

**Bridges — Cities and Towns — County Commissioners—
State Highway Commission—Counties.**

A county is responsible for bridges in any city or town leading over a natural stream from one part of the county to another of such county subject to the right to require the city or town to pay for replanking, paving, etc., and the city or town is responsible for the approaches to the bridge.

George W. Padbury, Jr., Esq.,
County Attorney,
Helena, Montana.

January 29, 1929.

My dear Mr. Padbury:

You have requested my opinion on the following question:

“Inasmuch as East Helena is now an incorporated city, is the city, county or state responsible for the condition of the two bridges spanning Prickly Pear creek in East Helena?”

Section 1707 R.C.M. 1921 provides as follows:

“Every bridge necessary to be constructed and maintained in any city or town as part of a main highway, in any county leading over a natural stream from one part to another of such county, shall be constructed and maintained by the county at large, and be under the direction and control of the board of county commissioners.”

Section 1709 R.C.M. 1921 further provides:

“The city or town in which any bridge referred to in the two preceding sections is situated shall be obligated to pay the whole or such part, not less than one-half, to be determined by the board of county commissioners, of the cost of planking, replanking, paving or re-paving such bridge from time to time; and such city or town shall be obliged to construct and maintain and keep in good repair the approaches to such bridge.”

These statutes are clear and unambiguous, and while you do not state whether the bridges in question are any part of the highway “leading over a natural stream from one part to another of the county,” I assume that is the case, and it is my opinion that the county is responsible for the condition of the bridges, subject, however, to the right of the county to recover from the city or town the cost of re-planking or paving the same, as provided in Section 1709. The county is, of course, not liable for the approaches, as under that section that responsibility is put upon the city.

In cases where the bridge is a part of the state highway Section 1788 R.C.M. 1921 provides in part:

“The state highway commission is hereby authorized to, and shall, in conjunction with the board of county commissioners, of the several counties in the state, designate such public

roads in the state as shall be classed as state highways and subject to improvements under the provisions of said federal aid road act of congress, and the state highway commission in conjunction with the board of county commissioners shall also formulate necessary rules and regulations for the construction, repair, maintenance and marking of state highways and bridges, and may provide for local supervision in such cases."

By this provision the state highway commission is given authority to cooperate with the counties in the maintenance of the bridges which constitute a part of the state highway and can make rules and regulations providing for the manner in which the maintenance of the same shall be maintained. The rules of the state highway commission are to the effect that where a bridge is constructed by the state highway commission as a part of a state highway the state assumes full responsibility for the maintenance thereof, but in cases where the bridge was constructed by the county before the highway was established the state highway commission does not assume any responsibility for the maintenance of the bridge, itself.

In the case of a bridge constituting a part of the state highway within the corporate limits of East Helena, the facts are that this bridge was constructed by the county before the highway was established, and therefore it is governed by the same condition as the other bridge in question, and the maintenance of the same is a responsibility of the county, subject to the condition as to the re-planking and caring for approaches as above stated.

Very truly yours,
L. A. FOOT,
Attorney General.
By S. R. Foot, Assistant.