

1973 O. A. G.

OFFICIAL OPINION NO. 29

November 9, 1973

Honorable Stephen C. Moberly
Indiana State Representative
P.O. Box 199, 32 West Broadway
Shelbyville, Indiana 46176

Dear Representative Moberly:

This is in response to your request for my official opinion regarding the following question:

“Does the word ‘roads’ include any ‘bridges’ found on a county’s eastern and southern boundaries pursuant to IC 1971, 8-17-1-45?”

“If the answer to the above question is affirmative, then are the following statutes repealed by implication so far as they apply to bridges on a county’s eastern and southern boundaries—IC 1971, 8-20-1-35 and IC 1971, 8-16-9-1?”

ANALYSIS

The Legislature has enacted two separate laws, one dealing with county line bridges and the other with county line roads. Both were enacted in the early 1900’s. The recent amendment, IC 1971, 8-17-1-45, as added by Acts 1971, P.L. 102, Section 1 (formerly Burns’ Section 36-334), is an amendment to IC 1971, 8-17-1, which deals exclusively with county line roads. The pertinent part of this amendment reads:

“Each county shall have as its full responsibility the construction, reconstruction, maintenance and operation of the roads making up its southern and eastern boundaries.”

This new provision effectively eliminates the lengthy procedure of cooperation required between county commissioners of neighboring counties when seeking to repair, maintain, or build county line roads. The county line bridge laws, IC 1971, 8-16-9-1 (formerly Burns’ Section 36-2002) and IC 1971, 8-20-1-35 (formerly Burns’ Section 36-2001), still retain the

OPINION 29

procedures of mutual cooperation since those statutes have not been amended. The pertinent portions of these laws differ slightly but the main requirement is one of cooperation. Whenever the county commissioners of one or more counties wish to repair, erect, or purchase a bridge located on or across a county line they may:

“. . . [b]y order entered of record declare . . . willingness to aid in erection, repair or purchase of such bridge and shall cause notice of such order to be given to the board or boards of commissioners of such other county or counties interested therein.” [IC 1971, 8-20-1-35, *supra.*]

The procedure quoted above is much the same as found in the county line road law as originally enacted. Had the Legislature seen fit to enact one law containing the same procedure for both roads and bridges, then the problem of implied repeal would have arisen in relation to the recent amendment. Implied repeal situations occur only when there are two legislative enactments on the same subject which seem to be repugnant or in conflict. In this case it is clear that the Legislature intended to promulgate a different law for county line bridges. Thus there is no question of implied repeal involved here.

It is, therefore, my Official Opinion that:

1. The word “roads,” as found in IC 1971, 8-17-1-45 does not include by implication the word “bridges,” since the Legislature has seen fit to create two different procedures, one for county line roads and another for county line bridges.
2. Inasmuch as it is my opinion that the word “roads” does not include “bridges,” IC 1971, 8-20-1-35 and IC 1971, 8-16-9-1, governing the procedure to be followed respecting county line bridges, are not repealed by implication.
3. The practical effect of these laws is that bridges on county lines are to be maintained through the joint and cooperative efforts of the board of county commissioners of adjoining counties, instead of being the sole responsibility of the county on whose eastern and southern boundary the bridge is located.