

DRAINS AND LEVEES: The repairs and upkeep on bridges in counties organized by county courts in drainage districts are controlled by Section 1083 1/2, Laws of Missouri, 1937, page 227, and in districts organized by circuit courts bridges must be repaired and kept by the district.

November 10, 1939

Honorable J. V. Conran
Prosecuting Attorney
New Madrid County
New Madrid, Missouri



Dear Sir:

This department is in receipt of your letter of October 26th wherein you request an opinion based on the following facts:

"Will you kindly give us your opinion upon the following question?

Where a County Court drainage district widens and deepens a ditch by reconstruction and the ditch crosses a public road where there is a bridge which will have to be extended and higher piers built to meet the new conditions caused by such widening and deepening, which organization is responsible for the work on the bridge, the drainage district or the county road district? The district in question is Drainage District No. 38 of New Madrid County, which was organized in 1923, under the statute for organization of drainage districts by county courts and the District is still under County Court supervision. After construction of the bridge, or extension thereof, which is responsible for the upkeep, the Drainage District or the road district? Is there any difference if the district is a circuit court organization?"

The only section of the statutes which we think is applicable to the question of repairing the bridge which has become necessary due to the fact that the drainage ditch is widened and deepened is originally Section 1083 1/2, R. S. Mo. 1929. In Laws of Missouri, 1937, p. 227, the Legislature amended said section so that the same now reads as follows:

"The county court may, when the same is necessary for the public health, convenience or welfare, cause to be constructed or enlarged any bridge or culvert made necessary by the crossing of any ditch constructed by a district organized under the provisions of this article: Provided, however, that if such bridge or culvert shall belong to any corporation other than the county, the county clerk shall give such corporation notice by delivering to its agent the order of the court declaring the necessity for constructing or enlarging such bridge or culvert. A failure to construct or enlarge such bridge or culvert within the time specified shall be taken as a refusal to do said work, and thereupon the county court shall proceed to let the work of constructing or enlarging the same, and assess the corporation with the cost thereof, and the county clerk shall place such assessment on the tax book against said corporation, and it shall be a lien upon the property of the corporation, to be collected as taxes. But before the county court shall let such work, they shall give to the agent of such corporation at least twenty days' actual notice of the time and place of letting such work. When a bridge has been constructed across a drainage ditch that crosses any public highway in this state, that shall be adjudged sufficiently by the county court of the county in which said drainage district is organized, such bridge shall become a part of such highway and shall thereafterwards be maintained, repaired or replaced by the authority authorized by law to maintain the road of which it becomes a part."

It will be noted that the last sentence constitutes the change in the original section and, according to the terms of the amended section, we think that it becomes the duty of the county to repair and maintain the bridge in question if the road is what is termed a county road or to be maintained by the county. Otherwise, as stated in the statute, it shall "be maintained, repaired or replaced by the authority authorized by law to maintain the road of which it becomes a part."

It would therefore appear to be the duty and the liability of the county, state or other part of the political subdivision to maintain, repair and replace the bridge in question when such district is organized under Article II, Chapter 64, R. S. Mo. 1929, relating to construction and improvement of ditches, water courses and levees by county courts.

There appears to be a difference in the case of bridges in districts organized by circuit courts, as was determined by the case of State ex rel. Chamberlin v. Drainage District, 311 Mo. 1. c. 330.

"In State ex rel. Ashby v. Medicine Creek Drainage District, 284 Mo. 636, the suit was by a county to compel the defendant district to construct and maintain bridges over public highways, crossed by the ditches of the district, and it was a district organized under the Act of 1913. The provisions of that act were exhaustively discussed, and the changes embodied therein, over the former provisions, were pointed out. The most significant change made was that found in Section 30 of the act, concerning the building of bridges, and limiting the application of the word 'corporation' as used in that section. The decisions in the Chariton River and Little River Drainage District cases had turned upon the meaning to be given to the word 'corporation' and had applied the word to counties; but the proviso in Section 30 is, that 'the word 'corporation' as used in this Section shall not apply to counties.' Numerous sections, and various considerations bearing upon the question as to which of the two organizations had imposed upon it the duty of constructing and maintaining bridges, over ditches crossing public highways, were discussed fully. The decision is founded upon the considerations that the drainage district is authorized to construct and maintain any ditch across any of the public highways of the State without proceedings for the condemnation of the same or being liable for the damages therefor; that the further provision is that a bridge shall be constructed and maintained over such drainage ditch where

the same crosses such highway; that such bridge must be constructed in accordance with the plans, specifications and orders made or approved by the chief engineer of the drainage district, and such plans are not made subject to approval by the county authorities; that the counties are excluded from the class of corporations required to construct such bridges or pay for the construction of same if done by the drainage district; that under the common law that duty would rest upon the drainage district as the person having made necessary the construction of such bridges; that since the duty is not imposed upon the county to construct such bridges, the drainage district must do so. The decision further means that since the duty to construct and maintain such such bridges, as 'works' or 'improvements' made necessary by its plan of reclamation, rests upon the district, it is empowered to levy a maintenance tax for the maintenance of such works and improvements."

We are therefore of the opinion that when bridges are in drainage districts which have been organized by the circuit courts, when the same intersect public roads, the district is required to repair, maintain and reconstruct them whenever their enlargement or renewal is made necessary by the widening of the ditches.

Respectfully submitted,

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APPROVED:

W. J. BURKE
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