:

We have received your request for a formal opinion on several questions concerning duties of the Ohio Department of Transportation (ODOT) with regard to the rehabilitation, reconstruction, maintenance, and repair of bridges, streets, and roads. Your questions are as follows:

1. Is ODOT responsible for the **rehabilitation and reconstruction** of a bridge structure if the road that passes **over** the bridge is a county or township road and the road beneath it is a limited access state highway? Would the answer to this question be the same if the bridge was located within a municipal corporation and the road was a municipal street?
2. Is ODOT responsible for the **maintenance and repair** of a bridge structure if the road that passes **over** the bridge is a county or township road and the road beneath it is a limited access state highway? Would the answer to this question be the same if the bridge was located within a municipal corporation and the road was a municipal street?
3. In responding to Questions 1 and 2, please answer whether a road, which is under the jurisdiction of the county or township, remains part of the county or township highway system as it passes over a bridge that crosses a limited access state highway? If so, is the county or township responsible for the maintenance and repair of the wearing surface of the road as it passes over such a bridge? If not, does the county's or township's responsibility for the road end at the bridge and begin again after crossing the bridge? What if ODOT had no reasonable access to the road from the limited access state highway, i.e., there is no interchange? Would the answers to these questions be the same if the bridge was located within a municipal corporation and the road was a municipal street?

4. Would the answer to questions #1-3 be different if the state highway underneath the bridge was not a limited access highway?

You have informed us that your questions do not pertain to highways that are part of the interstate system and that questions of federal law are not relevant to your inquiry. Accordingly, this opinion addresses only public highways that are not interstate highways.<sup>1</sup>

For the reasons discussed below, we reach the following conclusions:

1. When the Ohio Department of Transportation (ODOT) constructs a bridge to carry a county or township road or municipal street over a limited access state highway, the bridge structure is part of the state highway system; however, the road or street that passes over the bridge may be included in the county highway system, the township road system, or the system of municipal streets. (1960 Op. Att’y Gen. No. 1841, p. 667,

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<sup>1</sup> Highways on the interstate system are considered to be part of the state highway system and are included in the definition of state roads. *See* R.C. 5511.01-.02; R.C. 5535.01; 1960 Op. Att’y Gen. No. 1841, p. 667. They are also part of the federal-aid system and are subject to provisions of federal law. *See* 23 U.S.C.A. § 103 (West 2002 & Supp. 2006). Under federal provisions, a highway includes a road, street, and parkway, and also “a right-of-way, bridge, railroad-highway crossing, tunnel, drainage structure, sign, guardrail, and protective structure, in connection with a highway.” 23 U.S.C.A. § 101(a)(11) (West 2002 & Supp. 2006). The maintenance of highway projects constructed under federal law is governed by 23 U.S.C.A. § 116, which gives the state transportation department (in Ohio, ODOT) the duty of maintenance. 23 U.S.C.A. § 116(a) (West 2002 & Supp. 2006). If the state transportation department is without legal authority to carry out the maintenance of a project constructed on the federal-aid secondary system, or within a municipality, the state transportation department must contract for the maintenance with appropriate county or municipal officials. 23 U.S.C.A. § 116(b) (West 2002 & Supp. 2006). You have informed us that, through uncodified language, ODOT has been given responsibility for the maintenance of interstate highways within the boundaries of municipal corporations. *See, e.g., State ex rel. City of Cleveland v. Masheter*, 8 Ohio St. 2d 11, 221 N.E.2d 704 (1966).

There are also federal provisions governing bridge inspection. The state transportation department is responsible for inspecting, or causing to be inspected, “all highway bridges located on public roads that are fully or partially located within the State’s boundaries, except for bridges that are owned by Federal agencies.” 23 C.F.R. § 650.307(a) (2006). Federal agencies are responsible for the inspection of all highway bridges located on public roads that are fully or partially located within each agency’s responsibility or jurisdiction. 23 C.F.R. § 650.307(b) (2006).

followed in part and overruled in part, and 1958 Op. Att’y Gen. No. 1605, p. 29, reaffirmed in part.)

2. Pursuant to R.C. 5501.11(A)(1), ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of a bridge structure not located in a municipal corporation if the road that passes over the bridge is a county or township road and the road running beneath the bridge is a limited access state highway. ODOT is not responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge; instead, this responsibility rests with the county or township, as determined pursuant to state law.
3. When, as part of the construction of a state highway that is not a limited access highway, ODOT constructs a bridge not located in a municipal corporation to carry a county or township road over the state highway, the bridge is appurtenant to the state highway and ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of the bridge structure pursuant to R.C. 5501.11(A)(1); however, ODOT is not responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge, for this responsibility rests with the county or township, as determined pursuant to state law. When a bridge carrying a county or township road over a state highway that is not a limited access highway is not located in a municipal corporation and is not part of ODOT’s construction of the state highway, the bridge is not appurtenant to the state highway and responsibility for the rehabilitation, reconstruction, maintenance, and repair of both the bridge structure and the wearing surface of the road that passes over the bridge rests with the county or township, as determined pursuant to state law.
4. Except as provided in R.C. 5501.49, R.C. 5517.04, and R.C. 5521.01, ODOT is not responsible for the rehabilitation, reconstruction, maintenance, or repair of a bridge structure that carries a county or township road or a municipal street over a limited access state highway or other state highway within a municipal corporation, or for the maintenance or repair of the wearing surface of the county or township road or municipal street that passes over that bridge structure; instead, this responsibility rests with the county, township, or municipality, as determined pursuant to state law.

### **General Provisions Governing Roads in Ohio**

The General Assembly has addressed the rehabilitation, reconstruction, maintenance, and repair of bridges, highways, streets, and roads in a wide variety of statutes located throughout the Revised Code, rather than in a single comprehensive statute. As was stated in 1988 Op. Att’y

Gen. No. 88-036, at 2-175: “The statutory scheme governing the construction, improvement, and repair of streets and roads within Ohio is complex and confusing.” *See also, e.g., Starcher v. Logsdon*, 66 Ohio St. 2d 57, 61, 419 N.E.2d 1089 (1981) (“there can be no internal consistency amidst the morass of Revised Code sections dealing with roads and bridges” in particular circumstances, and, when statutes are ambiguous on their face, it is the court’s function to construe them to effect a just and reasonable result); *Frevert v. Finfrock*, 31 Ohio St. 621, 623 (1877) (“[r]oad cases, as a class, are attended with difficulty. The statutes relating to roads are and have been for years in much confusion . . .”); *Sparrow v. City of Columbus*, 40 Ohio App. 2d 453, 460, 320 N.E.2d 297 (Franklin County 1974) (“the General Assembly has spoken frequently and voluminously with respect to highways, roads, and streets. To look only at R.C. 5553.02 is to risk overlooking other essential statutory provisions”). Therefore, it is necessary for us to examine numerous statutes, cases, and Attorney General opinions and to determine from these various authorities general principles that provide answers to your questions.

With regard to the classification of roads, R.C. 5535.01 states:

The public highways of the state shall be divided into three classes: state roads, county roads, and township roads.

(A) *State roads* include the roads and highways on the state highway system.

(B) *County roads* include all roads which are or may be established as a part of the county system of roads as provided in sections 5541.01 to 5541.03, inclusive, of the Revised Code, which shall be known as the county highway system. *Such roads shall be maintained by the board of county commissioners.*

(C) *Township roads* include all public highways other than state or county roads. *The board of township trustees shall maintain all such roads within its township.* The board of county commissioners may assist the board of township trustees in maintaining all such roads. This section does not prevent the board of township trustees from improving any road within its township. (Emphasis added.)

Thus, public highways in Ohio are divided into state roads, county roads, and township roads. *See generally* R.C. 505.82(D) (undedicated roads are not part of the state, county, or township road systems).

Although they are not mentioned in R.C. 5535.01, public highways located within municipal corporations are generally classified as streets. *See Village of Peninsula v. Summit County*, 27 Ohio App. 3d 252, 254, 500 N.E.2d 884 (Summit County 1985) (county roads that were incorporated into a municipality “became municipal streets and their repair and maintenance is the responsibility of the municipality under R.C. 723.01,” although they might by agreement become part of the county road system); *see also City of Steubenville v. King*, 23 Ohio St. 610 (1873) (syllabus, paragraph 2); *Sroka v. Green Cab Co.*, 35 Ohio App. 438, 172 N.E. 531 (Cuyahoga County 1928) (syllabus, paragraph 5); 1988 Op. Att’y Gen. No. 88-036 (syllabus,

paragraph 2) (“[a] road that has been established as part of the township road system is considered a city street, rather than a township road, whenever it exists within a city. The city is responsible for the maintenance of the road and is authorized to make improvements upon the road). Municipal streets thus form another class of public highways.

R.C. 5535.08(A) states: “The state, county, and township shall each maintain its roads, as designated in section 5535.01 of the Revised Code.” *See also* R.C. 5501.11(A)(1) (ODOT is required to maintain and repair roads, bridges, and culverts on the state highway system); R.C. 5535.01 (the board of county commissioners shall maintain county roads and the board of township trustees shall maintain township roads); R.C. 5571.02 (the board of township trustees shall keep township roads in good repair); 1994 Op. Att’y Gen. No. 94-025. Further, it is established as a general rule that a municipal corporation is responsible for the maintenance of its streets. *See* Ohio Const. art. XVIII, § 3; R.C. 715.19 (“[a]ny municipal corporation may lay off, establish, . . . extend, improve, keep in order and repair . . . streets, alleys, . . . [and] bridges . . . within such municipal corporation”); R.C. 717.01(P) (each municipal corporation may “[o]pen, construct, widen, extend, improve, resurface, or change the line of any street or public highway”); R.C. 723.01 (the legislative authority of a municipal corporation is responsible for the care, supervision, and control of public highways, streets, and bridges within the municipal corporation); *Village of Peninsula v. Summit County*, 27 Ohio App. 3d at 254; 1988 Op. Att’y Gen. No. 88-036.<sup>2</sup>

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<sup>2</sup> Your request asks about ODOT’s responsibility for the rehabilitation, reconstruction, maintenance, and repair of bridges, streets, and roads in various circumstances. Accordingly, this opinion addresses ODOT’s duties with regard to these matters.

It is important to note, in addition, that Ohio law provides authority for discretionary action and cooperation in matters pertaining to road and bridge construction and maintenance. For example, R.C. 5535.08 provides for various forms of cooperation, stating, in part, that a county or township may by agreement contribute to the repair and maintenance of roads under the control of the other; that the state or a county or township may by agreement expend funds available for road construction, improvement, or repair upon roads inside a village; and that a village may expend funds available for street improvements upon roads outside the village and leading to the village. R.C. 5521.02 authorizes a board of county commissioners to cooperate with the Director of Transportation in various road planning and construction matters, including “the construction or reconstruction of bridges and viaducts, together with the approaches thereto.” Where work is within the limits of a municipal corporation, the consent of the municipal corporation generally must be obtained. R.C. 5521.01-.02. Numerous other statutes also authorize the state, counties, townships, and municipal corporations to cooperate and assist one another, in various ways, with road and bridge construction, rehabilitation, reconstruction, maintenance, and repair. Hence, it may be possible, in a spirit of cooperation, for ODOT and political subdivisions to resolve practical issues regarding the rehabilitation, reconstruction, maintenance, or repair of a street, road, highway, or bridge. *See, e.g.*, R.C. 5501.11(A)(4) (the functions of ODOT with respect to highways include “[c]ooperat[ing] with the counties,

For purposes of various chapters in R.C. Title 55, including R.C. Chapter 5535 and other chapters dealing with roads, highways, and bridges, “[r]oad” and “highway” are defined to include “*all appurtenances to the road or highway, including but not limited to, bridges, viaducts, grade separations, culverts, lighting, signalization, and approaches on or to such road or highway.*” R.C. 5501.01(C) (emphasis added). Hence, it is a general rule that the state, counties, townships, and municipal corporations are responsible for the maintenance and repair of their own roads and of the bridges on those roads. *See, e.g.*, 2000 Op. Att’y Gen. No. 2000-012, at 2-68 (“absent a statute to the contrary, the state and each county and township are required to maintain and repair their own roads, and the bridges situated on those roads”); 1981 Op. Att’y Gen. No. 81-083, at 2-326.

This general rule regarding road and bridge maintenance, however, may be modified by specific statutes applicable to particular circumstances. *See, e.g.*, R.C. 5535.07 (requiring the Director of Transportation to take over, for maintenance purposes, portions of the system of intercounty highways located outside of municipal corporations and not constructed by the state, after they are improved sufficiently by the county, and relieving the counties and townships of the duty of maintenance except with regard to bridge or culvert construction or replacement or any change in the type of construction); R.C. 5591.02 (making the county responsible for constructing and repairing certain bridges in municipal corporations); R.C. 5591.21 (making the county responsible for constructing and repairing bridges over streams or public canals “on or connecting” state, county, and improved roads); 1981 Op. Att’y Gen. No. 81-007, at 2-24 (the specific provisions of R.C. 5591.02 and R.C. 5591.21, which require that the county commissioners be responsible for the construction and repair of certain bridges within municipalities, create an exception to the general provisions of R.C. 723.01).

That more than one public body may be responsible for maintenance on a single bridge is reflected in R.C. 5501.47(A), which requires ODOT to furnish a copy of bridge inspection reports to each party responsible for a share of maintenance on a bridge where there exists joint

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municipal corporations, townships, and other subdivisions of the state in the establishment, construction, reconstruction, maintenance, repair, and improvement of the public roads and bridges”); R.C. 5501.31; R.C. 5511.01; R.C. 5521.07; R.C. 5521.11 (counties, townships, and municipalities are not prohibited “from constructing any part of the state highway system, or the bridges and culverts thereon,” with the approval and under the supervision of ODOT); R.C. 5523.15; R.C. 5535.01(C); R.C. 5535.15; R.C. 5535.16 (“[n]otwithstanding sections 5535.08 [state, county, and township each maintain its roads, except as otherwise agreed] and 5535.15 [means by which county, township, or municipality may maintain, repair, construct, reconstruct, improve, or widen a road under the control of the state or another political subdivision] of the Revised Code, the department of transportation or a political subdivision may provide snow and ice removal on the roads under the control of the state or any political subdivision”); R.C. 5555.022; R.C. 5557.02; R.C. 5557.08; R.C. 5571.01; R.C. 5571.02; R.C. 5579.03; 1994 Op. Att’y Gen. No. 94-025; 1988 Op. Att’y Gen. No. 88-039.

maintenance responsibility; R.C. 5543.20, which imposes a similar duty upon the county engineer; and R.C. 723.54, which imposes a similar duty upon the municipal official with responsibility for bridge inspection.<sup>3</sup> That there may be primary and secondary duties of repair is reflected in R.C. 305.12, which governs the liability of county commissioners in suits involving an injury to any public, state, or county road, bridge, ditch, drain, or watercourse in the county “with respect to which the county has the primary responsibility to keep in proper repair, and for the prevention of injury to them.” *See also Starcher v. Logsdon*, 66 Ohio St. 2d at 61; *State ex rel. City of Cleveland v. Masheter*, 8 Ohio St. 2d 11, 15-16, 221 N.E.2d 704 (1966). It has long been the practice to allocate primary and secondary duties of maintenance of roads and bridges. *See, e.g., City of Youngstown v. Sturgess*, 102 Ohio St. 480 (1921) (syllabus, paragraph 2) (“[t]he county primarily is obligated to construct and repair bridges upon state or county roads and the approaches thereto over streams within the limits of municipalities, but municipalities are not thereby relieved from their obligation to keep such bridges and the approaches thereto ‘open, in repair and free from nuisance;’ neither are such municipalities relieved from the duty to safeguard travelers upon such structures within the limits of municipalities against dangerous defects amounting to a nuisance”); 1981 Op. Att’y Gen. No. 81-007; 1960 Op. Att’y Gen. No. 1107, p. 35, at 37-38 (the county has the primary obligation for the maintenance and repair of a bridge on a state or county highway within a municipality, and the municipality has a secondary obligation); 1957 Op. Att’y Gen. No. 790, p. 309 (syllabus) (“[a] sidewalk on a bridge located in a municipality on a state or county highway is a part of such bridge and a duty to maintain such sidewalk rests primarily on the board of county commissioners and secondarily on the municipality”); 1951 Op. Att’y Gen. No. 471, p. 211, at 219 (the repair of bridges erected on state and county highways within municipal corporations is a joint obligation of the county and the municipality, with the primary obligation to repair placed upon the county).

R.C. 315.13 requires the county engineer to “make all emergency repairs on all roads, bridges, and culverts in the county, including state highways.” *See* 1994 Op. Att’y Gen. No. 94-

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<sup>3</sup> The duty of bridge inspection is different from the duty to perform actual maintenance. Pursuant to Ohio statutory provisions, ODOT is responsible for the inspection of all bridges on the state highway system inside and outside of municipalities, certain bridges connecting Ohio with another state, and other bridges or portions of bridges for which responsibility for inspection is assigned to ODOT by law or agreement. R.C. 5501.47(A). The county engineer is responsible for the inspection of all bridges or portions of bridges on the county highway system inside and outside of municipalities, bridges on township roads, and other bridges or portions of bridges for which responsibility for inspection is assigned to the county by law or agreement. R.C. 5543.20. If inspection responsibility is not fixed by law or agreement and the county performs the largest share of maintenance on a bridge, the county engineer must inspect the bridge. *Id.* A municipality is responsible for the inspection of “all or portions of bridges within such municipality, except for bridges on the state highway system and the county highway system.” R.C. 723.54. A township is permitted to inspect a bridge within its township, but is not required to perform an inspection. R.C. 5543.20.

025, at 2-113. We note this specific provision and its applicability to emergency situations. We address your questions in the context of repairs that are not of an emergency nature. *See* 1960 Op. Att’y Gen. No. 1841, p. 667, at 672.

**ODOT’s Responsibility for the Rehabilitation, Reconstruction, Maintenance, and Repair of a Bridge Structure Carrying a County or Township Road Over a Limited Access State Highway Not Located in a Municipal Corporation**

We begin our discussion with consideration of the portions of your first, second, and third questions that address ODOT’s responsibility for the rehabilitation, reconstruction, maintenance, and repair of a bridge structure not located in a municipal corporation if the road that passes over the bridge is a county or township road and the road running beneath the bridge is a limited access state highway that is not an interstate highway. Then we consider the inclusion of the road passing over the bridge as part of the county or township highway system. Because the law governing the rehabilitation, reconstruction, maintenance, and repair of highways within municipalities is significantly different from the law governing the rehabilitation, reconstruction, maintenance, and repair of highways outside municipalities, issues relating to highways within municipalities are addressed later in this opinion.

As outlined above, ODOT has general responsibility for the roads on the state highway system, including limited access state highways that are not part of the interstate system.<sup>4</sup> The responsibilities of ODOT with respect to highways include the following function: to “[e]stablish state highways on existing roads, streets, and new locations and *construct, reconstruct, widen, resurface, maintain, and repair the state system of highways and the bridges and culverts thereon.*” R.C. 5501.11(A)(1) (emphasis added). Thus, R.C. 5501.11(A)(1) gives

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<sup>4</sup> For purposes of the state highway system, a “limited access highway” or “freeway” is defined as “a highway especially designed for through traffic and over which abutting property owners have no easement or right of access by reason of the fact that their property abuts upon such highway, and access to which may be allowed only at highway intersections designated by the director.” R.C. 5511.02; *see also* R.C. 5535.02 (similar definition applying also to roads and streets and to boards of county commissioners and municipal authorities). With regard to “limited access highways” or “freeways,” the Director of Transportation is given express authority to “lay out, establish, acquire, open, construct, improve, maintain, regulate, vacate, or abandon” the highways or freeways in the same manner that the Director uses with regard to other highways. R.C. 5511.02; *see also* R.C. 5535.03 (similar powers granted also to boards of county commissioners and municipal authorities within their respective jurisdictions). The Director, a board of county commissioners, or a municipal authority is given all additional authority relative to limited access highways or freeways that apply to other roads, highways, or streets, including the authority to acquire land by condemnation, and also the authority to lay out and construct highways and drives, to be designated as service highways, to provide access from areas adjacent to a limited access highway or freeway. R.C. 5511.02; R.C. 5535.03-.04.

ODOT the responsibility of constructing, reconstructing, resurfacing, maintaining, and repairing a bridge on a state highway. It does not use the word “rehabilitation,” but the authority to reconstruct, resurface, maintain, and repair bridges on the state highway system encompasses the ordinary meaning of “rehabilitation.” See *Webster’s Third New International Dictionary* 1914 (unabridged ed. 1993) (including among the definitions of “rehabilitation”: “the restoration of something damaged or deteriorated to a prior good condition”).<sup>5</sup>

Hence, ODOT, by statute, is made responsible for the rehabilitation, reconstruction, maintenance, and repair of bridges on state highways, including both limited access highways and highways that are not limited access. See also R.C. 5501.31 (the Director of Transportation has “general supervision of all roads comprising the state highway system” and may “alter, widen, straighten, realign, relocate, establish, construct, reconstruct, improve, maintain, repair, and preserve” them); R.C. 5501.01(C) (roads and highways include appurtenances such as bridges); R.C. 5535.08(A) (the state shall maintain its roads, as designated in R.C. 5535.01). The express inclusion in R.C. 5501.11(A)(1) of bridges on state highways is consistent with the definition in R.C. 5501.01(C) that includes as part of a “[r]oad” or “highway” any appurtenance to the road or highway, such as a bridge or viaduct. See *State ex rel. Walter v. Vogel*, 108 Ohio App. 294, 161 N.E.2d 449 (Summit County 1958) (limited access highways include appurtenances as defined in R.C. 5501.01(C), including lighting fixtures installed upon a highway); *Masheter v. Ashland Pipe Line Co.*, 2 Ohio Misc. 179, 184, 208 N.E.2d 162 (C.P. Richland County 1965) (in R.C. 5501.01, “the terms bridges, viaducts, grade separations and appurtenances are used within the contemplation of said statute in connection with the state highway”).

### **Determining When a Bridge Is “On” or “Appurtenant To” a State Highway**

Although the statutes discussed above appear to give ODOT clear responsibility for the rehabilitation, reconstruction, maintenance, and repair of a bridge that is “on” or “appurtenant to”

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<sup>5</sup> “Rehabilitation” is a term used in federal law governing funding for bridge replacement and repair. See 23 U.S.C.A. § 144 (West 2002 & Supp. 2006) (highway bridge replacement and rehabilitation program); 23 C.F.R. §§ 650.401-415 (2006). In this context, “rehabilitation” means “[t]he major work required to restore the structural integrity of a bridge as well as work necessary to correct major safety defects.” 23 C.F.R. § 650.403(c) (2006). Replacement or rehabilitation under this program may be available for “[d]eficient highway bridges on all public roads.” 23 C.F.R. § 650.405(a) (2006). “It shall be the responsibility of the State agency to properly maintain, or cause to be properly maintained, any project constructed under this bridge program. The State highway agency shall enter into a formal agreement for maintenance with appropriate local government officials in cases where an eligible project is located within and is under the legal authority of such a local government.” 23 C.F.R. § 650.411(c)(1) (2006). This opinion does not purport to determine duties of rehabilitation, reconstruction, maintenance, or repair under federal law. See *supra* note 1 and accompanying text.

a state highway, in order to ascertain the extent of ODOT's responsibility, it is necessary to determine when a bridge is "on" or "appurtenant to" a state highway. Some confusion may arise in making this determination. *See, e.g.*, 1981 Op. Att'y Gen. No. 81-083, at 2-326 ("[t]here appears to be some question . . . as to whether a bridge which carries a road over an intersecting freeway is part of the road it connects or part of the freeway over which it passes"). It has been stated as a general rule that a bridge is part of the road which passes over it, and, absent a statute to the contrary, the duty to maintain and repair the road carries with it the duty to maintain and repair the bridge. 2000 Op. Att'y Gen. No. 2000-012, at 2-65;<sup>6</sup> 1981 Op. Att'y Gen. No. 81-083, at 2-326 ("[i]n most instances, a bridge is considered to be a part of the road which passes over it"); *Hanks v. Bd. of County Comm'rs*, 35 Ohio App. 246, 172 N.E. 423 (Adams County 1929) (finding that a bridge carrying a road over a creek was part of the road); *Van Scyoc v. Roth*, 2 Ohio Misc. 155, 160, 205 N.E.2d 617 (C.P. Monroe County 1964) ("[a] bridge is part of the road in which it is located"). This rule dates back many years, to an era when it was not common for one road to pass over another. It has been applied largely in connection with bridges over streams or canals. *See, e.g.*, *Hanks v. Bd. of County Comm'rs*; *Van Scyoc v. Roth*; *see also* note 11, *infra* (discussing R.C. 5591.21, which makes the county responsible for the construction and repair of bridges over streams and public canals on or connecting state, county, and improved roads).

Current statutes do not specify whether a bridge is "on" the road that passes over it or "on" the road that runs beneath it. The language of R.C. 5501.01(C) defining "[r]oad" or "highway" to include appurtenances to the road or highway, such as bridges and viaducts, indicates that a bridge is part of the road or highway to which it is appurtenant. Reading R.C. 5501.01(C) in this manner results in the conclusion that a bridge is "on" the road to which it is appurtenant, and that a finding of appurtenance defines the body with responsibility for the bridge. As discussed more fully below, opinions of Ohio Attorneys General have taken the

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<sup>6</sup> 2000 Op. Att'y Gen. No. 2000-012 contains a general discussion concerning bridges, as follows:

*A bridge is considered to be a part of the road that passes over it, and, absent a statute to the contrary, the duty to repair and maintain the road carries with it the duty to repair and maintain the bridge.* 1981 Op. Att'y Gen. No. 81-083 at 2-326 and 2-327; *see* R.C. 5501.01(C); R.C. 5535.08; *see also* 1994 Op. Att'y Gen. No. 94-025 at 2-112 ("a board of township trustees bears the responsibility of maintaining the bridges on township roads within its township"); 1925 Op. Att'y Gen. No. 2557, p. 389 (syllabus) ("[i]n performing the mandatory duty of keeping township roads in good repair, . . . township trustees may appropriate and use township road funds in the construction and maintenance of bridges and culverts on township roads within their respective jurisdictions").

2000 Op. Att'y Gen. No. 2000-012, at 2-65 (emphasis added).

position that a bridge that carries a road or street over a limited access state highway is appurtenant to the limited access state highway, and that the responsibility for maintenance and repair of the bridge is determined accordingly. *See* 1981 Op. Att’y Gen. No. 81-083, at 2-326 (“where the state builds a bridge in conjunction with construction of a state limited access highway and such bridge carries a county road over the state highway, the bridge is part of the state highway system”); 1960 Op. Att’y Gen. No. 1841, p. 667, at 670; 1958 Op. Att’y Gen. No. 1605, p. 29, at 31.

You have informed us that, “[i]n the case of bridges over limited access highways outside of a city or village, ODOT has always borne the cost of replacing or rehabilitating such bridges.” With regard to the questions you have raised, this established policy reflects determinations that a bridge over a limited access state highway outside of a city or village is part of the state highway system, and that the responsibility for the replacement or rehabilitation of the bridge structure rests with ODOT. *See* R.C. 5501.11(A)(1); *see also Masheter v. Ashland Pipe Line Co.*, 2 Ohio Misc. at 183 (the Director of Highways has exclusive power over state highways). In particular, you cite 1960 Op. Att’y Gen. No. 1841, p. 667, in support of the position that ODOT is the “jurisdictional owner”<sup>7</sup> of bridges that cross over a limited access highway outside of a city or village.<sup>8</sup>

You state also that it has always been ODOT’s position that counties and townships are expected to perform their statutory responsibility of maintaining the road surface that is carried over the bridge. You define this responsibility on two levels – (1) primary, which consists of “[c]learing debris from deck, sweeping, wearing surface repair [The Wearing surface shall be considered any part of the deck above the first layer of reinforcing steel], cleaning bridge drainage systems, vegetation control, marking decks for traffic control, spall removal above traffic, minor and emergency repairs to railing and appurtenance, and emergency patching of decks” (footnote placed in brackets); and (2) secondary, which consists of “[d]uties to keep such bridge open, in repair and free from dangerous defects amounting to a nuisance.” *See generally*

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<sup>7</sup> You have provided the following definition:

Jurisdictional Ownership – Agency [*i.e.*, ODOT] accountable for replacement or rehabilitation of the bridge. Rehabilitation work may include but is not limited to: Replacement, repairs or strengthening of the structural deck\*, superstructure, substructure, drainage features and corrosion control coatings.

\*The structural deck shall be considered anything below the first layer of reinforcing steel.

<sup>8</sup> Your description of the obligations of the various governmental entities is in some respects similar to the allocation of responsibilities set forth in R.C. 5501.49, which codifies maintenance and repair obligations pertaining to lift bridges. *See* note 21, *infra*.

*State ex rel. Walter v. Vogel*, 108 Ohio App. at 297 (in the context of highways, “maintain” means “to keep in a state of efficiency for the furnishing and rendition of those services which are required for the use of existing facilities”); 1988 Op. Att’y Gen. No. 88-036, at 2-169 (“using the word ‘improvement’ to cover construction, reconstruction, resurfacing, alteration, and other projects that constitute more than simple maintenance of a roadway, and the word ‘maintenance’ to cover repairs and maintenance that keep the roadway in usable condition”).<sup>9</sup>

You refer specifically to 1960 Op. Att’y Gen. No. 1841, p. 667. That opinion considered the construction of Interstate Highway No. 71 (referred to as the “freeway”) by the State of Ohio, with bridges, underpasses, approaches, and guardrails all constructed by the state on land within the right-of-way acquired by the state. The 1960 opinion addressed the following questions:

On county roads intersected by the Freeway either bridges or underpasses have been built in order to cross the Freeway.

In each case we understand that sufficient right of way has been taken by the State to cover the entire approaches thereto.

After these bridges, underpasses, approaches and guardrails are built by the State will they be a part of the County highway system?

What will be the power or duties of the County Commissioners with respect to the acceptance thereof, maintenance and repair?

Does the fact that these are entirely in the Freeway right of way have any significance?

1960 Op. Att’y Gen. No. 1841, p. 667, at 667-68.

The 1960 opinion considered the provisions of R.C. 5511.02 and found that the Director of Transportation “is authorized to maintain a freeway in the same manner in which he may maintain highways.” 1960 Op. Att’y Gen. No. 1841, p. 667, at 669; *see* note 4, *supra*. Based upon the division of public highways into state, county, and township roads under R.C. 5535.01 and the inclusion of bridges as appurtenances to highways under R.C. 5501.01, the opinion stated that, “when the director of highways [now the Director of Transportation] constructs a freeway under Section 5511.02, . . . bridges, underpasses, approaches and guardrails on or to such freeway are a part of the freeway.” 1960 Op. Att’y Gen. No. 1841, p. 667, at 670; *accord* 1958

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<sup>9</sup> You have informed us that ODOT defines maintenance responsibility to include the following:

Perform all deck and wearing surface repairs flush to the existing grade of the surrounding wearing surface resulting in a smooth riding surface. Perform all repairs using materials with physical properties equal to the existing material resulting in a durable repair.

Op. Att’y Gen. No. 1605, p. 29, at 31-32; *see also Kekic v. Linzell*, 60 Ohio Op. 235, 137 N.E.2d 581 (C.P. Cuyahoga County 1956); 1981 Op. Att’y Gen. No. 81-083, at 2-326.

The syllabus of 1960 Op. Att’y Gen. No. 1841 stated, in relevant part:

1. Where pursuant to Section 5511.02, Revised Code, the director of highways constructs a limited access highway which intersects with a county road, *bridges, underpasses, approaches and guardrails constructed at the intersection, within the highway right-of-way, are included in the state highway system and are not a part of the county highway system.*

2. Since under Section 5501.01, Revised Code, *such bridges, underpasses, approaches and guardrails are included as a part of the state highway, they should be maintained by the state department of highways* which, under Section 5535.08, Revised Code, has the duty of maintaining all state roads.<sup>10</sup> (Emphasis and footnote added.)

The 1960 opinion also concluded, in the third paragraph of the syllabus, that the county’s duty under R.C. 5591.21 to repair bridges over streams and public canals did not apply to a bridge erected by the state to carry a county road over a limited access state highway.<sup>11</sup>

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<sup>10</sup> The following conclusions were set forth in the body of the opinion:

(1) the freeway is a state highway which the director of highways is required to maintain; (2) the bridges, underpasses, approaches and guardrails were constructed by the director as a part of, and within the right-of-way [of], the freeway, and constitute a part of the state highway system; (3) the director of highways has the same duty to maintain such bridges, underpasses, etc., as he has to maintain the remainder of the freeway; and (4) the board of county commissioners has no duty or power to accept such bridges, underpasses, etc., as a county road, nor to maintain the same.

1960 Op. Att’y Gen. No. 1841, p. 667, at 670.

<sup>11</sup> R.C. 5591.21 continues to apply to bridges over streams and canals, stating:

Except as provided in section 5501.49 of the Revised Code, *the board of county commissioners shall construct and keep in repair necessary bridges over streams and public canals on or connecting state, county, and improved roads.*

The board may submit to the electors the question of issuing county bonds for the construction of bridges on proposed state or county roads or connecting state or county roads, one or more of which may be proposed, but such bonds shall not be issued or sold until the proposed roads are actually established.

The analysis set forth in 1960 Op. Att’y Gen. No. 1841 is based upon the understanding that, when a limited access state highway intersects a county road, there must be a bridge or underpass to permit the county road to continue without interfering with traffic on the limited access state highway. Hence, the state includes bridges and underpasses as an integral part of a highway construction project and those bridges and underpasses are appurtenant to the limited access state highway. Therefore, the state is responsible for the construction, reconstruction, maintenance, and repair of the bridges and underpasses. *Accord* 1958 Op. Att’y Gen. No. 1605, p. 29, at 31 (“[t]he purpose of these bridges or structures carrying county highways or city streets over or under [a limited access state highway] is to eliminate direct access to this freeway and is incident to the construction of a freeway improvement”); *cf.*, *e.g.*, 2000 Op. Att’y Gen. No. 2000-012, at 2-71 (“under the common law, a railroad company that erects a bridge to carry a public way over a railroad line is responsible for the repair and maintenance of the bridge”).<sup>12</sup>

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When the board determines it unnecessary in the construction of any bridge and the approaches thereto to acquire the entire land upon and over which the same shall be located, it may acquire such part of the land and easements and rights in the remainder thereof as are necessary and sufficient for such construction. (Emphasis added.)

*See also* R.C. 5591.23-.24. R.C. 5591.21 does not by its terms require the board of county commissioners to construct or repair bridges over roads, and no other statute contains similar provisions governing a bridge that carries one public highway over another public highway. *See* 1960 Op. Att’y Gen. No. 1841, p. 667, at 672; *cf.* 1981 Op. Att’y Gen. No. 81-007, at 2-23 (according to R.C. 5591.02 and R.C. 5591.21, “if a bridge located within a municipality connects a state or county road or improved road of general and public utility, then the board of county commissioners must keep the bridge in repair,” but not addressing what the bridge passes over). R.C. 505.26 authorizes but does not require a township to build and repair “bridges and viaducts over streets, streams, railroads, or other places where an overhead roadway or footway is necessary.”

By its terms, R.C. 5591.21 contains an exception for lift bridges on the state highway system within municipal corporations, which are governed by R.C. 5501.49. *See* note 21, *infra*.

<sup>12</sup> 2000 Op. Att’y Gen. No. 2000-012 considered the responsibility for the repair and maintenance of a bridge carrying a road over a railroad line and concluded that neither a county nor a township had that responsibility when the road had not been properly established as a public road. The opinion stated, in the second paragraph of the syllabus:

Pursuant to R.C. 4955.20, R.C. 4959.03, and R.C. 5523.19, a bridge carrying a public road over a railroad line must be repaired and maintained by the railroad company that owns or operates the railroad line, unless the bridge was constructed pursuant to R.C. Chapter 4957, 5523, or 5561. If the bridge carrying the road over the railroad line was constructed pursuant to R.C. Chapter 4957, 5523, or

We agree with and confirm most of the conclusions reached in 1960 Op. Att’y Gen. No. 1841. However, we are unable to agree with its conclusion that, if a bridge is part of the state highway system, no part of the bridge may in any respect be part of the county highway system, but that each bridge must, for all purposes, be included entirely within only one of the three classes listed in R.C. 5535.01 – state roads, county roads, or township roads. We find this conclusion unreasonable and in conflict with other provisions of state law – in particular, with the provisions of R.C. Chapter 5541 that require the system of county roads to be a connected system.<sup>13</sup>

### **Differentiating the Bridge Structure from the Road or Street that Passes Over the Bridge**

R.C. 5541.02 states that the board of county commissioners “shall select and designate a connected system of county highways . . . , connecting with the intercounty and state highways of the county all of the villages and centers of rural population within the county,” and authorizes the board to make changes in or additions to the system as provided in R.C. 5541.02. R.C. 5541.02 specifies that the system of highways selected and designated by the board of county commissioners “shall be known as the system of county highways of the county, and all of the roads composing the system shall be known and designated as county roads.” The roads of the county highway system are the roads classified as county roads pursuant to R.C. 5535.01(B).

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5561, then the state or the county, as may be provided by law, is responsible for the repair and maintenance of the bridge.

Various provisions govern railroad bridges and bridges over railroad tracks. These bridges are frequently addressed by statutes different from those governing other types of bridges. *See, e.g.*, R.C. Chapters 4955, 4957, 5523, 5561. *See generally Carney v. McAfee*, 35 Ohio St. 3d 52, 55, 517 N.E.2d 1374 (1988); *Wabash R.R. Co. v. City of Defiance*, 52 Ohio St. 262, 40 N.E. 89 (1895), *aff’d*, 167 U.S. 88 (1897).

The principal topic addressed in 2000 Op. Att’y Gen. No. 2000-012 was the duty of maintenance or repair of bridges that carry roads over railroad lines. A basic matter at issue in that opinion was whether a particular road had ever been properly dedicated and accepted for public use, which is not an issue in the instant case. Therefore, the conclusions reached in 2000 Op. Att’y Gen. No. 2000-012 do not affect the questions addressed in this opinion.

<sup>13</sup> It is evident that 1960 Op. Att’y Gen. No. 1841, p. 667, considered the questions before it without attempting to harmonize all of Ohio’s statutes governing roads and bridges. This is understandable because of the morass of statutes addressing those matters and their apparent inconsistencies. This does not mean that we can disregard the 1960 opinion, but it does indicate that it is appropriate for us to reconsider the validity of its conclusions in light of all relevant provisions of Ohio road and bridge law.

Pursuant to R.C. 5541.02, the Director of Transportation may approve the county highway system of a particular county only upon a finding that “all portions of the system of county highways connect with either a state or intercounty highway, or another county road.” R.C. 5541.02 specifies that “[n]o state or intercounty highway or part of it shall be included in the system of county highways.” See generally *Van Scyoc v. Roth*, 2 Ohio Misc. at 160-64.

It appears that, in many circumstances, a county road that ends at a bridge over or under a limited access state highway would not meet the requirements for inclusion in the county highway system. The county road might, for example, connect with a bridge that is appurtenant to the state highway, but go over or under the state highway rather than connecting with the state highway. Under the terms of R.C. 5541.02, the bridge constituting part of the state highway could not be included in the county highway system. Therefore, in order for the county highway system to comply with the “connection” requirement of R.C. 5541.02 in a reasonable way, it would be necessary to consider the road passing over the bridge to be part of the county road. Because the bridge is also an appurtenance to the state highway, it must follow that, for different purposes, a single bridge may be included within both highway systems. See *Black’s Law Dictionary* 98 (7th ed. 1999) (defining “appurtenance” as “[s]omething that belongs or is attached to something else”). See generally *Smith Bridge Co. v. Bowman*, 41 Ohio St. 37, 55-61 (1884) (Granger, C.J., dissenting) (arguing that, as used in 1877 legislation, the word “bridge” did not in ordinary parlance include a railroad bridge and, at 57, describing its meaning as follows: “the word ‘bridge’ in connection with roads and highways had, by the people, been thus applied to structures across streams for the passage of travellers in ordinary modes. A road led up to each end of such a structure. The traveller left the road and entered upon the bridge, and again left the bridge and took to the road. Constructively, in a legal sense purely, the road sometimes crossed the bridge, and the bridge was, sometimes, in like manner a part of the road; but actually, in fact, the bridge was distinct from the road”); 1988 Op. Att’y Gen. No. 88-036, at 2-173 (road may have “a sort of dual status” as a municipal street that “is also, in some sense, a part of the county or township road system”); cf. 2002 Op. Att’y Gen. No. 2002-003 (syllabus) (“[f]or purposes of R.C. 2729.13, the term ‘county road’ does not include township roads”); 1971 Op. Att’y Gen. No. 71-030 (syllabus, paragraph 3) (“[a] county may pay for the repair of the bridge on a municipal street as soon as that portion of the street on which the bridge is located has become a part of the county road system”).<sup>14</sup>

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<sup>14</sup> Other provisions of the Revised Code expressly recognize that a road may be part of the state highway system and also under the jurisdiction of the county for some purposes. For example, R.C. 5553.02 gives the board of county commissioners the authority to locate, establish, alter, widen, straighten, vacate, or change the direction of all roads within the county, but states that, “as to roads on the state highway system the approval of the director of transportation shall be had.” Similarly, R.C. 5555.02 authorizes the board of county commissioners to construct or improve a public road, defined to include “any state or county road or part of any state or county road, or any state or county road and any municipal street, or part of a road or street of those types, which form a continuous road improvement.” R.C.

We find, therefore, that 1960 Op. Att’y Gen. No. 1841 must be overruled on this point. We adopt, instead, the following position that had been set forth in 1958 Op. Att’y Gen. No. 1605 and was rejected in 1960 Op. Att’y Gen. No. 1841:

Therefore, the Director of Highways has the authority to construct and maintain bridges or structures carrying county highways or city streets over or under all limited access highway[s] or freeway[s]. Further, said bridges or structures are incident to the construction of a limited access highway or freeway and are a part of the state highway system.

*Although these bridges or structures are part of the state highway system, they also may be part of the county highway system if it is a county road on the bridge or structure over the limited access highway or freeway or part of a city system of streets if it is a city street on the bridge or structure.* (Emphasis added.)

1958 Op. Att’y Gen. No. 1605, p. 29, at 32.<sup>15</sup> Like the 1960 opinion, this 1958 opinion finds that a bridge that is incident to the construction of a limited access highway or freeway is part of the state highway system. Unlike the 1960 opinion, this 1958 opinion finds that a road passing over a bridge that is incident to the construction of a limited access highway or freeway may be part of the county highway system or the system of municipal streets, rather than part of the state highway system. The differentiation between the bridge structure and the road passing over the bridge leads also to the conclusion that the road passing over the bridge may be part of the township road system, rather than part of the state highway system.<sup>16</sup>

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5555.01(C). Further, R.C. 5555.02 states: “This section does not apply to roads or highways on the state highway system, except such portions as the board constructs under plans and specifications approved by the director and under the director’s supervision and inspection.”

<sup>15</sup> This opinion does not reconsider or address the validity of 1958 Op. Att’y Gen. No. 1605, p. 29, in any other respect.

<sup>16</sup> In a similar analysis, it was concluded in 1953 Op. Att’y Gen. No. 2916, p. 353, that, when the construction of the Ohio Turnpike required the use of an overpass to carry a public road over the turnpike, the paved surface on the overpass remained part of the original road and its maintenance was not the responsibility of the Ohio Turnpike Commission. The 1953 opinion stated, at 355:

When such an overpass is considered solely as a physical structure and when it is considered solely from the engineering viewpoint, it is difficult to conceive it to be other than a single physical entity. In seeking to ascertain the legislative intent on the question of responsibility of maintenance, however, it may well be borne in mind that the sole purpose of the structure is to make possible the relocation, in point of elevation, of a separate and complete structure previously existing, i.e., the paved portion of the public road concerned. By

In accordance with the analysis set forth above, a bridge that is constructed to carry a county or township road across a limited access state highway is part of the state highway system. Therefore, pursuant to R.C. 5501.11(A), ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of the bridge. *See* 1960 Op. Att’y Gen. No. 1841, p. 667; 1958 Op. Att’y Gen. No. 1605, p. 29, *see also* R.C. 5501.31; R.C. 5535.08; 1981 Op. Att’y Gen. No. 81-083, at 2-326. Although the bridge is constructed as an appurtenance to the state highway, the road passing over the bridge may be part of a county or township road or a municipal street, and the county, township, or municipality, accordingly, bears certain responsibility for the maintenance and repair of its road or street. *See, e.g.,* R.C. 723.01; R.C. 5501.01(C); R.C. 5535.01; R.C. 5535.08. *See generally, e.g., Wabash R.R. Co. v. City of Defiance*, 52 Ohio St. 262, 309-10, 40 N.E. 89 (1895) (where a railroad company erected a bridge over its track to carry a county road (later a municipal street) across the bridge in order to restore the road to its former usefulness for public travel, the bridge and approaches to the bridge became parts of the public road and continued to be so when the territory was incorporated into a city), *aff’d*, 167 U.S. 88 (1897). Therefore, we overrule 1960 Op. Att’y Gen. No. 1841 in relevant part, reaffirm 1958 Op. Att’y Gen. No. 1605 in relevant part, and conclude that, when ODOT constructs a bridge to carry a county or township road or municipal street over a limited access state highway, the bridge structure is part of the state highway system; however, the road or street that passes over the bridge may be included in the county highway system, the township road system, or the system of municipal streets.

As discussed above, a bridge may, in some sense, be appurtenant to both the road that passes over it and the road that runs beneath it. When a bridge carries a county or township road over a limited access state highway, the bridge structure is appurtenant to the state highway. As outlined above, however, the road surface passing over the bridge is part of the county highway system or the township road system, rather than the state highway system. Therefore, it is reasonable, and in accordance with state statutes, to conclude that ODOT should be responsible for bridge structures that carry county or township roads across a limited access state highway not located in a municipal corporation, because those structures are required to achieve the limited access nature of the state limited access highway. *See* R.C. 5501.11(A)(1); R.C. 5511.02; R.C. 5535.02; note 4, *supra*. Similarly, it is reasonable, and in accordance with state statutes, to conclude that the county or township should be responsible for the wearing surface of the road that is carried by the bridge, because the road is included within the system of roads of the county or township and is an integral part of the road crossing the bridge. The bridge

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means of such overpass such paved portion has been removed from direct contact with the supporting soil and is now borne by an artificial structure with only indirect contact with the earth. Such paved portion is, however, so reconstructed as again to become an integrated part of the traveled surface of a public road, and the operation may thus be regarded, in a very real and definite sense, as the reconstruction of a previously existing physical entity which is separate and distinct from the newly created structure which supports it.

connects two segments of the county or township road, and it is both logical and practical for the county or township's maintenance to continue along the entire surface of the road, including the part that has been placed upon a bridge in order to avoid interference with the limited access state highway. *See* R.C. 5541.02; R.C. 5535.01. It makes no more sense to recognize a gap in the road for purposes of such maintenance as plowing snow or filling potholes than it does for describing the county highway system in accordance with R.C. 5541.02. *See, e.g., Kekic v. Linzell*, 60 Ohio Op. at 236-37 (using logic and the sense of statutory language to construe R.C. 5511.02 and R.C. 5501.11, after noting that the draftsmanship was not as thorough, explicit, and detailed as might be desired to point out inclusively and exclusively all intended applications of the statutes); 1980 Op. Att'y Gen. No. 80-040, at 2-169 (reading state highway statutes in pari materia and construing them to carry out the intent of the legislature).<sup>17</sup>

We find, accordingly, that when a bridge carries a county or township road over a limited access state highway not located in a municipal corporation, the county or township is responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge. *See* R.C. 5535.01(B), (C) (the board of county commissioners shall maintain county roads and the board of township trustees shall maintain township roads); R.C. 5535.08; R.C. 5571.02. We conclude, therefore, that, pursuant to R.C. 5501.11(A)(1), ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of a bridge structure not located in a municipal corporation if the road that passes over the bridge is a county or township road and the road running beneath the bridge is a limited access state highway. We conclude, further, that ODOT is not responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge; instead, this responsibility rests with the county or township, as determined pursuant to state law.

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<sup>17</sup> The concept that different aspects of the maintenance of a bridge might rest with different entities is supported by a similar conclusion regarding culverts that was reached in *Hedrick v. City of Columbus*, Nos. 92AP-1030, 92AP-1031, 1993 Ohio App. LEXIS 1874, at \*14-16 (Franklin County Mar. 30, 1993). There the court found that, because of the size of a culvert, the county was required under its duty to inspect bridges to inspect the culvert for structural integrity, *see* R.C. 5501.47(B), and that the county also had bridge repair duties under R.C. 5591.02 and R.C. 5591.21. The court found, however, that the county had no duty to maintain the drainage under the bridge, for that duty fell under the jurisdiction of the city as part of its storm sewer system responsibilities under R.C. 715.47. *See* 1994 Op. Att'y Gen. No. 94-025, at 2-112 (citing 1981 Op. Att'y Gen. No. 81-039 as support for the conclusion that the responsibility for maintaining and repairing a culvert is the same as that for maintaining and repairing a bridge).

### **Application of Analysis when the State Highway Underneath the Bridge Is Not a Limited Access Highway**

We turn now to your fourth question and consider whether the answers to your first three questions would be different if the state highway underneath the bridge were not a limited access highway. This question requires a determination as to whether a bridge carrying a county or township road over a state highway is part of the state highway when the state highway is not a limited access highway. As mentioned above, issues relating to the rehabilitation, reconstruction, maintenance, and repair of bridges within municipalities are addressed later in this opinion because the law governing highways and bridges within municipalities is significantly different from the law governing highways and bridges outside municipalities.

As outlined above, both 1958 Op. Att’y Gen. No. 1605 and 1960 Op. Att’y Gen. No. 1841 concluded that bridges constructed by the state to carry county roads over limited access state highways are part of the state highway system under the jurisdiction of the Director of Highways (now the Director of Transportation), and we confirm that conclusion. Those opinions did not address a state highway that was not a limited access state highway. However, we find that the analysis adopted in those opinions is generally applicable also to state highways that are not limited access highways.

In concluding that the state is responsible for the construction and maintenance of bridges included within the highway right-of-way and constructed as part of a state limited access highway, 1960 Op. Att’y Gen. No. 1841 relied upon R.C. 5535.01, which includes as state roads all roads and highways on the state highway system; R.C. 5535.08, which requires the state to maintain its roads, as designated in R.C. 5535.01; and R.C. 5501.01, which declares that bridges and other appurtenances are included as part of a highway. None of these statutes is restricted to limited access highways. Rather, they apply to all roads and highways on the state highway system, including roads and highways that are not limited access highways.

The 1960 opinion concluded, in the second paragraph of the syllabus, that, because bridges, underpasses, approaches, and guardrails are included as part of the state highway under R.C. 5501.01, they should be maintained by the state department of highways which, under R.C. 5535.08, has the duty of maintaining all state roads. Although that opinion was concerned only with limited access highways, this conclusion and the analysis that supports it may fairly be applied to all state highways. Regardless of whether a state highway is a limited access highway, R.C. 5501.01 makes bridges and other appurtenances to the road part of the state highway. The 1960 opinion found that, when a bridge is constructed by the state as part of and within the right-of-way of a limited access state highway, it constitutes a part of the state highway system and ODOT has the same duty to maintain the bridge that it has to maintain the remainder of the highway. 1960 Op. Att’y Gen. No. 1841, p. 667, at 670. There is nothing about this conclusion that restricts it to limited access highways. Regardless of the accessibility of a state highway, if a bridge is constructed by the state as part of a state highway project, the bridge is appurtenant to

the state highway pursuant to R.C. 5501.01 and comes within the state's duty of maintenance pursuant to R.C. 5535.01 and R.C. 5535.08. *See also* R.C. 5501.11(A)(1).

This conclusion is qualified, as discussed above, by the finding that the responsibility for road surface maintenance may be distinguished from the responsibility for maintenance of the bridge structure. Under this analysis, ODOT bears the responsibility for a bridge structure it constructs outside of municipalities, while responsibility for the wearing surface of the road passing over the bridge rests with the county or township, as determined pursuant to state law.

Roads and bridges may be constructed in various circumstances and by various means. When no limited access highway is involved, a bridge or underpass may not be required at the intersection between a state highway a county or township road, and the interested parties may have a number of options. It is not necessarily the case, as it is with respect to limited access highways, that a bridge spanning the state highway will necessarily be appurtenant to the state highway. For example, if a bridge that is not located within a municipality carries a county or township road over a state highway that is not a limited access state highway and the bridge is not constructed as part of the construction of the state highway, then the bridge is not appurtenant to the state highway under the analysis set forth in 1960 Op. Att'y Gen. No. 1841. Instead, the bridge is appurtenant to the road that passes over it, and responsibility for the rehabilitation, reconstruction, maintenance, and repair of the bridge is not delegated to ODOT as part of its responsibility for the state highway system, but rests instead with the county or township, as determined pursuant to state law. Thus, when a bridge carrying a county or township road over a state highway that is not a limited access highway is constructed outside of municipalities and is not part of ODOT's construction of a state highway project, both the bridge structure and the wearing surface of the road are appurtenant to the county or township road that passes over the bridge and the responsibility for rehabilitation, reconstruction, maintenance, and repair is determined accordingly.

Therefore, we conclude that when, as part of the construction of a state highway that is not a limited access highway, ODOT constructs a bridge not located in a municipal corporation to carry a county or township road over the state highway, the bridge is appurtenant to the state highway and ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of the bridge structure pursuant to R.C. 5501.11(A)(1); however, ODOT is not responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge, for this responsibility rests with the county or township, as determined pursuant to state law. When a bridge carrying a county or township road over a state highway that is not a limited access highway is not located in a municipal corporation and is not part of ODOT's construction of the state highway, the bridge is not appurtenant to the state highway and responsibility for the rehabilitation, reconstruction, maintenance, and repair of both the bridge structure and the wearing surface of the road that passes over the bridge rests with the county or township, as determined pursuant to state law.

### **ODOT's Responsibility for the Rehabilitation, Reconstruction, Maintenance, and Repair of Bridges in Municipal Corporations**

We turn now to consideration of your questions as they pertain to bridges located in municipalities. Your questions concern ODOT's responsibility for the rehabilitation, reconstruction, maintenance, and repair of a bridge structure that is located in a municipal corporation and carries a municipal street over a limited access or other state highway.

The powers and duties of ODOT with regard to state highways are different in municipal corporations than in unincorporated areas of the state. With limited exceptions, the Director of Transportation has "no duty of constructing, reconstructing, widening, resurfacing, maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon." R.C. 5501.31;<sup>18</sup> *see also* R.C. 5511.01 ("[e]xcept as provided in [R.C. 5501.49 and 5517.04], no duty of constructing, reconstructing, maintaining, and repairing such state highways within municipal corporations shall attach to or rest upon the director"); *Jay v. ODOT*, No. 2004-01699-AD, 2004 Ohio Misc. LEXIS 109 (Ct. Cl. Mar. 25, 2004) (maintenance of a roadway in a municipality was under the maintenance jurisdiction of the municipality, not ODOT). An express exception requires ODOT to provide certain services within villages, as required by R.C. 5521.01,<sup>19</sup> and another exception applies to lift bridges<sup>20</sup> in municipal corporations, as provided

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<sup>18</sup> R.C. 5501.31 states, in relevant part:

Except in the case of maintaining, repairing, erecting traffic signs on, or pavement marking of state highways within villages, which is mandatory as required by section 5521.01 of the Revised Code, and except as provided in section 5501.49 of the Revised Code, *no duty of constructing, reconstructing, widening, resurfacing, maintaining, or repairing state highways within municipal corporations, or the bridges and culverts thereon, shall attach to or rest upon the director [of transportation], but the director may construct, reconstruct, widen, resurface, maintain, and repair the same with or without the cooperation of any municipal corporation, or with or without the cooperation of boards of county commissioners upon each municipal corporation consenting thereto.* (Emphasis added.)

As indicated in R.C. 5501.31, the Director of Transportation has authority to take actions with regard to state highways within municipalities in certain circumstances even where no duty exists. *See also, e.g.,* R.C. 5511.01; R.C. 5521.01; 1981 Op. Att'y Gen. No. 81-007, at 2-23; note 2, *supra*.

<sup>19</sup> R.C. 5521.01 states, in part:

*The director of transportation, upon the request by and the approval of the legislative authority of a village, shall maintain, repair, and apply standard*

in R.C. 5501.49.<sup>21</sup> R.C. 5501.31; *see also, e.g.*, 1981 Op. Att’y Gen. No. 81-007. ODOT is also responsible under R.C. 5517.04 for repairing any substantial damage done to county and

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*longitudinal pavement marking lines* as the director considers appropriate, or may establish, construct, reconstruct, improve, or widen any section of a *state highway within the limits of a village*. The director also may erect regulatory and warning signs, as defined in the manual adopted under section 4511.09 of the Revised Code, on any section of a state highway within the limits of a village. (Emphasis added.)

Thus, the Director is required, upon the request and with the approval of a village, to maintain, repair, and apply standard longitudinal pavement marking lines on a state highway within the limits of the village. R.C. 5501.31 indicates that erecting traffic signs on state highways within villages is mandatory as required by R.C. 5521.01. *See* note 18, *supra*. However, the terms of R.C. 5521.01 appear to grant the Director discretion with regard to the erection of signs, and also with regard to the establishment, construction, reconstruction, improvement, or widening of state highways within the limits of a village. *See also* R.C. 5511.01.

<sup>20</sup> The term “lift bridge” is not defined by statute and, therefore, should be given its common meaning, which is “a drawbridge whose movable parts are lifted vertically or by rotating about a horizontal axis.” *Webster’s Third New International Dictionary* 1307 (unabridged ed. 1993).

<sup>21</sup> R.C. 5501.49 states:

(A) *The director of transportation is responsible for the construction, reconstruction, major maintenance and repair, and operation of all lift bridges located on the state highway system within a municipal corporation. The responsibilities of the director pertain only to those lift bridges necessary for the initial construction or continued operation of the state highway system. The county or other person responsible for maintaining the pavements and sidewalks on either end of the bridge is responsible for the routine maintenance of all lift bridges located on the state highway system within the municipal corporation, unless other arrangements have been made between the county and the municipal corporation to perform the routine maintenance.*

(B) The director may enter into an agreement with the legislative authority of a municipal corporation or a county, upon mutually agreeable terms, for the municipal corporation or county to operate and perform major maintenance and repair on any lift bridge located on the state highway system within the municipal corporation or county.

(C) The director is not required to obtain the consent of a municipal corporation prior to the performance of any major lift bridge maintenance and repair. Except in an emergency, the director shall give a municipal corporation

township roads or municipal streets by the transportation of materials or equipment for projects of ODOT. *See* R.C. 5511.01.

Apart from these specific exceptions, ODOT is not responsible for the rehabilitation, reconstruction, maintenance, or repair of state highways within a municipal corporation or of bridges on those state highways. This general rule applies, within municipal corporations, to bridges that are part of the state highway system and carry county or township roads or municipal streets over highways that are part of the state highway system. *See* 1981 Op. Att’y Gen. No. 81-007. It applies also to bridges constructed to carry limited access state highways over municipal streets. *See* R.C. 5501.01(C); 1960 Op. Att’y Gen. No. 1841, p. 667, at 670.

Pursuant to their constitutional powers, municipal corporations have authority over highways and bridges within their boundaries, except to the extent that these powers are properly limited by the General Assembly. *See* Ohio Const. art. XVIII, § 3 (“[m]unicipalities shall have

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reasonable notice prior to the performance of any work that will affect the flow of traffic. No utilities, signs, or other appurtenances shall be attached to a lift bridge without the prior written consent of the director.

(D) As used in this section:

(1) Major and routine maintenance and repair relates to all elements of a lift bridge, including abutments, wingwalls, and headwalls but excluding approach fill and approach slab, and appurtenances thereto.

(2) “*Major maintenance*” includes the painting of a lift bridge and the repair of deteriorated or damaged elements, including bridge decks, to restore the structural integrity of a lift bridge.

(3) “*Routine maintenance*” includes without limitation, clearing debris from the deck, sweeping, snow and ice removal, minor wearing surface patching, cleaning bridge drainage systems, marking decks for traffic control, minor and emergency repairs to railing and appurtenances, emergency patching of deck, and maintenance of traffic signal and lighting systems, including the supply of electrical power.

(4) “*Operation*” relates to those expenses that are necessary for the routine, daily operation of a lift bridge, such as payroll, workers’ compensation and retirement payments, and the cost of utilities. (Emphasis added.)

Thus, R.C. 5501.49 makes ODOT responsible for the construction, reconstruction, major maintenance and repair, and operation of all lift bridges located on the state highway system within a municipal corporation, but it provides for the county or other person responsible for maintaining the pavements and sidewalks on either end of the bridge to be responsible for the routine maintenance of the lift bridges, unless other arrangements have been made between the county and the municipal corporation to perform the routine maintenance. *See also* note 24, *infra*.

authority to exercise all powers of local self-government . . . ”); *Village of Perrysburg v. Ridgway*, 108 Ohio St. 245, 140 N.E. 595 (1923) (syllabus, paragraph 2) (“[t]he power to establish, open, improve, maintain and repair public streets within the municipality, and fully control the use of them, is included within the term ‘powers of local self-government’”); *Sparrow v. City of Columbus*; 1988 Op. Att’y Gen. No. 88-039; 1988 Op. Att’y Gen. No. 88-036, at 2-171. The General Assembly has provided that, except with regard to lift bridges under R.C. 5501.49, “the legislative authority of a municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation.” R.C. 723.01;<sup>22</sup> *see*

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<sup>22</sup> The full text of R.C. 723.01 is as follows:

Municipal corporations shall have special power to regulate the use of the streets. Except as provided in section 5501.49 of the Revised Code, the legislative authority of a *municipal corporation shall have the care, supervision, and control of the public highways, streets, avenues, alleys, sidewalks, public grounds, bridges, aqueducts, and viaducts within the municipal corporation.* The liability or immunity from liability of a municipal corporation for injury, death, or loss to person or property allegedly caused by a failure to perform the responsibilities imposed by this section shall be determined pursuant to divisions (A) and (B)(3) of section 2744.02 of the Revised Code. (Emphasis added.)

The provisions governing liability of a municipal corporation appear in R.C. 2744.02, which now states, in relevant part:

(A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function.

.....  
 (B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

.....  
 (3) Except as otherwise provided in section 3746.24 of the Revised Code, *political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full*

R.C. 5511.01 (with limited exceptions, the Revised Code does not restrict a municipality's authority under R.C. 723.01 or liability under R.C. 2744.02(B)(3)); *City of Youngstown v. Sturgess*; 1988 Op. Att'y Gen. No. 88-036, at 2-171 to 2-172; note 22, *supra*. As discussed above, a municipality is generally responsible for the maintenance of its streets. *See, e.g., Village of Peninsula v. Summit County*, 27 Ohio App. 3d at 254; *Sroka v. Green Cab Co.*; *see also* R.C. 715.19. A municipal corporation, pursuant to R.C. 723.01, cares for, supervises and controls all public highways within its borders and has the duty to keep them open, in repair and free from nuisance").<sup>23</sup>

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*defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.* (Emphasis added.)

*See also* R.C. 2744.01(H) (for purposes of political subdivision tort liability, “[p]ublic roads” means “public roads, highways, streets, avenues, alleys, and bridges within a political subdivision” and does not include “berms, shoulders, right-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices”); R.C. 2744.02(B)(5) (“[c]ivil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision”); R.C. 4511.01(EE) (for purposes of traffic laws, “[r]oadway” means “that portion of highway improved, designed, or ordinarily used for vehicular travel, except the berm or shoulder”); R.C. 4511.01 (UU) (for purposes of traffic laws, “[r]ight-of-way” includes “the roadway, shoulders or berm, ditch, and slopes extending to the right-of-way limits under the control of the state or local authority”); note 23, *infra*.

<sup>23</sup> Prior to its amendment in 2003, R.C. 723.01 stated, with regard to public highways, streets, bridges, and the other public areas listed in R.C. 723.01, that “the municipal corporation shall cause them to be kept open, in repair, and free from nuisance,” and similar language appeared in R.C. 2744.02(B)(3). 2001-2002 Ohio Laws, Part II, 3500, 3501, 3508 (Am. Sub. S.B. 106, eff. Apr. 9, 2003). *See generally* *Trader v. City of Cleveland*, No. 86227, 2006-Ohio-295, 2006 Ohio App. LEXIS 258 (Cuyahoga County Jan. 26, 2006), *discretionary appeal not allowed*, 109 Ohio St. 3d 1507, 849 N.E.2d 1028 (2006).

Under this earlier version of R.C. 723.01, it was stated that R.C. 723.01 gives the municipality certain duties with regard to bridges, but not the duty of actual repair, and that R.C. 723.01 does not relieve the state and county of specific duties imposed upon them by statute. *See Manufacturer's Nat'l Bank v. Erie County Rd. Comm'n*, 63 Ohio St. 3d 318, 321, 587 N.E.2d 819 (1992) (“R.C. 723.01 obligates municipal corporations to keep highways and streets open for the purposes for which they were designed and built – to afford the public a safe means of travel”); *Strunk v. Dayton Power & Light Co.*, 6 Ohio St. 3d 429, 453 N.E.2d 604 (1983) (extending municipality's duty under R.C. 723.01 only as far as the berm or shoulder, and not to an adjacent light pole; dissent would extend duty to everything defined as an appurtenance under R.C. 5501.01(C), including light poles); *Hedrick v. City of Columbus*, Nos. 92AP-1030, 92AP-

With regard to certain bridges within municipal corporations, the responsibility for construction and repair is placed specifically upon the county. R.C. 5591.02 states:

Except as provided in section 5501.49 of the Revised Code, the board of county commissioners shall construct and keep in repair all necessary bridges in municipal corporations on all state and county roads and improved roads which are of general and public utility, running into or through the municipal corporations.

Thus, if a bridge is in a municipality and on a state or county road or an improved road of general and public utility running into or through the municipal corporation, the board of county commissioners is required to construct the bridge and keep it in repair.<sup>24</sup> R.C. 5591.02. Pursuant to this provision, it has been found that the board of county commissioners must repair “a bridge within a village, where the bridge was built by the state, in conjunction with the state’s construction of a limited access highway, to carry an existing county road over such highway.” 1981 Op. Att’y Gen. No. 81-083 (syllabus). R.C. 5591.21 imposes a similar duty upon the county with regard to bridges over streams and public canals. *See* note 11, *supra*.

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1031, 1993 Ohio App. LEXIS 1874, at \*14 (Franklin County Mar. 30, 1993) (R.C. 723.01 generally requires a municipality to keep bridges located within its boundaries free from nuisance); 1981 Op. Att’y Gen. No. 81-083 (syllabus); 1981 Op. Att’y Gen. No. 81-007. *See generally Carney v. McAfee*, 35 Ohio St. 3d 52, 517 N.E.2d 1374 (1988) (held, pursuant to R.C. 5523.17, that state (and not municipality) was responsible for maintaining bridge designed and constructed by the state to carry state route over railroad tracks within municipality, even though municipality received state highway funds to maintain state roads within the municipality and sometimes performed repair work on the bridge, and, at 35 Ohio St. 3d at 54 n.4, stated in dictum that R.C. 5591.02 and R.C. 5591.21 supported the conclusion that “the state has the obligation of maintaining and inspecting bridges on state roads”).

<sup>24</sup> An exception is created for R.C. 5501.49, which governs lift bridges located on the state highway system within municipal corporations and gives the county responsibility only for routine maintenance. *See* note 21, *supra*. The Ohio Legislative Service Commission’s Analysis of the bill enacting R.C. 5501.49 states:

Under existing law [prior to the enactment of R.C. 5501.49], primary responsibility for the maintenance of bridges within municipal corporations rests with the county commissioners. The Director of Transportation has no obligation to construct and maintain such bridges, even those on state highways, unless the municipality involved is a village.

Ohio Legislative Service Comm’n, 118-HB381 LSC Analysis, at p. 28 (analysis of Am. Sub. H.B. 381, eff. July 1, 1989, which, *inter alia*, enacted R.C. 5501.49) (citing R.C. 723.01, R.C. 5501.31, R.C. 5501.49, R.C. 5511.01, R.C. 5521.01, R.C. 5591.02, and R.C. 5591.21).

Accordingly, a municipality is responsible for the maintenance of its streets, including bridges that are part of the streets, unless that responsibility is extended to the county pursuant to R.C. 5591.02 or R.C. 5591.21. With regard to a bridge that carries a municipal street (not a state or county road) over a limited access state highway, R.C. 5591.02 gives the county responsibility for constructing and repairing the bridge if the street is an improved road of general and public utility running into or through the municipal corporation. The meaning of that term was addressed in detail in 1990 Op. Att’y Gen. No. 90-079 and it is not necessary to repeat that discussion here. Suffice it to say that “[t]he phrase ‘improved roads which are of general and public utility, running into or through the municipal corporations,’ as used in R.C. 5591.02 and incorporated thereby in R.C. 5591.21, includes improved roads located entirely within the municipality, if such roads have utility to the general public and are not used primarily by local municipal traffic.” 1990 Op. Att’y Gen. No. 90-079 (syllabus, paragraph 1). The determination as to whether a particular road is an improved road of general and public utility is a question of fact to be determined in the first instance by the board of county commissioners. If a particular road meets this description, the board of county commissioners has a duty to repair a bridge located on the road. 1990 Op. Att’y Gen. No. 90-079 (syllabus, paragraph 3); *see* 1981 Op. Att’y Gen. No. 81-007, at 2-25; 1957 Op. Att’y Gen. No. 811, p. 316.

Therefore, if a bridge carries a municipal street over a limited access state highway, the county is responsible for the rehabilitation, reconstruction, maintenance, and repair of the bridge structure pursuant to R.C. 5591.02 because the bridge structure is part of the state highway. The county is also responsible for the maintenance and repair of the street that passes over the bridge if the street is an improved road of general and public utility running into or through the municipal corporation. R.C. 5591.02. Otherwise, the municipality is responsible for the maintenance of the street carried across the bridge, though, pursuant to R.C. 2744.02(B)(3), the municipality is never liable when it is not responsible for maintaining or inspecting the bridge. *See* R.C. 723.01; notes 3 & 22, *supra*. If the municipality is a village, it may request ODOT to carry out ODOT’s limited duties under R.C. 5521.01 to maintain, repair, and apply standard longitudinal pavement marking lines to a state highway within the limits of the village. *See* note 19, *supra*.

With regard to bridges carrying state highways over municipal streets, the rule regarding maintenance is as outlined above. Except as provided in R.C. 5501.49, R.C. 5517.04, and R.C. 5521.01, ODOT is not responsible for the rehabilitation, reconstruction, maintenance, or repair of state highways located within a municipal corporation or of bridge structures on the highways. Instead, this responsibility rests with the county, township, or municipality, as determined pursuant to state law. R.C. 5501.31; R.C. 5511.01.

We conclude, accordingly, that, except as provided in R.C. 5501.49, R.C. 5517.04, and R.C. 5521.01, ODOT is not responsible for the rehabilitation, reconstruction, maintenance, or repair of a bridge structure that carries a county or township road or a municipal street over a limited access state highway or other state highway within a municipal corporation, or for the maintenance or repair of the wearing surface of the county or township road or municipal street

that passes over that bridge structure; instead, this responsibility rests with the county, township, or municipality, as determined pursuant to state law.

### **Conclusions**

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. When the Ohio Department of Transportation (ODOT) constructs a bridge to carry a county or township road or municipal street over a limited access state highway, the bridge structure is part of the state highway system; however, the road or street that passes over the bridge may be included in the county highway system, the township road system, or the system of municipal streets. (1960 Op. Att’y Gen. No. 1841, p. 667, followed in part and overruled in part, and 1958 Op. Att’y Gen. No. 1605, p. 29, reaffirmed in part).
2. Pursuant to R.C. 5501.11(A)(1), ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of a bridge structure not located in a municipal corporation if the road that passes over the bridge is a county or township road and the road running beneath the bridge is a limited access state highway. ODOT is not responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge; instead, this responsibility rests with the county or township, as determined pursuant to state law.
3. When, as part of the construction of a state highway that is not a limited access highway, ODOT constructs a bridge not located in a municipal corporation to carry a county or township road over the state highway, the bridge is appurtenant to the state highway and ODOT is responsible for the rehabilitation, reconstruction, maintenance, and repair of the bridge structure pursuant to R.C. 5501.11(A)(1); however, ODOT is not responsible for the maintenance and repair of the wearing surface of the road that passes over the bridge, for this responsibility rests with the county or township, as determined pursuant to state law. When a bridge carrying a county or township road over a state highway that is not a limited access highway is not located in a municipal corporation and is not part of ODOT’s construction of the state highway, the bridge is not appurtenant to the state highway and responsibility for the rehabilitation, reconstruction, maintenance, and repair of both the bridge structure and the wearing surface of the road that passes over the bridge rests with the county or township, as determined pursuant to state law.
4. Except as provided in R.C. 5501.49, R.C. 5517.04, and R.C. 5521.01, ODOT is not responsible for the rehabilitation, reconstruction,

maintenance, or repair of a bridge structure that carries a county or township road or a municipal street over a limited access state highway or other state highway within a municipal corporation, or for the maintenance or repair of the wearing surface of the county or township road or municipal street that passes over that bridge structure; instead, this responsibility rests with the county, township, or municipality, as determined pursuant to state law.

Respectfully,

A handwritten signature in black ink, appearing to read "Jim Petro", written in a cursive style.

**JIM PETRO**  
Attorney General