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BOARD OF COUNTY COMMISSIONERS—AUTHORITY—
5531.03 RC—COST DIVISION AGREEMENT—DIRECTOR OF
HIGHWAYS—RECONSTRUCTION OF EXISTING GRADE
SEPARATION STRUCTURE ON COUNTY ROAD.

SYLLABUS:

A board of county commissioners may, under authority of Section 5531.03, Revised Code, enter into a cost division agreement with the Director of Highways for the reconstruction of an existing grade separation upon a county road.

Columbus, Ohio, April 9, 1957

Hon. James K. Leedy, Prosecuting Attorney
Wayne County, Wooster, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

"I have been requested by Walter Metzler, County Engineer and the Wayne County Commissioners to write you and to obtain your opinion relative to the County of Wayne participating with the State of Ohio in the reconstruction of an existing bridge over the tracks of the Pennsylvania Railroad Company on County Road No. 23 about 1.75 miles east of State Route No. 5. It is considered to be in the public interest that the existing bridge aforesaid be reconstructed.

"The State Department of Highways has agreed to cooperate in this project pursuant to its authority under Sections 5523.19 and 5531.03 of the Revised Code of Ohio providing the county agrees to assume and bear:

"1. Fifty (50%) per cent of all construction cost and other incidentals.

"2. Fifty (50%) per cent of all right of way and property damage costs.

"It is estimated that the total costs of said project will be Two Hundred Thousand Dollars (\$200,000.00). The Board of County Commissioners of Wayne County are agreeable to participate in this project under the above arrangements. However, the question arises as to whether or not they have the authority to enter into such an agreement since Chapter 5561 of the Revised Code, which deals with county road grade crossings, is silent on the reconstruction of existing structures not built under existing effective sections of the code."

Section 5531.03, Revised Code, authorizes the Director of Highways to accept Federal funds "* * * for or in connection with" the separation of grade crossings and further provides for the division of expense involved in carrying forward any such project. The first paragraph of said section is as follows:

"The director of highways may accept any allotment of funds by the United States or any department or agency thereof,

as appropriated under the 'emergency relief appropriation act of 1935,' and any subsequent legislation either supplementing or amending such act, or by the act of congress approved July 11, 1916, entitled 'An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes,' known as the 'federal road aid act of 1916,' as amended by the act of congress approved June 16, 1936, and any subsequent legislation either supplementing or amending either of such acts, or otherwise providing funds for the same or similar purposes, in accordance with the rules and regulations issued thereunder, for or in connection with the separation of grades of a public highway and a railroad by the construction of a bridge, underpass, or highway, or railroad relocation, or for the alteration, relocation, *reconstruction*, change, or repair of *any bridge* or underpass carrying a *public highway* over or under a railroad, or for the protection of grade crossings. If any allotment of funds is made by the United States or any department or agency thereof, for the purposes stated, the division of any expense, in connection with such improvement, between the state or any political subdivision thereof and the railroad involved, *unless otherwise* agreed upon, shall be in accordance with existing laws applying to municipal, county, or state highway grade separation projects, but such division of expense shall be limited to only such part of the expense of such improvement as remains after the application thereto of any funds accepted from the United States or any department or agency thereof."

(Emphasis added)

The concluding paragraph of this section is as follows:

"The board or legislative authority of any municipal corporation may co-operate with the director in *any* of the improvements described in this section, adopting the appropriate procedure set forth in sections 5521.02, 5521.07, and 5523.15 and related sections of the Revised Code. The portion of the cost to be borne by the board or legislative authority of a municipal corporation *may* be paid from any available county or municipal funds."

(Emphasis added.)

It will be noted that the above quoted final paragraph of this section refers to the "board". This word refers to the Board of County Commissioners as indicated by the following language found in the last part of the second paragraph of the same section:

"As a condition precedent to such a declaration in connection with a grade separation within a municipal corporation or on a county road not on the state highway system, the director must receive from the municipal corporation or county an ordinance

or resolution, duly enacted by a majority of votes of the legislative authority of the municipal corporation or the *board of county commissioners* in which the improvement is located, consenting to the improvement and agreeing to assume the maintenance obligation imposed on said political subdivision in the case of a grade separation improvement constructed in cooperation with a railroad company under existing statutes.”

I am advised by telephone conversation with you, subsequent to my receipt of your letter of request, that Federal monies under the acts of Congress set forth in the statute above referred to, will be used to defray in part the expense involved in this project, thus rendering section 5531.03, Revised Code, applicable to this situation. The authority of the county to participate in projects wherein Federal Funds are made available, stems directly from Section 5531.03, Revised Code, and that authority is not restricted to the type of project outlined by either Chapter 5561, Revised Code, or Chapter 4957, Revised Code. In view of the comprehensive and inclusive terms in which Section 5531.03, Revised Code, is drawn, there exists little reason and less purpose for deeming it limited by the provisions of these chapters.

I conclude, therefore, that as to this language in the final paragraph of Section 5531.03, *supra*, although the several sections therein mentioned relate only to cooperative projects affecting state routes, it is only the *procedural* provisions of these sections which are made applicable to federal aid projects of the sort here involved, and not the limitations in such sections as to the nature of the projects which may be constructed as provided in Section 5531.03, Revised Code.

It is, therefore, my opinion that a board of county commissioners may, under authority of Section 5531.03, Revised Code, enter into a cost division agreement with the Director of Highways for the reconstruction of an existing grade separation upon a county road.

Respectfully,
WILLIAM SAXBE
Attorney General