

DRAINS AND LEVEES: Duty of Drainage Districts to maintain  
and erect destroyed bridges.

July 18, 1933



Honorable Morris E. Osborn  
Prosecuting Attorney  
Shelby County  
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Dear Morris:

Your letter of July 12th, addressed to General McKittrick wherein you ask for several opinions regarding questions of liability of the drainage districts in replacing bridges, has been handed to me for answer. Your letter is quoted as follows:

"The County Court has asked that I get your opinion on the following:

After the Drainage Laws of 1913 were passed there was organized in this county a Drainage District. After the construction was completed, three bridges were built across the ditch in this county. For some reason, which I am unable to explain, the County Court has maintained these bridges up to about two years ago. At that time the company widened the ditch and raised the banks, which necessitated building approaches from each bank down to the bridge, which was left at a much lower altitude than the banks.

At that time the Court brought the matter to my attention, and I gave the court my opinion that the maintenance of the bridges was and had always been the job of the company. Since that time the bridges have not been repaired, and only lately were washed out by an over-flow of the ditch.

Whose job is it, according to the law, to repair and maintain these bridges?

Does the fact that Shelby county has maintained these bridges in the past estop the

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the county from now maintaining mandamus against the company to repair and maintain the bridges.

I believe the Court talked with Mr. McKittrick sometime ago and he told them to have me to write him for this opinion.

I might add that the 1929 law had not as yet been enacted when Shelby county got my opinion as to whose job it was to maintain the bridges. Also, at the time the ditch was being widened and the banks raised the Commissioners of the Company were served with a notice that the County expected them to repair and maintain the bridges. You will note that the 1929 Law gave to Counties the right to take over Drainage bridges only after they were constructed according to the specifications of the County Court and County Engineer."

This department agrees with you in having given your opinion to the County Court that the maintenance of the bridges was and always has been the duty of the Drainage District. Since you state that the Drainage District was formed under the laws of 1913, there has been an unbroken line of decisions holding that it was the duty of the drainage district to maintain and build the bridges. The first case deciding this point being State ex rel v. Medicine Creek Drainage District, 284 Mo. l. c. 649, wherein the court said:

"\*\*\*In each of the three cases above cited, it will be noted that it was held that the cost of building bridges over public highways in or out of drainage districts, was imposed upon the county in which the bridge was located. In the first case (State ex rel. v. Chariton Drainage District, 252 Mo. 345) this court construed Section 5513, supra, to impose the cost of building bridges upon the county, not because of any plain and pointed statement in the statute to that effect (for the statute contains no such statement), but because of the proviso

in that section to the effect that "if such bridge shall belong to any corporation, or be needed over a public highway", then the bridge shall be built by or at the expense of such corporation. A county is a public corporation, of course (14 C.J. 74), and upon that idea the decision in the Chariton Drainage District case is plainly based. That decision was handed down July 10, 1913. The opinion affirmed the judgment of the lower court. It is argued that when the General Assembly of 1913 met it was a matter of common knowledge that under the drainage laws as they then stood, the cost of building bridges made necessary by the cutting of drainage ditches, was imposed upon the counties, because counties were corporations within the meaning of that word as used in the drainage laws. Thereupon the General Assembly of 1913 undertook a revision of the drainage laws. In so doing it adopted as Section 30 of the Act of 1913 all that part of Section 5513, supra, beginning with the words, "All bridges contemplated by this section," thence to and including the words "twenty days actual notice of the time and place of letting such work." A few slight changes in verbiage are made, but none which affects the question here involved. The Legislature then added the following clause, which did not appear in the statutes of 1909, to-wit:

"Within ten days after a dredge boat or any other excavating machine shall have completed a ditch across any public highway, a bridge shall be constructed and maintained over such drainage ditch where the same crosses such highway; Provided, however, the word corporation as used in this section shall not apply to counties."

Whether or not the General Assembly took cognizance of the decision of the Macon County Circuit Court in the Chariton Drainage District case,

252 Mo. 345, may admit of speculation, but that the addition to the drainage laws of the words last above quoted sweeps away the foundation upon which the decision of the Chariton Drainage District case was based, so far as the question here involved is concerned, is too plain for controversy. This amendment affects the decisions above cited in the Little River cases (269 Mo. 444 and 271 Mo. 429) in the same way, and to the same extent. Hence it becomes necessary to determine in the light of this amendment, upon whom now rests the burden of bridge building under the Act of 1913. At common law, that burden would rest upon the individual whose acts made the building of the bridge necessary. (Rex v. Lindsey, 14 East, (Eng) 317; Rex v. Kerrison 3 M. & Sa. (Eng) 526; Penn. Railroad Co. v. Irwin, 85 Pa. St. 336; Richardson Co. v. Drainage Dist., 92 Neb. 776). Numerous authorities to the same effect are collated in an exhaustive note upon the case last cited, in 31 Am. & Eng. Ann. Cases (1914A), page 550.

As construed in the Chariton Drainage District case, supra, and in subsequent decisions, Article 1 of Chapter 41 (Drainage Statutes, R.S. No. 1909) the law imposed what this court felt to be a hardship upon the counties, but one which we could not avoid. Thus in the Chariton case, Paris, J., speaking for this court, said:

"While it is regrettable that a studied effort seems to have been made to render this drainage statute vague and ambiguous upon the point of where the burden of bridge building lies and while the view we have heretofore taken and are now again forced to take, is fraught with hardships in this and in other single instances, we can only repeat that the remedy lies with the Legislature and not with us. We construe the law; we do not make it." (269 Mo.l.c.463)

The vexatious vagueness of which the learned jurist there spoke is still as annoyingly per-

sistent in the Act of 1913 as before. It seems that it would not have been a difficult matter to incorporate into this act a line saying in plain terms either that the county or the drainage district must build and pay for bridges, but that has not been done. We must construe the act as we find it.

Seeking the legislative meaning, then as in duty bound, as Job sought the grave, "diligently and with tears," we come to considerations which may be summed up thus: The drainage law as found in the Statutes of 1909 permitted a construction which placed the duty of building bridges over drainage ditches upon the counties. The trial courts so construed it--and correctly so construed it, as we held in the Chariton case, supra. This was felt to be a hardship, as was said by Faris, J., in the paragraph which we have quoted. This paragraph though written subsequent to the Act of 1913, no doubt voiced a sentiment which had prevailed under the old law. The construction which caused this hardship was based, as we have said, upon an interpretation of the word corporation, as used in the drainage statute, as a word which included counties. The Legislature revised the law and in substance and almost literally reenacted the section which had been so construed. But in doing so, the Legislature said very clearly, that "the word corporation as used in this section shall not apply to counties." By this rule of construction we are bound, and if counties are not corporations within the meaning of that section, then there is no authority in the Act of 1913 for imposing the burden of the building of bridges upon counties. But Section 30 of the Act of 1913 provides that the bridges must be built. In the absence of a statutory declaration otherwise, the obligation to perform the duty would rest upon the drainage district under the common law, as we have said."

This opinion by the court has been followed and we find it further approved in 40 S. W. (2nd) p. 1086.

The next question which confronts us; What effect would the change in the statute of Section 4406 R. S. 1919, as made by the Legislature in 1929, which we find in Section 10773 R. S. 1929?

Omitting the parts which are not pertinent to the question we find the old Section 4406 reading as follows:

" \* \* A bridge shall be constructed and maintained under such drainage districts where the same crosses such highways; Provided, however, the word corporation as used in this section shall not apply to counties." \* \* "

The same was then changed in Section 10773 to read as follows:

"A bridge adjudged sufficient by the county court of said county or counties shall be constructed over such drainage ditch where the same crosses such highway, and after such bridge has been constructed it shall become a part of the road over which it is constructed and shall be maintained by the authority authorized by law to maintain the road of which it becomes a part. If said bridge has been constructed by the drainage district and has become a part of said road and is then destroyed the authorities having control of the road are authorized, if they desire, to reconstruct such bridge. Provided, however, the word corporation as used in this Section shall not apply to the state or any political subdivision thereof."

From reading Section 10773, at first glance it might be construed that the drainage districts are relieved of further responsibility of maintaining and repairing bridges across drainage districts, and such would be the case in the opinion of this Department in the absence of the statement in your

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letter; "Since that time the bridges have not been repaired, and only lately were washed out by an over-flow of the ditch."

The situation now is that you have no bridges and that they have been destroyed across the ditches, therefore we must apply that portion of the statute beginning with; "If said bridge has been constructed by the drainage district and has become a part of said road and is then destroyed the authorities having control of the road are authorized, if they desire, to reconstruct such bridge."

We must therefore construe this portion of the statute to mean that the county has the power and could reconstruct the bridges if it so desired, but there is nothing mandatory on the county court to reconstruct the bridges, in other words, if the county court does not desire to reconstruct the bridges then the decisions quoted above would still compel the drainage district to replace the bridges.

The change in the statute merely gave the county court the right to assist and aid drainage districts if the county court so desired.

The next question; "does the fact that Shelby County has maintained these bridges in the past estop the county from now maintaining mandamus against the company to repair and maintain the bridges?"

Under the doctrine of estoppel we fail utterly to understand how the drainage district could avail itself of that defense. To constitute an estoppel by conduct there must have been, first, a false representation or concealment of material facts; second, the representation must have been made with the knowledge of facts; third, the party to whom it was made must have been ignorant of the truth of the matter; fourth, it must have been made with the intention that the other party should act on it; fifth, the other party must have been induced to act on it. Under the facts set forth in your letter the drainage district has in nowise been injured or prejudiced by the county court maintaining the bridges which under the law the district itself should have maintained.

In view of the foregoing authorities it is the opinion of this Department that the county court has the power, if it so desires, to replace the bridges, but in the event the county

Hon. Morris E. Osborn.

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court does not so desire it can compel the district  
to replace the bridges destroyed.

Yours very truly,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

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ROY McKITTRICK  
Attorney General.

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