

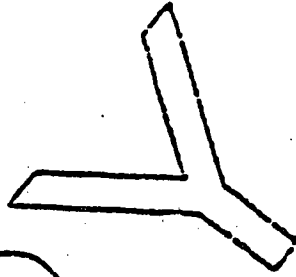


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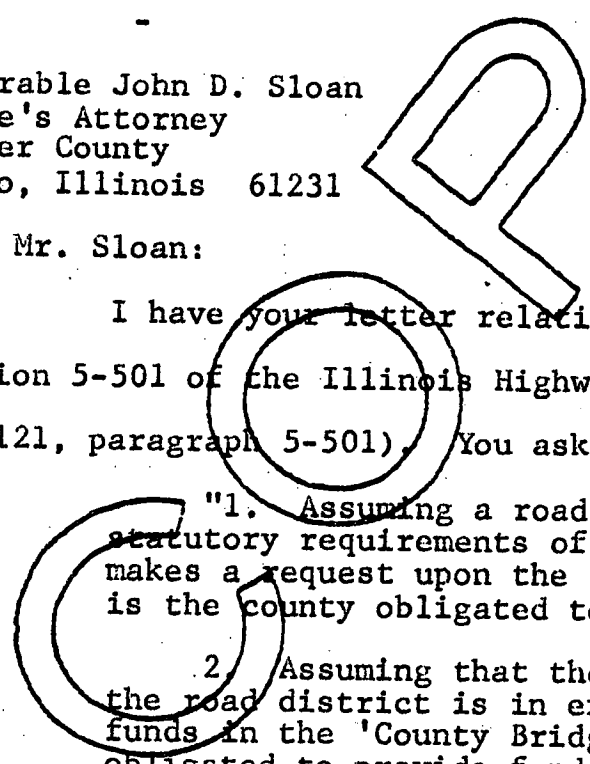
HIGHWAYS:  
Bridges - County Aid  
Under Section 5-501 of  
the Illinois Highway Code



Honorable John D. Sloan  
State's Attorney  
Mercer County  
Aledo, Illinois 61231

Dear Mr. Sloan:

I have your letter relating to the application of section 5-501 of the Illinois Highway Code (Ill. Rev. Stat. 1977, ch. 121, paragraph 5-501). You ask the following questions:



"1. Assuming a road district meets the statutory requirements of the above section and makes a request upon the county for assistance, is the county obligated to honor the request?

2. Assuming that the request for funds by the road district is in excess of the amount of funds in the 'County Bridge Fund', is the county obligated to provide funds from any other source?

3. If at the time of the prayer for assistance [a] township has no available source of funds of its own to match the 'County Bridge Fund', is the county board still obligated to honor the township's prayer?

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4. If at the time of the prayer for assistance [a] township has successfully passed a referendum which will satisfy 100% of the cost of construction or repair, is the county board obligated to honor the township's prayer?

5. In the event [a] township has sufficient funds to construct a bridge, but the 'County Bridge Fund' is insufficient to match township funds dollar for dollar, does the county board have a continuing obligation to match [the] township['s] funds in succeeding years from monies in the 'County Bridge Fund'?

6. Specifically referring to 6-902 [of the Illinois Highway Code], what effect, if any, do the priority requirements [set forth therein] have in carrying out the provisions of Section 5-501?"

Section 5-501 provides in pertinent part as

follows:

"When it is necessary to construct or repair any bridge, culvert, drainage structure or grade separation, including approaches thereto, on, across or along any public road in any road district in the county, or on any street in any municipality of less than 15,000 population in the county, or on or across a line which forms the common boundary line between any such road districts or such municipalities, in which work the road district, or such municipality is wholly or in part responsible, and the cost of which work will be more than .02% of the value of all the taxable property in such road district or municipality, as equalized or assessed by the Department of Local Government Affairs, and the tax rate for road purposes in such road district was in each year for the 2 years last past not less than the maximum allowable rate provided for in Section 6-501 of this Code, or the tax rate in such municipalities for corporate purposes was in each year for the 2 years last past for the full amount allowed by law to be extended therein for such corporate purposes, the highway commissioner, the city council or the

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village board of trustees, as the case may be, may petition the county board for aid, and if the foregoing facts shall appear, the county board shall appropriate from the 'county bridge fund' in the county treasury a sufficient sum to meet one-half the expense of constructing or repairing such bridge, culvert, drainage structure or grade separation, including approaches thereto, on condition that the road district or municipality asking for aid shall furnish the other one-half of the required amount. If, however, the road district has increased its tax rate for such purposes to a rate in excess of .05% but not exceeding .25%, as provided in Section 6-508 of this Code, the amount required to be appropriated by the county shall be in accordance with the provisions of Section 5-501 of this Code, to the extent that the County and township rates are identical.

\* \* \*

"

In response to your first two questions, it is my opinion that section 5-501 mandates appropriation, when all prerequisites for aid are met, only to the limits of the county bridge fund. Therefore, a county is not obligated to provide funds from any other source.

It is well established that section 5-501 is mandatory. (People ex rel. Smith v. Board of Supervisors (1924), 314 Ill. 256, 259; People ex rel. Thomas v. Wabash Ry. Co. (1914), 265 Ill. 530, 533.) Until 1959, the statutory provision from which section 5-501 was drawn (Ill. Rev. Stat. 1977, ch. 121, par. 40) required the county board to appropriate bridge aid funds from the county treasury as a whole

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rather than from the county bridge fund of the county treasury. Under that provision all unrestricted funds in the county treasury were probably subject to appropriation for purposes of the provision, and a mandamus action could have been brought to compel appropriation of aid from such unrestricted funds. Board of Supervisors v. People (1902), 102 Ill. App. 128, 130.

The language of the provision was changed in 1959 with the enactment of the Illinois Highway Code (Ill. Rev. Stat. 1977, ch. 121, par. 1-101 et seq.) to provide for the appropriation of aid solely from the county bridge fund. The change was apparently intended to limit the amount of aid required to be appropriated under the section to the amount available in the county bridge fund.

In response to your third question, it is my opinion that a county's obligation to appropriate funds under section 5-501 is not conditioned upon the township's ability, at the time of its prayer for assistance, to match the requested aid funds. Whether a township is likely to have sufficient funds to match the appropriated funds, however, is a relevant consideration which a county might use for establishing priorities when the county bridge fund is not sufficient to satisfy all requests for aid.

You will note that section 5-501 provides that

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the county board "shall appropriate \* \* \* a sufficient sum to meet one-half the expense of constructing or repairing" a bridge "on condition that the road district or municipality asking for aid shall furnish the other one-half of the required amount". Under the statutory language, the county has an obligation, upon satisfaction of conditions precedent, to appropriate funds to aid the requesting governmental unit. Because of the conditional wording of the provision, however, the funds appropriated may not be used unless the requesting governmental unit matches such funds in the manner provided by statute.

In response to your fourth question, it is my opinion that the county board has, in situations where the prerequisites of section 5-501 are met, a responsibility to appropriate aid funds, even though a township has passed a referendum sufficient to satisfy the cost of bridge construction or repair. You will note that section 5-501 applies only where the bridge in question is to be constructed or repaired out of necessity, the constructing or repairing unit is responsible in whole or in part for the cost, the cost is more than .02% of the value of the taxable property within the unit and the tax rate levied by the unit for road purposes in the two years prior to the request was not less than the maximum allowable rate for such purposes.

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You will also note that, in the event a road district has raised its rate for bridge purposes to a rate in excess of .05% but not exceeding .25% as authorized under section 6-508 of the Code (Ill. Rev. Stat. 1977, ch. 121, par. 6-508), a county is liable under section 5-501 only to the extent that county and township rates are identical. If every condition to bring section 5-501 into operation is met, I can see no reason why its application would be affected by the fact that a township has sufficient funds to construct or repair a bridge without county aid.

In response to your fifth question, it is my opinion that a county, when the county bridge fund is insufficient to provide the required aid, has no continuing obligation to provide additional funds in succeeding years. The county board, upon receipt of a proper petition, is required to appropriate the necessary funds from the county bridge fund. If the county bridge fund is not sufficient to comply fully with the request, the board cannot do so. I can see no basis for concluding that the mandate of section 5-501 extends to funds coming into the fund in subsequent years.

Because a county board is not permitted to incur an obligation unless an appropriation therefor has been previously made (Ill. Rev. Stat. 1977, ch. 34, par. 2104),

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it could not commit the future receipts of the fund for payment to a particular township. A county board could, however, should it have sufficient funds in a later year, apply those funds to a request which it could not satisfy in a prior year.

In response to your sixth question, it is my opinion that the priorities set forth in section 6-902 of the Code (Ill. Rev. Stat. 1977, ch. 121, par. 6-902) do not affect the operation of section 5-501 in any way. Therefore, although a county board might establish its own priorities by rule, such board is not bound to allocate funds in accordance with section 6-902.

The priorities set forth in section 6-902 govern the use of State funds appropriated under section 6-901 of the Code (Ill. Rev. Stat. 1977, ch. 121, par. 6-901) for the construction of bridges. Nothing in section 6-902 or in any other provision purports to extend the application of those priorities beyond Division 9 of article 6 of the Illinois Highway Code (Ill. Rev. Stat. 1977, ch. 121, par. 6-901 et seq.).

If a particular county board does not have sufficient funds to meet the obligations imposed on it by section 5-501, I can see no reason why such board could not develop its own list of priorities for the most equitable and practical

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distribution of the limited funds available to it. I find no statutory or case law requiring that funds distributed pursuant to section 5-501 must be distributed on a "first come, first served" basis, although a county board could arguably distribute available aid funds on such a basis.

Very truly yours,

A T T O R N E Y   G E N E R A L