

OPINION NO. 1338**Syllabus:**

Section 5591.35, Revised Code, authorizes boards of county commissioners to provide artificial lighting for either bridges over streams or for the other four highway areas mentioned in such statute, namely, highway intersections, highway grade separations, railroad grade separations, or interchange areas.

To: Clyde W. Osborne, Mahoning County Pros. Atty., Youngstown, Ohio
By: William B. Saxbe, Attorney General, September 2, 1964

Your request for my opinion reads:

"Reference is made to attached correspondence relative to the above.

"We, therefore, request an opinion from your office as to the authority of the County Engineer to provide lighting at intersections by virtue of such Revised Code section."

The correspondence to which you referred shows that the county engineer of Mahoning County has been negotiating with the officials and engineers of a public utility company to provide artificial lighting for certain bridges and intersections on the county highway system. The county engineer has looked upon Section 5591.35, Revised Code, as authorizing the expenditure of road funds by the county to provide such lighting, but the officials of the company have questioned this interpretation. This letter shows that the boards of township trustees of certain townships in Mahoning County have provided lighting systems for highway intersections and that the accident rate has been reduced.

Prior to the Amendment in 1955, Section 5591.35, Revised Code, read in pertinent part:

"The board of county commissioners may contract for the proper lighting of bridges erected by it when the span, or two or more spans of which cross the same stream and which spans are connected by levees, and when such span and levees taken together have a combined length of not less than five hundred feet. The cost of such lighting shall be paid from the bridge fund of the county, on the order of the board.* * *"

This section was amended effective August 18, 1955, in 126 Ohio Laws, 1131, to read as follows:

"The board of county commissioners may provide for the proper lighting of bridges over streams, highway intersections, highway or railroad grade separations or interchange areas erected by it. The cost of such lighting shall be paid from the bridge fund of the county, or from any funds available for highway construction or maintenance and repair, on the order of the board. This section does not apply where the board has constructed three or more bridges within the limits of a municipal corporation. In such case the municipal corporation shall light the bridges within its limit at its own expense."

It seems to me that the language of this amended section is open to two interpretations. The first is that the General Assembly has now authorized only the lighting of bridges, but that such bridges may be ones over streams, highway intersections, highway or railroad grade separations or interchange areas. Indeed, it may seem that the proper construction of this language is that these words are all objects of the preposition "over" and all refer to the word "bridges". The fact that this section is part of the chapter entitled "County Bridges" seems to lend force to this conclusion.

The second possible interpretation is that the General Assembly has now authorized boards of county commissioners to light any bridge which is over a stream, without regard to the prior limitation as to the length of the span or spans, and

also to light highway intersections, highway grade separations, railroad grade separations and interchange areas.

I am impelled toward the conclusion that the latter interpretation is correct. The 101st General Assembly, in amending Section 5591.35, Revised Code, by Amended House Bill No. 878, expressed the following intent or purpose:

"To amend section 5591.35 of the Revised Code to grant authority to the county commissioners to contract for the proper lighting of highway intersections, etc."

The title of the section is this:

"Lighting of bridges; intersections".

Neither such statement of purpose in a preamble nor the title is, of course, part of the substantive law, yet both the preamble and the title may serve to show the intent of a legislative enactment when there is ambiguity in the law itself; see Crawford, Statutory Construction, Sections 205 and 206, pages 355 to 359, inclusive. Similar general statements are found in 50 Ohio Jurisprudence 2d, pages 243 and 244, Sections 258 and 259.

Under this interpretation, it is quite clear that boards of county commissioners could provide artificial lighting for bridges over streams or for highway intersections, highway or railroad grade separations or interchange areas but could not provide such lights for any bridge or similar structure, whether known as a bridge, viaduct, overhead crossing, or other designation, which is not over a stream.

I am aware that this conclusion may seem to draw a very fine distinction between bridges over streams and rather similar structures which are part of a highway system, but this amendment in reality liberalized the former statute by removing the requirement as to the length of the span or spans of a bridge over a stream; in addition, power was granted to provide lighting for the additional four named highway areas.

It is, therefore, my opinion and you are advised that Section 5591.35, Revised Code, authorizes boards of county commissioners to provide artificial lighting for either bridges over streams or for the other four highway areas mentioned in such statute, namely, highway intersections, highway grade separations, railroad grade separations, or interchange areas.