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STATE HIGHWAY DEPT. — AUTHORIZED TO DESIGNATE DANGEROUS CROSSINGS OVER RAILROAD TRACKS — DIRECTOR OF HIGHWAYS MAY PROVIDE PROTECTION AT GRADE CROSSINGS WITH FEDERAL FUNDS. §§4511.10, 4511.11, 4511.61, 4907.47, 5531.03, R. C.

SYLLABUS:

1. The state highway department is authorized by Section 4511.61, Revised Code, to designate dangerous highway crossings over railroad tracks, on state, county or township highways or on streets or ways within municipal corporations, and may erect stop signs thereat. Said department is also authorized by Section 4511.10, Revised Code, to place and maintain traffic control devices on all state highways, for the purpose of guiding, warning and regulating traffic.

2. County commissioners and township trustees are authorized by Section 4511.11, Revised Code, to place and maintain traffic control devices upon highways under their respective jurisdictions, including signs, warning of the nearness of railroad crossings.

3. Except for the authority given the director of highways by Section 5531.03, Revised Code, neither the state highway department or county commissioners or township trustees have authority to place on a highway, devices which will prevent travelers from going on to a railroad crossing, such as may be required of railroads under the provisions of Section 4907.47, Revised Code; nor can any of such bodies enter into agreements with the railroads for cooperation in the installation or maintenance of such devices.

4. Pursuant to the provisions of Section 5531.03, Revised Code, the director of highways may provide protection at grade crossings with federal funds, providing the appropriate federal agency is in accord, and upon application of a railroad company specifying the type of protection requested, accompanied by its agreement to maintain the same.

Columbus, Ohio, October 8, 1959

Hon. E. S. Preston, Director of Highways
Department of Highways, Columbus, Ohio

Dear Sir:

I have before me your communication in which you request my opinion on the following question:

“May the townships, counties, and department of highways expend funds for the purpose of installing and maintaining safety or protective devices at dangerous railroad crossings, individually or in cooperation with said railroad owners?”

Your letter calls attention to the large number of dangerous or potentially dangerous grade crossings in the state, and to the provisions of Sections 4907.47 and 4907.49, Revised Code, giving the Public Utilities Commission broad authority to require the railroads to erect and maintain a "gate, automatic alarm bell, or other mechanical device" for the protection of travelers on the highway.

Section 4907.49, *supra*, contains this provision:

"* * *

"If a crossing within a municipal corporation is considered dangerous and a traffic hazard has been established, the proper authorities of the municipal corporation having jurisdiction and control over the streets in such municipal corporation may construct, purchase, and operate an available safety device suitable for such crossing. The cost of such construction, maintenance, and repair shall be borne by the municipal corporation, and paid from the general revenue or any revenue levied and made available for street purposes."

In this connection, I may direct your attention to a provision found in Section 4511.16, Revised Code, reading:

"No person shall place, maintain, or display upon or in view of any highway any unauthorized sign, signal, marking, or device which purports to be or is an imitation of or resembles a traffic control device or railroad sign or signal, * * *."

The question which you submit, however, does not involve the duty that may be imposed on the railroad, but rather the authority, if any, of counties, townships and the department of highways to install and maintain like safety or protective devices at dangerous railroad crossings, individually or in cooperation with the railroad owners.

1. *As to counties:* We will, of course, bear in mind the well established principle of law, that counties have only such power as the statutes give them. This is expressed in 14 Ohio Jurisprudence 2d, page 259, as follows:

"Boards of county commissioners, being the creatures of statute, have such powers, and such only, as are conferred by statute or as are necessarily implied from those expressly given, and a board of county commissioners can act for and bind the county only within the limits of such authority. * * *"

Again, it is said at page 390:

“* * * The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

I am unable to find in the statutes any authority conferred upon county commissioners with reference to such devices as may be required of railroad companies, which will prevent travelers in the highway from getting into collisions with railroad equipment. I do find in Section 5735.23, Revised Code, to which you refer and which specifies the uses to which counties may put their share of what is known as the “first gasoline tax,” a provision that such moneys may be used, *inter alia*, for the “purchase, installation and maintenance of traffic signal lights.” While this would not include “devices” for controlling traffic, at railroad crossings, such as may be required of railroads under Section 4907.47, *supra*, however I can see no reason why these lights might not be erected at a location and in a manner so that they would give warning of the nearness of a railroad crossing.

I note also Section 4511.11, Revised Code, which reads in part as follows:

“Local authorities in their respective jurisdictions may place and maintain traffic control devices upon highways under their jurisdictions as are necessary to indicate and to carry out sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic.* * *”

You will observe that this section speaks of “traffic control devices,” which term is defined by Section 4511.01, Revised Code, as follows:

“* * *

“(00) ‘Traffic control devices’ means all signs, signals, markings, and devices placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic, including signs denoting names of streets and highways.

“* * *

They are certainly not devices of the character that may be required of railroad companies. Other sections of the chapter to which reference is made, deal with all phases of driving on the highways, with the ordinary

automatic lights at intersections, and with other traffic regulations. However, as I have above suggested, I see no reason why "devices" erected pursuant to this section may not be directed to warning of the proximity of a railroad crossing.

2. *As to townships*: What has been said as to the powers of counties will apply equally to townships. They, too, are creatures of statutes, and the powers of township trustees are equally limited. I find no provision in the statutes giving them any power in the matter of traffic safety devices or signals, except that contained in Section 4511.11, *supra*, which applies to townships as well as to counties.

It is significant that the provision which I have quoted as part of Section 4907.49, Revised Code, giving municipalities certain authority in the matter of *railroad* crossings, was added in 1937 by amendment to Section 591, General Code, predecessor of said Section 4907.49, *supra*, and that the legislature saw fit to confer the power on municipalities alone, and on no other public body.

3. *As to the state highway department*: That department, too, is a creature of the statute, and we must look to the statutes to determine its powers. We find its general powers outlined in Chapter 5501., *et seq.*, Revised Code. In Chapter 5523., Revised Code, the director of highways is given broad powers in securing the separation of grade when a state highway is crossed by a railroad at grade.

In Section 4511.10, Revised Code, we find this provision as to "traffic control devices":

"The department of highways may place and maintain traffic control devices, conforming to its manual and specifications, upon all state highways as are necessary to indicate and to carry out sections 4511.01 to 4511.78, inclusive, and 4511.99 of the Revised Code, or to regulate, warn, or guide traffic.

"* * *

I have already shown what was here meant by "traffic control devices."

There are two provisions of law, so far as I have found, which give the department of highways any specific authority with respect to railroad grade crossings. The first is found in Section 4511.61, Revised Code, as follows:

“The department of highways may designate dangerous highway crossings over railroad tracks whether on state, county, or township highways or on streets or ways within municipal corporations, and erect stop signs thereat.* * *”

It will be noted that the authority here given is limited to the *erection of stop signs*. There is no suggestion of cooperation with railroads in the erection or maintenance of the devices which may be required of them by the Public Utilities Commission.

The second provision referred to above is found in Section 5531.03, Revised Code, reading:

“* * *

“The director may provide protection at grade crossings with federal funds, providing the appropriate federal agency is in accord, and upon application of a railroad company specifying the type of protection requested, accompanied by its agreement to maintain the same.

“* * *

I believe that, pursuant to this section, the director of highways is authorized to provide protective devices such as noted in your request, however, such can be done *only with federal funds* and with the agreement of the appropriate federal agency.

It is accordingly my opinion and you are advised:

1. The state highway department is authorized by Section 4511.61, Revised Code, to designate dangerous highway crossings over railroad tracks, on state, county or township highways or on streets or ways within municipal corporations, and may erect stop signs thereat. Said department is also authorized by Section 4511.10, Revised Code, to place and maintain traffic control devices on all state highways for the purpose of guiding, warning and regulating traffic.

2. County commissioners and township trustees are authorized by Section 4511.11, Revised Code, to place and maintain traffic control devices upon highways under their respective jurisdictions, including signs warning of the nearness of railroad crossings.

3. Except for the authority given the director of highways by Section 5531.03, Revised Code, neither the state highway department or county commissioners or township trustees have authority to place on a highway,

devices which will prevent travelers from going on to a railroad crossing, such as may be required of railroads under the provisions of Section 4907.47, Revised Code; nor can any of such bodies enter into agreements with the railroads for cooperation in the installation or maintenance of such devices.

4. Pursuant to the provisions of Section 5531.03, Revised Code, the director of highways may provide protection at grade crossings with federal funds, providing the appropriate federal agency is in accord, and upon application of a railroad company specifying the type of protection requested, accompanied by its agreement to maintain the same.

Respectfully,

MARK McELROY

Attorney General