

pensation in a lump sum, surely the employer or any other person could not do that which the court has no authority to do.

Hönnold on Workmen's Compensation, Volume I, p. 685, says:

"Compensation rights can not ordinarily be assigned or subject to the payment of debts."

He also quotes from the Washington Industrial Insurance Commission, with approval, the following:

"The exemption of awards from assignment or charge is necessary in order to protect the injured employe and his dependents. If the claim were made assignable, he could sell it for a small sum, and thus deprive his dependents of benefits to which they are entitled. The compensation is also made exempt from his debts on the same principle that wages are now exempt. The justice and fairness of this should be conceded by all."

—Hönnold, Volume I, p. 685.

Other writers on workmen's compensation law take the same general view as does Hönnold. The compensation acts of many of the states provide that an award shall be exempt from attachment and execution and assignment.

For these reasons, it is the opinion of the Attorney-General that the commission would not be warranted in reimbursing the employer.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2113.

ROADS AND HIGHWAYS—VIADUCT TO BE CONSTRUCTED OVER
RAILROAD LINES AND CREEK—HOW COST APPORTIONED.

Where a viaduct is proposed to be built under authority of sections 8863 to 8894 G. C., and must in addition to passing over lines of railroad pass over a creek which runs parallel to said lines of railroad, the total cost of the project is the basis of division as between the public and the railroad companies (sections 8868 and 8883), and the public alone is not to bear the cost of that part of the viaduct passing over the creek.

COLUMBUS, OHIO, May 26, 1921.

HON. WATSON H. GREGG, *Prosecuting Attorney, Cambridge, Ohio.*

DEAR SIR:—You have recently addressed this department as follows:

"The county and the Pennsylvania and Baltimore and Ohio Railroad Companies in this city are contemplating building a viaduct. Section 8868 provides the railroad companies if several railroads cross a public way at or near the same point (that is the case in this instance), shall pay not less than sixty-five per cent and the county not more than thirty-five per cent of the cost of such improvement.

Wills creek runs along parallel with the railroad tracks and the viaduct cannot be built across the tracks without crossing said Wills

Creek. What I want to know is, if the railroad companies would have to stand for their portion of the viaduct across said creek or whether the county would have to pay for that portion wholly and then share in the apportionment as heretofore mentioned."

Section 8868 G. C. is found in the so-called grade crossing elimination statutes. These statutes may be said to consist of two parts, (a) section 8863 to 8873, relating to cases where a municipality or county on the one hand, and a railroad company or companies on the other, arrange for the elimination on the basis of a division of cost of not more than thirty-five per cent to the municipality or county, and not less than sixty-five per cent to the company or companies; and (b) sections 8874 to 8894, authorizing proceedings by municipalities to compel co-operation by railroad companies in the elimination on the basis of payment of thirty-five per cent of cost by the municipality and sixty-five per cent by the company. Through amendment of section 8863, the provisions of sections 8874 to 8894 have been extended to counties in the matter of state, county and township roads within municipalities.

It is unnecessary to give any further description of the statutes, except to say that they are general in terms and do not contain provisions dealing with special cases, such as the crossing of a creek in connection with the elimination project. On the other hand, both series of sections contain terms of inclusion in that the cost to be apportioned embraces not only that of construction, but also the amount expended for the appropriation of property and the payment of damages to abutting owners.

Since the presence of the creek gives rise to an actual condition to be dealt with, it is useless to speculate upon the question whether the necessity of carrying the viaduct over the creek tends to increase or decrease the cost of the project as compared with what it would otherwise be. It is to be supposed that your inquiry arises from the probable fact that the public is now maintaining a bridge over the creek at the present street level and that it might be considered only fair that the public alone bear the cost of so much of the new structure as will take the place of the present bridge. Considerations of this nature, however, cannot be taken into account in giving effect to the arbitrary terms of a statute designed to cover all cases. Moreover, as already suggested, any attempt to go into the equities of the matter can lead nowhere except into a broad field of theory and speculation. It is therefore believed that the circumstance recited in your letter that "the viaduct cannot be built across the tracks without crossing said Wills creek" furnishes as the answer to your inquiry the conclusion that in the division of cost as between county and railroad companies, there is not to be a deduction made and the sum thereof separately paid by the county alone on account of that part of the viaduct crossing the creek.

Respectfully,
JOHN G. PRICE,
Attorney-General.