

VOLUME NO. 38

OPINION NO. 50

COUNTIES - Maintenance of bridge not located on county road;

COUNTY COMMISSIONERS - Maintenance of public bridges, what constitutes public bridge;
HIGHWAYS - Public bridges crossing between counties, when not located on county road;
MONTANA CODE ANNOTATED - Sections 7-14-2201(1), 7-14-2202, 7-14-2502(3), 60-1-103(6).

HELD: The county commissioners are not responsible for maintenance of a bridge that is utilized by the public, but is not located in a city or town in the county or on a county road maintained by the county.

2 November 1979

Charles A. Graveley, Esq.
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion on the following question:

Whether the county commissioners are responsible for maintenance of a bridge that is utilized by the public but is not located on a county road maintained by the county.

According to your inquiry, a road in Lewis and Clark County is connected with a road in Teton County by means of a bridge over a waterway forming a common boundary between the counties. The bridge is utilized by the public. The road in Lewis and Clark County is also utilized by the public, but is not a county road under section 60-1-103(6), MCA, is not maintained by the county, and is not located within a city or town in the county.

Section 7-14-2201(1), MCA, provides: "Each board of county commissioners shall maintain all public bridges other than those maintained by the department of highways." Section 7-14-2202, MCA, further provides that the responsibility for construction and maintenance of bridges crossing between counties is to be apportioned between the counties into which the bridges reach.

Prior to the 1979 legislative session, the term "public bridges" as used in section 7-14-2201(1), MCA, was not specifically defined. By analogy to the definition of "public highway" in section 60-1-103(21), MCA, it would appear that a "public bridge" included any bridge dedicated to or acquired for public use, regardless of the status of the roads on either side. See § 7-14-2502(3), MCA. Because the bridge described in your inquiry has evidently been utilized consistently by the public since its construction, its maintenance prior to July 1, 1979, would have been the common responsibility of Teton and Lewis and Clark Counties.

In 1979, the legislature amended section 7-14-2201. 1979 Mont. Laws, ch. 194, §1. Subsection (4) of that statute now states: "In this part 'public bridges' means public bridges located in towns or cities and bridges located on county roads maintained by the county." With this more limited definition, it is clear that public utilization of a bridge is no longer sufficient in itself to trigger a county's responsibility to maintain the bridge under sections 7-14-2201(1) and 7-14-2202, MCA. The bridge you have described is not located in a city or town or on a county road in Lewis and Clark County. Therefore, although it is used by the public, its maintenance is not the duty of the county commissioners of Lewis and Clark County.

THEREFORE, IT IS MY OPINION:

The county commissioners are not responsible for maintenance of a bridge that is utilized by the public, but is not located in a city or town in the county or on a county road maintained by the county.

Very truly yours,

MIKE GREELY
Attorney General