

**OPINION NO. 70-094****Syllabus:**

The county has neither the authority nor it is required under the provisions of Section 4511.11, Revised Code, to install stop signs at railroad crossings which pass over roads within the county's jurisdiction. Such authority lies exclusively with the Department of Highways under the provisions of Section 4511.61 and Section 5523.31, Revised Code.

To: Lawrence H. Huffman, Allen County Pros. Atty., Lima, Ohio  
 By: Paul W. Brown, Attorney General, July 27, 1970

Your request for my opinion reads in pertinent part as follows:

"(1) Does the county have the authority to place and erect stop signs at railroad crossings, which railroads pass over county roads?

"(2) Is the county required to place stop signs at said railroad crossings?

"(3) If the county does place stop signs at railroad crossings, must the county commissioners pass a resolution authorizing same?"

The second part of your letter requested my opinion as to the county's responsibility in the following situation:

(a) A grade crossing not covered by Resolution, and no stop sign installed;

(b) A grade crossing covered by Resolution and no stop sign installed;

(c) A grade crossing covered by Resolution, stop sign installed;

(d) A grade crossing covered by Resolution, and stop sign temporarily down, a condition unknown by local authority for a period of time.

You point out in your letter that there has been an apparent conflict in opinions of previous prosecutors regarding the county's authority in this matter. I presume this difference of opinion stems from the interpretation of the Motor Vehicle Act, particularly, Section 4511.61, Revised Code, and Section 4511.11, Revised Code.

Section 4511.61, supra, reads in pertinent part 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.\* \* \*"

Section 4511.11, supra, reads in pertinent part as follows:

"(A) Local authorities in their respective jurisdictions shall place and maintain traffic control devices in accordance with the department of highway manual and specifications for a uniform system of traffic control devices, adopted under section 4511.09 of the Revised Code upon highways under their jurisdiction as are necessary to indicate and to carry out sections 4511.01 to 4511.76, inclusive, and 4511.99 of the Revised Code, local traffic ordinances, or to regulate, warn, or guide traffic.

\* \* \*

\* \* \*

\* \* \*"

Regarding your first two questions, it is a well established principle of law that the function of the county is to serve as an agency or instrumentality of the state and, except as restricted by the state constitution, has only such powers as are conferred upon it by the laws of Ohio.

14 Ohio Jurisprudence Second Edition, page 204, states in part as follows:

"\* \* \*Counties, therefore, possess only such powers and privileges as may be delegated to or conferred upon them by statute. These powers and privileges must be strictly construed, and may, in general, be modified or taken away.\* \* \*"

You will observe that Section 4511.11, supra, speaks of "Local Authorities" and "Traffic Control Devices." "Local Authorities" is defined under Section 4511.01 (Y), Revised Code, and specifically designates county commissioners as being within the definition.

The term "traffic control devices" is defined by Section 4511.01, supra, as follows:

"\* \* \* \* \* \* \* \*"

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

"\* \* \* \* \* \* \* \*"

One might logically conclude that Section 4511.11, supra, standing by itself, would confer upon the county the general authority to erect traffic control devices, including regulatory signs at railroad crossings, upon any road within the county's jurisdiction. However, Section 4511.11, supra, and Section 4511.61, supra, must be read in pari materia and in subserviency to the common policy of traffic regulations on roads within the state.

The only specific authority I can find in the statutes regarding stop signs at railroad crossings is found in Section 4511.61, supra, and in Section 5523.31, Revised Code.

As a general rule, a special statute will prevail over a general statute to the extent of any irreconcilable conflict between their provisions.

50 Ohio Jurisprudence Second Edition, page 84, states as follows:

"\* \* \*The general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment. The special provision has been declared to modify, qualify, limit, restrict, exclude, supersede, control, govern, and prevail over the general provision, although the words of the general act,

standing alone, would be broad enough to include the subject to which the more particular provisions relate.\* \* \*"

You will observe that Section 5523.31, supra, requires the director of highways to make a continuous survey of all public crossings of railroads at grade, whether on state, county, or township highways or on streets or ways within municipal corporations. The purpose of such survey is to create a priority list of said crossings with the highest probability of accident. The statute further authorizes the director of highways to use said priority list in carrying out the provisions of Sections 4511.61, 4955.33, and Sections 5523.31 to 5523.33, inclusive, of the Revised Code.

It is clear, therefore, that Section 4511.61, supra, together with Section 5523.31, supra, was intended by the legislature to modify or limit the authority granted to local authorities under Section 4511.11, supra.

A limitation upon local authorities' power to promulgate traffic regulations was firmly set forth in Opinion No. 5437, Opinions of the Attorney General for 1955, which stated in the syllabus as follows:

"2. Section 4511.11, Revised Code, merely authorizes local authorities, as to roads under their jurisdiction, to place and maintain traffic control devices (1) to guide traffic and (2) to warn highway users of dangerous road conditions and of existing traffic regulations. This section does not purport to authorize local authorities to promulgate speed or other traffic regulations."

In answer to questions (1) and (2) of your request, I conclude that the county has neither the authority nor it is required to install stop signs at railroad crossings on county roads.

Question (3) is obviated by my answer to (1) and (2).

Regarding the responsibility issue raised by the second part of your letter, I presume you refer to possible tort liability that might be incurred by the county in the examples you listed. Your question is speculative and any answer which I gave would require a comprehensive treatise on the Law of Negligence far beyond the scope of this opinion. For this reason, I cannot answer this point. However, as to General Tort Liability of Counties, I refer you to 14 Ohio Jurisprudence Second Edition, Section 239, et seq.; Page, Counties: Section 111, et seq.

In view of the above, it is my opinion and you are advised that the county has neither the authority nor is it required under the provisions of Section 4511.11, Revised Code, to install stop signs at railroad crossings which pass over roads within the county's jurisdiction. Such authority lies exclusively with the Department of Highways under the provisions of Section 4511.61 and Section 5523.31, Revised Code.