

**County Roads, Bridges Upon. Ditches, Canals or Flumes
Across County Roads, Duty to Bridge. Duty, to Bridge Canals,
Ditches or Flumes Across County Road.**

All bridges upon the public highway of the state are to be maintained by the county at large, and no distinction can be made between those put in previous to 1903, and those of later date

June 30, 1915.

Hon. H. A. Bollinger,
County Attorney,
Bozeman, Montana.

Dear Sir:

I am in receipt of your communication submitting for my opinion the question of whether or not, in view of Section 4858, Revised Codes of 1907, it is the duty of the County Commissioners to keep in repair, and rebuild if necessary, bridges, across ditches, dikes, flumes or canals, over or across public roads or highways; or whether the person maintaining such ditches and canals should be required to keep the same in repair?

The question seems to arise from the fact that Section 8 of Chapter 6 of Chapter 141, Session Laws of the Fourteenth Legislative Assembly, in a way seems to conflict with Section 4858 of the Revised Codes of 1907. Under the provisions of Section 4858, it was the duty of any person building a ditch across a public highway to keep the same in repair, and bridge it if necessary. The latter provision provides that all persons contemplating the excavation of ditches across highways, shall obtain a permit from the county commissioners and build a bridge in conformity to plans and specifications furnished by the county commis-

sioners, and that after such bridges are built, they shall be maintained by the county. Section 4858 comes to us from the Laws of 1895. The provisions of the highway law were enacted as a part of the laws of 1903. It might be perhaps contended that this section of the highway law could not be applied to any bridges erected previous to its enactment without violating the provisions against retroactive statutes. However, we must consider that all bridges erected previous to 1903 must be presumed to have been erected by authority or after permission was obtained. Furthermore, when erected they become part of the public highway, and are owned by the public generally. Also a different rule obtains upon the question of retroactive statutes where a city, town or county is involved, since such public corporations are merely political divisions of the state for governmental purposes, and do not have the same rights with regard to retroactive legislation as ordinary individuals do.

“As cities, towns, counties and the like are governmental instrumentalities, the power of the legislature over them is much greater than its power over individual citizens, and acts or proceedings may be validated against cities, towns or counties that could not be validated where private rights are involved.”

Elliott Roads and Streets, Sec. 523.

It is, therefore, possible for the legislature to put the burden of the care and maintenance of such bridges upon counties, if in its discretion it seems fit to do so. Examining the highway law, enacted at the last session, further, we find that Section 1 of Chapter 5 provides:

“All public bridges are maintained by the county at large under the management and control of the Board of County Commissioners.”

I am of the opinion, therefore, that all bridges upon the public highways of the State are to be maintained by the county at large, and that no distinction can be made between bridges put in previous to 1903 and those of later date.

Yours very truly,

J. B. POINDEXTER,

Attorney General.