

ROADS AND BRIDGES: Bridge across ditch in drainage district organized by circuit court is maintained by county if county court has adjudged bridge sufficient, but by drainage district if county court has not adjudged bridge sufficient.

July 19, 1949

Honorable J. Harry Latham
Prosecuting Attorney
Andrew County
Savannah, Missouri



7/26/49

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"I am writing you for an opinion concerning bridges across drainage ditches where the drainage ditches have been constructed across the county highways.

"In the instant case the drainage district was organized in 1924 under the law relating to the organization of drainage districts by Circuit Court. At various places the drainage ditch crossed the public highway of Andrew County and the drainage district constructed the bridges, which then became a part of the public highway and has since said time, been maintained and kept in repair by Andrew County as a part of the County road system.

"At the present time, the bridge is inaccessible because high waters have destroyed the approaches and otherwise damaged said bridge, leaving it in such a condition that in order to make a proper bridge, it will have to be torn down and rebuilt.

"The County does not have sufficient funds at this time to rebuild the bridge if the burden is on the County to do so.

"Specifically, our question is whose obligation is it to rebuild the bridge. Does the law place the burden on the County or upon the drainage district to rebuild this bridge?"

We believe that the question of whether the county or the drainage district is required to repair the bridge in question depends on whether or not the county court of Andrew County has "adjudged sufficient" the bridge. In the case of State ex rel. vs. Big Medicine Drainage Dist. No. 1, 196 S.W. (2d) 254, the Supreme Court of Missouri said, l.c. 257:

"The amendment, we believe, evidences a transition of policy. Although requiring, as before, the bridges to be constructed by the district when its ditches are excavated through public highways (because ditches excavated through public highways by the district make the construction of bridges necessary), the legislature now, since 1929, desires, we believe, to recognize the benefit accruing to the public (due to the reclamation of swamp, wet or overflowed lands and their transformation to productivity) to the extent that it has balanced the benefit against the maintenance of bridges, making the maintenance the obligation of the public. However, it is emphasized that under the reenacted statute (Section 12354, supra) such bridges, the maintenance of which may become the obligation of the authorities authorized to maintain the roads, are sufficient bridges-- bridges which are adjudged sufficient by the county courts. In this wise the authorities authorized to maintain the roads, although obligated to undertake the maintenance of bridges adjudged sufficient, were to be and are protected from the burden, never intended by the legislature, of maintenance and repair, and reconstruction, of insufficient bridges. We have not found in any statute an evidence of the legislative intent that the maintenance of a drainage district's insufficient bridges should be undertaken by any public road maintaining authority. * * * * "

It will be noted that the court has italicized the words "adjudged sufficient." While it might be contended that such action by the county court could be shown only by an order of record, it is our view that the maintenance by the county court of the bridge since 1929, the date upon which the court held the county was authorized to maintain such bridges,

constituted an adjudging of the sufficiency of the bridge by the county. From the facts stated in your letter, it also appears that the bridge was sufficient for most of the past 20-year period and only recently has become in need of extensive repairs. Therefore, we believe under the circumstances that the county court of Andrew County has adjudged such bridge to be sufficient and that it is the responsibility of such county to repair such bridge.

CONCLUSION

It is the opinion of this department that it is the duty of Andrew County to repair a bridge built across a drainage ditch in a drainage district organized by the circuit court when the county has maintained such bridge for the past 20 years.

Respectfully submitted,

C. B. BURNS, JR.
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

CBB:VLM