

**Opinion No. 333.****Roads and Bridges—Cities and Towns  
—Counties—County Commissioners—  
Highways—State.**

HELD: 1. While the obligation to build and maintain highways, including bridges, primarily devolves upon the State, the State may and in Montana has imposed that duty upon the counties and municipalities.

2. The Board of County Commissioners in the exercise of a sound discretion must determine whether a bridge located within a municipality should be replaced; and must fix the share of the cost (not less than one-half) which the municipality must bear.

July 30, 1936.

Board of County Commissioners  
Flathead County  
Kalispell, Montana

We are in receipt of a letter dated July 17, 1936, signed by R. D. Frederick, City Attorney of Whitefish, D. Gordon Rognlien, County Attorney of Flathead County, and Dean King, Deputy, in which we are advised that you desire an opinion from this office concerning the replanking of the Baker Avenue bridge, which extends over the Whitefish River, within the city limits of Whitefish.

The facts submitted to us are as follows:

"About twelve years ago the County of Flathead built a bridge across the Whitefish River on Baker Avenue and within the city limits of Whitefish. This was the main Whitefish to Kalispell highway.

"Last year, the Highway Commission took over the old highway from Kalispell to Whitefish, building another bridge at another site, so that the old highway across Baker Avenue bridge joined the State Highway about half a mile from the city limits. There is still much traffic over the Baker Avenue bridge, coming from the state highway, from along the highway itself, and going through Whitefish and out onto other county roads."

The letter then states: "We desire your opinion as to whether the county, under Section 1703 must replank the bridge—or is it the duty of the city to not only replank the bridge but maintain it in other ways—or can the county replank it, under Sections 1707-9 and compel the city to pay half or some larger portion of the cost. We are not at all anxious to have your opinion as to maintenance other than replanking."

We do not understand how there can be any dispute about the matter in the face of the applicable statutory provisions, which are clear and comprehensive.

While the obligation to build and maintain highways, including bridges, primarily devolves upon the state, it may impose, and in Montana has imposed (Chapter 146, Political Code, R. C. M. 1935) that duty upon the counties and municipalities. (State v. Poland, et al., 61 Mont. 600, 203 Pac. 352; 9 C. J. 456, 457.)

Under Section 1713, R. C. M. 1935, whether or not the bridge in question should be replanked is a matter to be decided by the board of county commissioners in the exercise of a sound discretion, and if the board determines that it should be done, the work must proceed as and when directed by the board, subject, of course, to the limitations of Section 1705, R. C. M. 1935. When that is done the county commissioners must fix the share

of the cost, which shall be not less than one-half, and which amount so fixed shall be a legal and binding obligation upon the City of Whitefish, under Section 1709, R. C. M. 1935. For further discussion of the subject see Volume 8, Report and Official Opinions of the Attorney General, p. 366; 1 Elliott on Roads and Streets, 4th Ed., p. 77; 4 R. C. L. 215 et seq.