



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Jim Ryan**  
ATTORNEY GENERAL

January 31, 1996

FILE NO. 96-007

HIGHWAYS:

Construction of Bridge on County  
Road Within 80 Rods of County Line

Honorable James D. Owens  
State's Attorney, Stark County  
Stark County Courthouse  
Toulon, Illinois 61483

Honorable Ted J. Hamer  
State's Attorney, Henry County  
100 South Main Street  
Cambridge, Illinois 61238

Gentlemen:

I have your letters wherein you inquire regarding the applicability of section 5-503 of the Illinois Highway Code (605 ILCS 5/5-503 (West 1994)) to the construction of a bridge located within Stark County, but less than 80 rods from the Henry County line. For the reasons hereinafter stated, it is my opinion that section 5-503 will require that Henry County contribute to the cost of constructing the bridge only if the road upon which it lies can properly be considered a county line road. A road that merely intersects, rather than parallels, a county line is not a county line road.

Honorable James D. Owens - 2.  
Honorable Ted J. Hamer

Section 5-503 of the Code provides, in part:

"Bridges, culverts or drainage structures for across highway waterways having a waterway opening of 25 square feet or more and located on county highways, township roads or district roads on county lines, and bridges, culverts or drainage structures for across highway waterways having a waterway opening of 25 square feet or more and located on such county line highways where such highways deviate from the established county line within 80 rods of county lines, shall be constructed and repaired by such counties and the expense of such construction and repair shall be borne in a proportion to the assessed value of the taxable property in the respective counties according to the last preceding equalized assessment thereof prior to such construction or repair. \* \* \*

\* \* \*

"

Other provisions of this section allow alternative contractual arrangements for cost sharing, and provide for judicial enforcement of obligations thereunder.

In the case of County of Stark v. County of Henry (1927), 326 Ill. 535, which, I am advised, concerned a bridge at this location, the court ruled that Henry County was required to share in construction costs of the bridge. At the time that case arose, section 36 of "AN ACT to revise the law in relation to roads and bridges" (the Roads and Bridges Act) (Ill. Rev. Stat. 1927, ch. 121, par. 41) provided, in part:

Honorable James D. Owens - 3.  
Honorable Ted J. Hamer

"Bridges or culverts on roads on county lines, and bridges or culverts on roads within 80 rods of county lines shall be built and repaired by such counties and the expense of such construction and repair shall be borne in proportion to the assessed value of the property, real and personal, in the respective counties according to the last preceding equalized assessment thereof prior to such construction or repair."

The plain language of the section in effect at that time made it applicable to any bridge or culvert on a road lying within 80 rods (1/4 mile) of a county line, whether or not the road was on or crossed the county line. The court observed in its opinion that a previous amendment to the section had deleted language which limited its application to bridges "over streets or roads extending from one county or town into another county or town and crossing county or town lines". County of Stark v. County of Henry (1927), 326 Ill. 535, 539.

Section 36 of the Roads and Bridges Act was amended in 1941 to provide, in pertinent part:

"Bridges or across road culverts, having a waterway opening of one hundred (100) square feet or more, on roads on county lines, and bridges or across road culverts, having a waterway opening of one hundred (100) square feet or more, on county line roads, where such roads deviate from the established county line within eighty rods of county lines shall be built and repaired by such counties and the expense of such construction and repair shall be borne in proportion to the assessed value of the property, real and personal, in the respective counties according to the last preceding

Honorable James D. Owens - 4.  
Honorable Ted J. Hamer

equalized assessment thereof prior to such  
construction or repair.

\* \* \*

"

(Emphasis in original.) (Laws 1941, p. 1092.)

A subsequent amendment changed the reference to the size of the  
waterway opening from 100 square feet to 25 square feet, as it  
remains today. (Laws 1945, p. 1296.)

Throughout the course of the various amendments re-  
ferred to above, there was no specific provision in the Roads and  
Bridges Act to address the joint construction of a bridge or  
culvert which traversed a county line, but which was not situated  
on a county line road. Such a provision was added to section 34  
of the Roads and Bridges Act (Ill. Rev. Stat. 1953, ch. 121, par.  
39) in 1953:

"

\* \* \*

In case a bridge, culvert or drainage  
structure is located on a public road which  
crosses a county line, transversely or sub-  
stantially so, and such bridge, culvert or  
drainage structure is so located that the  
county line passes through any part of such  
structure, then the adjoining counties may  
jointly construct or repair such bridge,  
culvert or drainage structure.

\* \* \*

"

(Laws 1953, p. 1640.)

This provision now appears as the fourth paragraph of section 5-  
502 of the Illinois Highway Code (605 ILCS 5/5-502 (West 1994)).  
The 1953 Act also updated the language of the first sentence of

Honorable James D. Owens - 5.  
Honorable Ted J. Hamer

section 36 to essentially that which now appears in section 5-503.

It appears from the course of amendments over the years that the legislative intent with respect to what is now section 5-503 of the Illinois Highway Code has changed. As noted by the supreme court in County of Stark v. County of Henry, prior to the enactment of section 36 of the Roads and Bridges Act the mandatory contribution requirement was limited to bridges on roads which crossed county or town lines. By 1927, however, the requirement applied to all bridges on roads lying within 80 rods of a county line, as well as those on county line roads. With the 1941 amendment, and since that time, the plain language makes the section applicable only to bridges or related structures on roads on county lines or on county line highways which deviate from the county line within 80 rods thereof. Another provision has been added to permit joint funding of bridges on roads which traverse county lines. It is my opinion, based upon the development of the statutory law, that section 5-503 now applies only to bridges or related structures on roads that are on county lines or on highways which can properly be denominated "county line highways" and which deviate not more than 80 rods from the established county line.

Section 5-405 of the Illinois Highway Code (605 ILCS 5/5-405 (West 1994)) provides:

Honorable James D. Owens - 6.  
Honorable Ted J. Hamer

"County highways may be constructed or improved on county lines. In case two counties desire to secure the construction or improvement of a county highway situated upon or near the boundary line between them, the respective county boards thereof may, by appropriate resolutions, initiate proceedings therefor. To this end such county boards may, by concurring resolutions, fix the portion of the total cost of construction which should be borne by each county.

In all proceedings contemplating the construction or improvement of a county line highway as herein provided, all acts of each county board relative thereto, together with the result of any vote upon the question of levying a tax or issuing bonds as provided herein, shall be communicated by the county clerk of each county to the county clerk of the other county.

In case either county refuses to take the steps necessary to secure the construction or improvement of such county line highway as herein provided, then all prior proceedings relative thereto on the part of the other county shall be regarded as suspended."

This provision has remained substantially the same since it was originally enacted in 1913 (see Ill. Rev. Stat. 1913, ch. 121, par. 31).

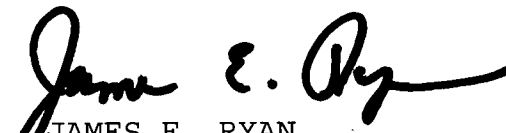
Because section 5-503 refers to township and district roads on county lines, as well as to county highways, it is possible to construe the term "county line highways" as used therein to include roads in addition to those which have been jointly constructed under section 5-405. The language of section 5-503, however, clearly contemplates a road lying on, or closely paralleling, a county line. Thus, it refers to bridges on

Honorable James D. Owens - 7.  
Honorable Ted J. Hamer

highways which deviate not more than 80 rods from a county line, not to bridges on highways some parts of which lie within 80 rods of a county line.

As to whether the road in question is a county line highway, assertions by the Henry County Engineer, included with Mr. Hamer's letter, suggest that it is not. The road evidently crosses the extreme southeast corner of Henry County, but originates and ends in Stark County, portions of which lie both south and east of Henry County. No information has been provided regarding the extent to which the road may parallel the county line to the west of the bridge in question, or the distance it may deviate therefrom at any other point. Similarly, no information has been provided regarding past joint agreements with respect to maintenance or construction of the road. These factors must be considered in determining whether the road is a county line highway to which section 5-503 is applicable.

Sincerely,

  
JAMES E. RYAN  
ATTORNEY GENERAL