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1. ROADS—MINIMUM WIDTH PROVIDED BY STATUTE FOR COUNTY ROADS—THIRTY FEET—ORDER IS ERRONEOUS TO OPEN ROAD HAVING A WIDTH LESS THAN THAT FIXED BY STATUTE.
2. THIRTY FEET MINIMUM WIDTH FOR COUNTY ROADS DOES NOT REFER EXCLUSIVELY TO TRAVELED OR PAVED PORTION OF ROAD—MAY ALSO INCLUDE STRUCTURES WHICH UPHOLD RAILROAD LINE OVER TRAVELED PORTION OF ROADS.

## SYLLABUS:

1. The minimum width provided by statute for county roads is thirty feet and an order for opening a road having a width less than that fixed by statute is erroneous.

2. The thirty feet minimum width provided for county roads does not refer exclusively to the traveled or paved portion of said roads, but may also include structures which uphold a railroad line over the traveled portion of said roads.

Columbus, Ohio, December 15, 1949

Hon. Kenneth J. Nordstrom, Prosecuting Attorney  
Ashland County, Ashland, Ohio

Dear Sir :

I am in receipt of your communication requesting my opinion, which reads as follows :

“The County Commissioners of Ashland County desire to open a new county road, one segment of which would make use of an existing underpass under a railroad line only 18 feet in width. The said 18 foot underpass was originally installed for an electric interurban line which has been abandoned for many years.

“My question is whether or not the County Commissioners may locate and establish a county road which would use the above described 18 feet underpass at one point. Your attention is directed to General Code Section 6861, which would seem to require that such new public road must be of a width not less than 30 feet. Assuming that the road would be 30 feet throughout its entire length except for the underpass, does this statute mean that such road could not include a short portion required by the underpass which is substantially less than 30 feet in width?”

The plain and unequivocal language of Section 6861, General Code, to which you refer in your communication, reads :

“All public roads hereafter located and established by the county commissioners shall be of such width, not less than thirty feet, as may be determined by the county commissioners. If such public road is established upon a county or state line, the county commissioners may determine the width of the strip of land in such county to be used for such purposes, but such width shall not be less than fifteen feet.”

This statute is discussed in 20 O. Jur. 648, Section 25, which recites in part as follows :

“The proceedings for the location and establishment of a road by the county commissioners must provide for the opening thereof to a width of not less than 30 feet. Statutory provisions prescribing a maximum or minimum width of highways are generally regarded as mandatory.”

However, the thirty feet minimum width required of county roads

does not refer exclusively to the paved portion of such roads, but refers to the entire right-of-way, which may also include certain unimproved portions or ditches or any other facilities which may be necessary in the care and maintenance of the traveled portion of the road.

With this in mind it may be feasible to make use of the underpass with a width of eighteen feet so long as the structure, or at least six feet of the structure on both sides of the road, is also taken for road purposes so that the total width of the right-of-way at this point is also a minimum width of thirty feet.

Therefore, in specific answer to your question, I am of the opinion that :

1. The minimum width provided by statute for county roads is thirty feet and an order for opening a road having a width less than that fixed by statute is erroneous.

2. The thirty feet minimum width provided for county roads does not refer exclusively to the traveled or paved portion of said roads, but may also include structures which uphold a railroad line over the traveled portion of said roads.

Respectfully,

HERBERT S. DUFFY,  
Attorney General.