

Opinion No. 33

Highways and Bridges—Culverts—Distinction—Charges.

Held: (1) Whether a particular structure in a highway is a bridge or a culvert depends upon its essential purpose and characteris-

tics. If a change in any bridge places it into the category of a culvert, expenditures made thereon are no longer properly chargeable to the bridge fund.

July 14th, 1949.

Mr. A. W. Edwards, Chairman
Board of County Commissioners
Glendive, Montana

Dear Mr. Edwards:

You have requested my opinion on the distinction between a culvert and a bridge in order to determine whether to charge various expenditures to the bridge fund or the County road fund.

I have examined the opinion of Mr. E. W. Popham, your County Attorney, which accompanied your letter of request and agree in the general conclusion reached by him.

The subject for which the structure is used rather than the material or manner of construction, would determine whether any particular structure is a bridge or a culvert, in general.

That the law of this State makes a definite distinction between a bridge and a culvert is clear.

Section 1611 of the Revised Codes of Montana, 1935, provides as follows:

"Within the meaning of this act, a highway shall be deemed to include its necessary embankments, retaining walls, culverts, sluices, and drains, and a bridge shall be deemed to include its superstructures, abutments, and piers and approaches, except dirt fills."

This distinction becomes of importance because the law establishes a fund to construct and maintain bridges, which is raised by a separate and additional tax levy. This is provided in Section 1704, Revised Codes of Montana, 1935. This same section allows for special additional assessments if the total linear footage of bridges in a County exceeds certain amounts.

As a result, the determination in any case as to whether a particular structure is a bridge or a culvert becomes of importance in regard to both taxes and expenditures.

Our statutes do not give any clear definition of the distinction between a bridge and a culvert. The Section which differentiates between them (Sec. 1611, supra) merely states what should be considered part of each. To hold from that Section that every bridge must contain all of the parts therein enumerated, e.g. "superstructure, piers and approaches," would be to confine bridges to the most limited definition. This would serve only to increase the confusion of the issue.

In the absence of a statutory distinction, it is necessary to look to other authority.

At common law, the definition of a bridge was confined to structures over water courses and required that there must be a bed and banks and evidence of a permanent stream of running water, *Board of Commissioners v. Bailey* (1890) 122 Ind. 46, 23 N.E. 672. In the *Bailey* case a structure of stone 5 feet across, 20 feet wide, and 8 feet high, which permitted cattle to pass under a road way and drained surface water was held a culvert and not a bridge.

"A bridge is a structure of wood, iron, brick or stone ordinarily erected over a river, creek, pond or lake, or over a ravine, railroad, canal, or other obstruction in the highway, so as to make a continuous roadway and afford to travelers a convenient passageway from one bank to the other. The term "bridge" includes all the appliances necessary to the proper use of the bridge, including the abutments and approaches necessary to make it accessible and convenient for public travel." 9 *Corpus Juris* 420.

In 8 *American Jurisprudence* 910, *Bridges*, Section 2, a very similar definition is set forth, and continues:

"It is not so much the name by which the structure is designated as the purpose which it is intended to serve that characterizes it as a bridge within the meaning of the law."

"In fact, any structure which affords a passageway by which travelers and others are enabled to pass safely over streams or other obstructions is within the legal definition of a bridge, so long as the passageway does not rest directly on the ground."

A culvert on the other hand, is defined in 17 *Corpus Juris* 400 to be:

"A waterway, or water passage, whether of wood or stone square or arched; a covered drain under a road designed for the passage of water; an arched drain to carry water under a road from one side to the other."

In a Canadian case involving this very question, *City of Dufferin v. City of Wellington*, 10 Ont. W. R. 239 (1907), the Court held that a circular concrete pipe with an inside diameter of 3 feet which replaced an old bridge of 8 or 10 feet span that had fallen into dispair, was a culvert and not a bridge.

The Court stated, at page 240.

"In connection with railways and highways it is sometimes disreputed whether a particular structure is a 'culvert' or a 'bridge'. The essential purpose of a bridge, however, is to carry a road at a desired height over a river, and its channel, a chasm or the like; that of a culvert to afford a passage for a small crossing stream under the embankment of a railway or highway, or beneath a road where the configuration of the surface does not require a bridge."

In *Knickerbocker Co. v. Seattle*, (1912) 69 Wash. 336, 340, 124 Pac. 920, it was held that an elevated railway built to bring the street up to an established grade was not a bridge. The Court said:

“ (the structure) is no more a bridge proper than it would have been had the street been filled with earth to the required level and the top planked over. It was an elevated roadway.”

In *Hubbard v. Fulton County* (1915), 144 Ga. 363, 87. S.E. 281, construction of an embankment of dirt across a ravine, under which was a 'bridge' had the effect of transforming the road and creating a culvert.

From the above authorities it seems to be well settled that there is a definite distinction between a bridge and a culvert, based on the purpose for which the structure is used. The purpose for which it is used is undoubtedly a question to be determined by the Board of County Commissioners in each instance, in conformance with the legal bases set forth above.

It is my opinion, however, that merely because a bridge once existed in a particular place does not mean that any structure thereafter used in that place must be a bridge. If a change is made in the road, a fill placed in a ditch formerly bridged, and a culvert placed in the highway at that point, the particular structure is no longer a bridge, but is a culvert, and expenditures there made are not properly chargeable against the bridge fund.

Very truly yours,
ARNOLD H. OLSEN,
Attorney General.