Note from the Attorney General's Office:

1928 Op. Att'y Gen. No. 28-2940 was overruled in part by 2012 Op. Att'y Gen. No. 2012-009.

3. Where the question of the issuance of bonds is submitted to the electorate, a ballot containing the word "No" written by the voter, either in the place provided for the cross-mark, or in the rectangular blank space in which appears the negative proposition "Against the Bond Issue," is of such character that it is impossible to ascertain the intention of the voter, and such ballot should be excluded from the count.

4. Where the question of the issuance of bonds is submitted to the electorate, a ballot containing the word "No" opposite and following the proposition "For the Bond Issue," and within the rectangular space containing such proposition, the words "For the Bond Issue" being also obliterated by pencil marks, evinces an intention of the voter to vote against such bond issue, and the ballot should be so counted.

5. Where the question of the issuance of bonds is submitted to the electorate, and the word "No" is written within the rectangular space on the ballot containing the proposition "For the Bond Issue," and the word "Yes" is written within the rectangular space containing the words "Against the Bond Issue," the intention of the voter to vote against the bond issue is clearly evinced and the ballot should be so counted.

6. Where the question of the issuance of bonds is submitted to the electorate, and a cross-mark is made within the rectangular space on the ballot containing the proposition "Against the Bond Issue" and following such words, the intention of the voter to vote against the bond issue is clearly evinced and the ballot should be so counted.

7. Where the question of the issuance of bonds is submitted to the electorate, and a cross-mark is made within the rectangular space on the ballot containing the proposition "For the Bond Issue" and following such words, the intention of the voter to vote for the bond issue is clearly evinced and the ballot should be so counted.

Respectfully,
EDWARD C. TURNER,
Attorney General.

2940.

GUARD RAILS—DUTY OF COUNTY COMMISSIONERS TO MAINTAIN SAME—NOT RELIEVED BY NORTON-EDWARDS ACT.

SYLLABUS:

Counties of Ohio are not relieved from the requirements imposed by Section 7563, *General Code, by the provisions of the Norton-Edwards Act (H. B. No.* 67, 112 *v.* 430), *or other sections of the General Code, establishing and providing for the construction and maintenance of a state highway system. Opinions Nos.* 461 *and* 2155 *followed and approved.*

COLUMBUS, OHIO, November 30, 1928.

HON. G. C. SHEFFLER, *Prosecuting Attorney, Fremont, Ohio.*

DEAR SIR:—I am in receipt of your letter which reads as follows:

"The County Commissioners of our county desire me to write you concerning guard rails for county bridges, viaduct or culvert, if the approach is more than six feet high on either side of said bridge, etc.

Our Commissioners have been sued for a large sum of money for failing to erect guard rails at the approach of a bridge that is located on I. C. H. Road No. 276. Prior to this accident the State took over this road, and it is now known as State Route 101, and at the present time is being rebuilt under authority of the State.

The bridge, at the approach of which this accident happened, has wing-walls that run perpendicular and are twelve feet to the bank of the creek below.

The plaintiff in this case claims that he, together with three or four other persons, were driving in the night time on said route, going north on the right hand side of the road, when another machine approached the bridge coming from the north. Two machines could easily pass on the bridge. Plaintiff claims that the lights from the other machine blinded him and he hit the corner of the bridge, swerved a little, and went over the wing-wall of said bridge to the creek below, cutting and bruising the occupants of the car very severely, and demolishing the automobile.

What I desire to know is: After the State has taken over this road, renumbered it, and controls the construction thereon, is the county relieved from the responsibility of placing guard rails on each side of the approach to this bridge, or are the Commissioners compelled to put up the guard rails when they have no authority over this road?

I have examined carefully G. C., Section 7562; also 96 O. S. 163, *Commissioners* vs. *Dorst;* 96 Ohio State 171, *Commissioners* vs. *Kile;* 98 Ohio State 263, *Commissioners* vs. *Boucher;* 27 O. C. A. 184; 26 C. C. (N. S.) 377; 31 O. C. A. 449; Ohio Law Abstract of November 10, 1928, p. 651.

It seems that the County Commissioners were in your city Friday, November 16th, and they claim that the State Highway Commission, state that the Commissioners were relieved from this situation, and that this matter was controlled by the State and not by the County.

I wish you would examine the notes under Section 7563, and one of these notes of the section reads as follows:

'* * * And the duty enjoined on County Commissioners by such sections was not relieved by the passage of the State Highway Law (106 v. 623 to 666 inclusive) or any later amendment thereof, etc.' "

The note which you quote, under Section 7563, General Code, is based upon the case of *Harrigan* vs. *Commissioners,* 13 Ohio App. 408, 31 O. C. A. 449, decided by the Court of Appeals of Lawrence County, June 5, 1919, in which case the Court held:

"The principal purposes of requiring guard rails to be erected at the ends of certain county bridges and on each side of the approaches thereto, as required by Section 7563, is to warn drivers of the location of danger.

The duty enjoined on county commissioners by the provisions of such sections was not relieved by the passage of the State Highway Law (105-106 O. L., p. 623-666) or any later amendment thereof."

This question was considered but not decided by the Ohio Supreme Court in the case of *Riley* vs. *McNicol, et al.,* 109 O. S. 29-35. I find no other reported decisions of an Ohio Court upon this question.

However, under date of May 7, 1927, I rendered an opinion to the Director of Highways and Public Works, being Opinion No. 461, of which the first and third branches of the syllabus are as follows:

"1. There is no legal duty placed upon the Department of Highways and Public Works to erect and maintain guard rails at either fills, dangerous curves and other dangerous places on inter-county highways and main market roads, or at approaches to bridges.

3. The duty enjoined on county commissioners to erect and maintain guard rails at the places specified and in accordance with the provisions of Section 7563, General Code, was not removed by the passage of the State Highway Law (105-106 v. 623—General Code Section 1178 and related sections) or any later amendment thereto."

And again under date of May 24, 1928, I rendered Opinion No. 2155, to the Prosecuting Attorney of Holmes County, the syllabus of said opinion reading as follows:

"It is the duty of county commissioners to erect guard rails at all perpendicular wash banks more than eight feet in height, where such banks have an immediate connection with the public highway, or are adjacent thereto, in an unprotected condition; and such duty extends to roads in the state highway system. Upon failure so to do county commissioners may be subjected to a suit in damages, in case injuries are sustained which directly grow out of such failure to erect guard rails as required by law."

It was specifically held in this latter opinion that the amendment of Section 7464, General Code, by the Norton-Edwards Act (H. B. No. 67, 112 v. 430), did not change the conclusion reached in Opinion No. 461, supra.

To the list of cases enumerated in your letter as having been read by you, I suggest the addition of the case of *Buddenberg* vs. *Kavanagh,* 17 Ohio App. 252, the second headnote of which reads as follows:

"Where a petition recites that plaintiff was blinded by the lights of an approaching machine so as to be unable to see the street ahead of him, and that while so driving he collided with another machine negligently left in the street, the contributory negligence of the plaintiff is apparent and there is nothing to submit to the jury."

I am aware of the fact that this case has been distinguished in *Kronenberg* vs. *Whale,* 21 Ohio App. 322, and in *Ashdown* vs. *Tresise,* 26 Ohio App. 431, but the rule therein recognized by Judge Mauck of the Fourth District, seems to be particularly applicable to the facts in your case and has not been repudiated.

Answering your question specifically, a county is not relieved from the responsibility of placing guard rails on each side of the approach to a bridge on a highway which has been taken over by the state, which renumbers it and controls the construction thereof.

Respectfully,
EDWARD C. TURNER,
Attorney General.