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1. BRIDGE OR OTHER STRUCTURE SEPARATING GRADE CROSSING OF RAILROAD AND STATE HIGHWAY—NOT CONSTRUCTED PURSUANT TO SECTIONS 8863 ET SEQ., OR 6956-22 ET SEQ., G. C., WHICH WAS LAID OUT AND OPENED AFTER CONSTRUCTION OF RAILROAD, MAY BE WIDENED, REALIGNED AND RECONSTRUCTED—SECTIONS 1182 ET SEQ., 1182-20 G. C.—RAILROAD COMPANY MAY BE REQUIRED TO BEAR PART OF EXPENSE—SECTION 1182-9 G. C.
2. SUCH DESIGNATED BRIDGE OR STRUCTURE MAY, WHEN NECESSARY FOR SAFETY OR CONVENIENCE OF TRAVELING PUBLIC, BE RELOCATED AND RECONSTRUCTED BY DIRECTOR OF HIGHWAYS UNDER SECTIONS 1182 ET SEQ., 1182-20 G. C.—RAILROAD COMPANY MAY BE REQUIRED TO BEAR PART OF EXPENSE—SECTION 1182-9 G. C.
3. BRIDGE BUILT BY RAILROAD COMPANY—SEPARATION, GRADE OF TRACKS OVER OR UNDER STATE HIGHWAY WHEN RAILROAD COMPANY MUST COMPLY WITH OBLIGATION IMPOSED BY SECTION 1182-20 G. C.
4. STATUS WHERE CONSTRUCTION PRIOR TO HIGHWAY ACT PASSED APRIL 21, 1927, 112 O. L., 430—STATUTES THEN IN FORCE, LATER REPEALED—WHEN RAILROAD COMPANY MAY BE REQUIRED TO REPLACE STRUCTURES TO PROVIDE SAFE, ADEQUATE AND SUFFICIENT CROSSING.

SYLLABUS:

1. A bridge or other structure separating a grade crossing of a railroad and a state highway, which was not constructed pursuant to Section 8863 et seq., or Section 6956-22 et seq., of the General Code, and which is located on a road or highway which was laid out and opened after the construction of the railroad, may, when the safety and convenience of the traveling public require it, be widened, realigned and reconstructed by the director of highways under the provisions of Section 1182 et seq., particularly Section 1182-20 of the General Code, and the railroad company whose tracks are so separated may be required to bear a part of the expense of such reconstruction as provided in Section 1182-9, General Code.

2. A bridge or other structure separating a grade crossing of a railroad and a state highway, which was not constructed pursuant to Section 8863 et seq. or Section 6956-22 et seq., of the General Code, may, when it is necessary for the safety and convenience of the traveling public to relocate and reconstruct the same in whole or in part without the right of way of such road or highway, be so relocated and reconstructed by the director of highways under the provisions of Section 1182 et seq., particularly Section 1182-20 of the General Code, and the railroad company whose tracks are so separated may be required to bear a part of the expense of such reconstruction as provided in Section 1182-9, General Code.

3. Where a bridge was built by a railroad company separating the grade of its tracks so as to place them over or under a state highway which had been laid out before the laying of such tracks, and such bridge was constructed either for the convenience of the railroad, or because of public requirements before the enactment of grade separation statutes applying to such crossings, and such structure has become wholly inadequate and insufficient for the present travel upon such highway, an obligation is imposed by the final paragraph of Section 1182-20, General Code, on such railroad company to make such crossing safe, adequate and sufficient, if necessary, by complete reconstruction of such bridge and approaches thereto.

4. Where bridges separating the grades of railway tracks crossing state highways were built prior to the Highway Act passed April 21, 1927, 112 O. L., 430, pursuant to statutes then in force but since repealed, and such bridges have become wholly inadequate and insufficient for present day traffic, the railroad company may under the terms of the last paragraph of Section 1182-20, General Code, be required to replace them with structures which will provide a safe, adequate and sufficient crossing.

Columbus, Ohio, December 31, 1947

Hon. Murray D. Shaffer, Director, Department of Highways
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion, reading as follows:

“This department has many bridges over or under railroads built in years past, which now need rebuilding either in place or on new locations. We have been rebuilding some of these struc-

tures on a new location under the terms of Section 1182-20. Others which must be rebuilt in place present difficulties, because of the conditions and laws under which they were built. Some of the latter type are as follows:

(1) A bridge built by the railroad in the past, over or under its tracks, for its own convenience or because of public requirements, before the enactment of grade separation statutes, or since then, where no then existing grade crossing was eliminated. In practically all such cases the railroads acknowledge the responsibility of maintaining such bridges to the width and strength originally built. Almost all such bridges are either too weak for modern highway loads or are too narrow for modern pavement designs, or both. Few railroads to date have acknowledged a responsibility to rebuild any such bridge to greater width and strength. Under Section 1182-20 the State cannot participate in the cost of the reconstruction of such bridge unless it is relocated in whole or in part outside of the highway right-of-way. If the railroad's contention holds, i. e., they have no obligations towards a wider and stronger bridge, there is apparently no way to improve such a structure.

Under the terms of Section 1182-20 what is the responsibility of the railroads as to rebuilding such bridges to greater width and for carrying legal loads?

(2) Bridges over railroads built under the provisions of grade separation statutes prior to about 1923, which statutes usually required the railroad to maintain the framework and abutments of the bridge (and the public subdivision the wearing surface).

What is now the obligation of the railroad to maintain the framework and abutments of such bridge, and to rebuild such bridge, if necessary, to greater width and carrying capacity?

(3) In one instance, about 1917, a county started legal proceedings to eliminate a grade crossing. At some stage the proceedings proved defective and the railroad refused to participate, but the county proceeded with the elimination, paying all costs.

Under the provisions of Section 1182-20, or any other section, is the railroad now obligated to maintain the structure and the approaches thereto? The road is now on the state highway system."

Sections 1182 to 1182-21, inclusive, of the General Code relate to the elimination of grade crossings on roads or highways which form a part of the state highway system. Section 1182 gives authority to the director to raise or lower the grade of any such highway above or below the existing tracks of a railroad, and to require cooperation by the railroad company. The sections immediately following set out the procedure, which includes the preparation of plans in which the railroad company is to cooperate, and also authorizes proceedings in the court of common pleas in the event the director and the railroad company are not able to agree. Section 1182-9 provides for the allocation of the entire cost of the improvement between the state and the railroad company, on the basis of 85% to be paid by the state and 15% by the company, unless otherwise agreed.

Section 1182-18 makes provision as to the cost of maintenance and repair after the work of grade separation is completed. That section reads as follows:

“After the completion of the work of constructing or of re-constructing, widening or realigning of a separated crossing by the director under and in accordance with the provisions of this act, the separated crossing and approaches thereto so constructed shall be kept in repair as follows: When the public way crosses the tracks of any such company or companies by a structure carrying the highway over such tracks the cost of maintenance shall be borne by the state. When the public way passes under the tracks of any such company the cost of maintaining the bridge and its abutments shall be borne by such company, or, when there is more than one company involved, such bridge and abutments shall be kept and maintained by such companies in such proportion as may be fixed by agreement between such companies, or, in the absence of any such agreement, in such proportion as may be found by the common pleas court of the county within which the crossing is located to be just and equitable; and the public way and its approaches shall be maintained and kept in repair by the state.”

Section 1182-20 contains provisions regarding the relocation, widening or reconstruction of the original structure when that becomes necessary, in order to more efficiently provide for the safety and convenience of the traveling public. That section reads as follows:

“When a separated crossing, which was not constructed under and in accordance with the provisions of Sections 8863 to

8894, both inclusive, of the General Code, or under and in accordance with the provisions of Sections 6956-22 to 6956-39, both inclusive, of the General Code, is situated on a road or highway on the state highway system, or an extension thereof, and is so located that in order to provide for the safety and convenience of the traveling public having occasion to use such road or highway, or extension thereof, the director deems it necessary to *relocate and reconstruct the same in whole or in part without the right of way* of such road or highway, or extension thereof; *or* when in the opinion of the director a separated crossing, which was not constructed under and in accordance with the provisions of Section (s) 8863 to 8894, both inclusive, of the General Code, or under and in accordance with the provisions of Sections 6956-22 to 6956-39, both inclusive, of the General Code, and which separated crossing is located on a road or highway on the state system or an extension thereof, which *road or highway was laid out and opened after the construction of the railroad*, is in need of widening, reconstruction or realignment in order to provide for the safety and convenience of the traveling public having occasion to use such road or highway, or extension thereof, the director is authorized to relocate and reconstruct or widen, reconstruct or realign the same.

In order to accomplish the things hereinbefore in this section provided for, the director is authorized to take such action and initiate and prosecute *such proceedings as hereinbefore in this act provided to secure the elimination of existing grade crossings*; and the cost and expense of such relocation and reconstruction, or such widening, reconstruction, or realignment shall be borne by the state or by the state and any other political subdivision in which the crossing is located, and by the railroad company or companies in the proportions set out in this act in relation to the elimination of existing grade crossings, unless otherwise agreed upon.

Every person or company owning, controlling, managing or operating a railroad in this state *shall maintain and keep in good repair good, safe, adequate and sufficient crossings, and approaches thereto, whether at grade or otherwise*, across its tracks at all points, other than at separated crossings separated under and in accordance with the provisions of Sections 8863 to 8894, both inclusive, of the General Code, or under and in accordance with the provisions of Sections 6956-22 to 6956-39, both inclusive, of the General Code, or under and in accordance with the provisions of this act relating to the elimination of existing grade crossings, and other than separated crossings relocated and reconstructed or widened, reconstructed or realigned under and in

accordance with the provisions of this section hereinbefore set out, where such tracks intersect a road or highway on the state highway system, or an extension thereof." (Emphasis added.)

The provisions of Section 1182-20 supra were found in former Section 1229-19, General Code, in almost identical wording. It will, I believe, throw considerable light upon the general plan and intention of the General Assembly to note the development of Section 1229-19. It was originally enacted as Section 77 of a comprehensive highway law found in 112 O. L., p. 430. As then enacted it read as follows:

"Whenever, in the opinion of the director, a railroad crossing on the state highway system and extension thereof, the grade of which has heretofore been separated either under the provisions of the statute or otherwise, is in such *state or condition that the safe and convenient use of the public way is substantially interfered with, or such crossing is of a type which prevents the normal development of a road on the state system to meet the demands of highway traffic*, he is authorized to take such action and initiate such proceedings as are hereinabove provided, to secure the relocation, reconstruction, improvement, maintenance, and repair of such separated crossing, under procedure conforming as near as may be to that hereinbefore set out in this act for the elimination of existing grade crossings; and the cost of such relocation, reconstruction, improvement, maintenance and repair of such separated crossing shall be borne by the state or by the state and any other political subdivision in which the crossing is located, and by the railroad company or companies in the proportions set out in this act." (Emphasis added.)

This act was passed April 21, 1927, and by its terms was to become effective on the first Monday of January, 1928. On May 10, 1927, said Section 77 was amended to read as I have already stated, substantially in the same language as present Section 1182-20. This amendment also, was to take effect on the first Monday in January, 1928 (112 O. L. 504). The contrast between the two readings of said Section 1229-19 is striking and significant. As first enacted, the burden of reconstruction of all separated crossings which had theretofore been constructed "either under the provisions of the statute or otherwise" was to be divided between the state or political subdivision and the railroad company, in the proportions set out in the act, which, as to original construction, was 50% to the railroad and 50% to the public authority. The section as amended, after eliminating those which had been constructed pursuant to certain statutes dealing with agreements made by counties and municipalities, specified just

two instances in which the cost of *reconstructing* a separated crossing was thus to be shared and divided, to wit, (1) where the reconstruction involved relocation in whole or in part outside the right-of-way of the road, and (2) where the highway had been laid out and opened *after* the construction of the railroad.

The final paragraph of Section 1229-19 and now of Section 1182-20 appears to have been a new step in the law and seems to me to be intended to impose upon the railroad the entire burden of reconstruction in all cases except those specifically excepted.

In the original section, it will be observed, the director was authorized to reconstruct at joint expense, a previously separated crossing whenever it is "in such state or condition that the *safe and convenient use by the public* is substantially interfered with, or such crossing is of a type which prevents the *normal development of a road* on the state highway system to *meet the demands of highway traffic*". In the amendment that language does not appear but instead thereof, there are substantially equivalent recitals as to the two cases where the reconstruction is to be at joint expense, and then in the final paragraph, where the entire burden is placed upon the railroad, we find that in very broad and sweeping terms, the legislature has imposed upon every railroad company owning or operating a railroad in the state the duty to "maintain and keep in good repair, *good, safe, adequate and sufficient crossings and approaches thereto, whether at grade or otherwise*, across its tracks at all points." These words, in my opinion, mean exactly the same as did the language in the former act. Then, there follows a recital of certain crossings which the General Assembly saw fit to eliminate from this requirement, and as to those, it may be said that the railroad company is relieved, so far as this section of the law is concerned. These eliminations include (a) crossings which have been separated under Section 8863 et seq. or Section 6956-22 et seq. (which relate to work done pursuant to agreements with counties or municipalities); (b) crossings which have been originally eliminated under the provisions of "this act; and (c) crossings which have been relocated and reconstructed or widened, reconstructed or realigned in accordance with the provisions of *this section*."

As to all other crossings, whether at grade or at a previously separated grade, the obligation of the railroad company appears to be absolute.

This obligation is not to maintain *the bridge* or other structure, which may be beyond repair or wholly unsuited to present requirements of traffic, but to maintain *a crossing*, which must be *safe, adequate and sufficient*.

I cannot believe that this new provision was put into the former law or that it appears in the present law merely to require the railroad company under the conditions stated, to keep in repair a bridge or other structure in its original width and strength. If that was all that was intended, there was no occasion to write it into this section at all, because both in the old law and in the present highway law there are definite provisions as to the repair and maintenance of the original structure, and the legislature meant something when it went on and added other provisions looking to reconstruction of outmoded bridges and the permanent maintenance of "safe, adequate and sufficient crossings."

I have called attention to the provisions of Section 1182-18 as to requirements of *repair* in the present highway law. In the act in which Section 1229-19 supra was first enacted as Section 77, I find a like provision as to repairs in Section 1229-17, being Section 75 of the act. That provision required the maintenance and repair of a bridge carrying the highway over the tracks, to be at the cost of the state, and where the public way passed under the tracks, at the cost of the railroad. However, as I have indicated, ordinary repair of the *old bridge* to maintain it at its original strength and width is one thing, and maintenance of a safe, adequate and sufficient *crossing* and complete reconstruction where the public need demands it is quite another.

Your letter states that there were many bridges built a long time ago by railroad companies to carry the highways over their tracks, either for their own convenience or as a condition to their right of crossing, possibly before the enactment of grade separation statutes. These bridges are now too weak and too narrow for modern traffic. I cannot believe that the law is so lame as to permit the railroad companies to escape further responsibility to the public by once building primitive bridges which are now worse than useless, and which may actually become a nuisance in a modern highway.

It is true that the statutes which are mentioned as exceptional in Section 1182-20 supra have granted large indulgences to the railroads with

respect to bridges which have been built pursuant to contracts with municipalities and counties, but these concessions do not have the effect of limiting the *state* in its dealings with *state* highways.

As to the power of the state and its subdivisions to maintain a continuing control over the public highways in the exercise of the police power, there can be no doubt. In 25 Am. Jur., page 544, it is said:

“The use of highways and streets may be limited, controlled, and regulated by the public authority in the exercise of the police power whenever and to the extent necessary to provide for and promote the safety, peace, health, morals, and general welfare of the people, and is subject to such reasonable and impartial regulations adopted pursuant to this power as are calculated to secure to the general public the largest practical benefit from the enjoyment of the easement, and to provide for their safety while using it.”

Citing *Clark v. Poor*, 274 U. S. 554; *Frost & F. Trucking Co. v. Railroad Commission*, 47 ALR, 457.

It is also a settled principle that this power is not confined to public uses known at the time of their dedication but extends to new uses as they spring into existence. *State, ex rel. v. Murphy*, 134 Mo., 548.

It is established that the governmental power to control and regulate the use of highways in the public interest cannot be surrendered or impaired by contract. So, a contract between a city and a railroad company, the enforcement of which would hamper the power of the state to regulate reasonably the construction and use of a crossing of the railroad by a city street is void. *M. K. & T. R. Co. v. Oklahoma*, 271 U. S., 303, 44 Am. Jur., page 524.

These principles apply as well to the use by a railroad of part of the highway as to any other use that may be permitted. In 44 Am. Jur., page 524, it is said:

“The reconstruction, relocation, elimination, and separation of railroad crossings of, and trackage on, highways and streets is peculiarly within the police power of the states.”

Citing *Ry. Co. v. Public Utility Commissioners*, 278 U. S., 24; 62

ALR 805; *Erie Ry. Co. v. Public Utility Commissioners*, 254 U. S., 394.

Referring specifically to grade crossing elimination, the following statement is made by the same authority, at page 525:

“Contracts involving the separation, reconstruction, elimination, relocation or change of railroad crossings of, and trackage on, highways are sometimes expressly entered into between the railroad and a municipality, and such contracts are, of course, entitled to full constitutional protection, but such protection does not put them above the police power, which cannot be alienated. In other words, the power to require the elimination or separation of a grade crossing for the public safety or welfare cannot be taken out of the police power by contract between the legislature or the city and the railroad company.”

Citing *Ry. Co. v. Nebraska*, 170 U. S. 57; *State, ex rel. St. Paul v. Chicago, M. & St. P. R. Co.*, 135 Minn., 277.

Numerous cases are cited by the editor in support of these propositions. I do not deem it necessary to elaborate them at this time, but they will be found to sustain abundantly the principles above stated.

Most of the early statutes relating to grade crossing elimination, contain provisions looking to the repair and maintenance of a structure, similar to that which is found in Section 1182-18 and apportioning the burden between the railroad and the public authority. Those statutes are earlier in point of time than the new provision introduced in 1928 into Section 1229-19 and carried forward in the more recent highway act. If the legal principles to which I have called attention are sound, it appears to me to be perfectly within the power of the General Assembly to make provision, as I believe it has, for reconstruction on new and modern lines, of grade separation structures which have theretofore been erected but which are now by reason of general decay, beyond repair, or by reason of the development of modern traffic requirements are hopelessly inadequate, unsafe and insufficient for the public needs. Furthermore, I do not consider that the provisions of these earlier statutes constituted a contract whereby the rights of the state to legislate further for the safety and welfare of the public was in the least degree surrendered or limited.

I have already traced the changes in former Section 1229-19. This legislation was directly under consideration by one of my predecessors in

an opinion found in 1927 Opinions of the Attorney General, page 1272. This opinion was rendered shortly after the legislature had passed House Bill No. 511, amending an act known as Section 77 of House Bill No. 67, passed by the 87th General Assembly, to become effective on the first Monday in January, 1928. As already pointed out, this section as amended (Section 1229-19, General Code) was substantially the same as present Section 1182-20. The then Attorney General, having this entire section under consideration and having before him the case of a bridge which had been constructed in about 1868, held:

“1. Where there exists a separated crossing which was not constructed under and in accordance with the provisions of Sections 8863 et seq., or Sections 6956-22 et seq., General Code, and such crossing is located on a road or highway which was laid out and opened after the construction of the railroad and is in need of reconstruction in order to provide for the safety and convenience of the traveling public, the Director of Highways and Public Works may, after the first Monday in January, 1928, cause a railroad company whose tracks are so separated from such highway by such crossing to contribute towards the reconstruction of said crossing.

2. Under the provisions of Section 77 of House Bill No. 67, as amended in House Bill No. 511, when it becomes necessary to repair or maintain an existing separated crossing at the intersection of a railroad and a road or highway on the state highway system, or an extension thereof, which crossing was not constructed under the provisions of Sections 8863 et seq. and 6956-22 et seq., General Code, for the reason that the same is unsafe and inadequate for public travel, and such repair and maintenance does not involve a relocation of such existing separated crossing, it is the duty of the railroad company to make the repairs necessary to properly maintain such structure and that duty may be enforced by proper court action.”

Commenting upon this situation it was said in the opinion, at page 1275:

“From a reading of your letter I gather that it is proposed to build an entirely new structure to replace the present one which is unsafe and inadequate. You state that this bridge has been closed to travel for the past eighteen months. * * *

A reading of the first part of the amendment clearly shows

that if the bridge separating the highway from the tracks of the railroad company, which was not constructed under Sections 8863 et seq. or 6956-22 et seq., General Code, it is to be reconstructed or relocated, and requires the widening or a realignment, which will carry the same without the bounds of the right of way of the existing highway, the railroad company or companies can be called upon to bear fifty per cent of the cost of such relocation and reconstruction. * * *

If the proposed structure is to be repaired or maintained without relocating the same, then it would appear that under the last paragraph of Section 77 of House Bill No. 67 as amended in House Bill No. 511, it would be the duty of the railroad company to keep in repair and maintain in a good, safe, adequate and sufficient condition the bridge in question. You will notice that the provisions of said section place the duty upon the railroad company to maintain and keep in repair, safe and adequate crossings, whether at grade or otherwise, across its tracks at all points other than at separated crossings that have been constructed according to Sections 8863 et seq. and 6956-22 et seq., General Code.

If the present overhead bridge can be made *sufficient and adequate for public travel* by the proper maintenance or repair of the same, then, *clearly it is the duty of the railroad company to make the repairs necessary* to properly maintain the structure, and that duty may be enforced, if necessary, by proper court action. *The term maintenance might imply almost the entire reconstruction of a bridge.*" (Emphasis added.)

Another opinion which it appears to me has some force as bearing on the obligation of railroad companies relative to bridges erected by them prior to the enactment of grade crossing elimination statutes, is found in 1922 Opinions of the Attorney General, page 1020, where it was held:

"1. Where a railroad company, prior to the enactment of the grade crossing elimination statutes (Section 8863 et seq.) has erected bridges along a public road so as to constitute an overhead crossing for the public road, it is the duty of the railroad company and not of the county to keep up all repairs of such bridges. * * *

3. Further, an action in mandatory injunction may perhaps be available to the county commissioners to compel the railroad company to make the necessary repairs."

It is true this opinion dealt with the obligation of a railroad company to keep in repair a bridge rather than to maintain a safe crossing, but the

principle is somewhat similar. Section 8863 et seq. were enacted in 1893. The Attorney General speaking of the law as it existed prior to that time, said:

“In this general state of legislation, it would seem that since the bridges in question, notwithstanding that they constitute a part of the line of public road, were inserted in the public road primarily for the benefit of the railroad company, such bridges are to be maintained in all respects at the sole expense of the railroad company, and that the county is not charged as between railroad company and county with any part of the maintenance and upkeep of the bridges.”

Your second question relates to bridges over railroads built under the provisions of grade separation statutes prior to about 1923, which statutes, as you state, usually required the railroad to keep in repair the framework and abutments of the bridge and the public subdivision the wearing surface.

Among these statutes, long since repealed, may be noted former Sections 3337-8 to 3337-13, inclusive, of the Revised Statutes. These sections were enacted in 1893, and are found in 90 O. L., page 359; also Sections 3337-17a to 3337-17f, Revised Statutes, as enacted in 1902 and found in 95 O. L., page 356. Both of these sets of statutes related to proceedings by municipalities and counties in agreement with the railroad company, and the second introduced the idea of an appeal to court in case the subdivision and the railroad companies were not able to agree. These statutes provided, as does the present law which I have quoted, for a division of the cost of *repair and maintenance*, but made no provision for reconstruction when the public needs demanded it. It appears to me, therefore, that since Section 1182-20 contains no reference to any of these statutes except those which it specifically exempts, the provisions of that section would apply, and the question whether the burden would fall in part on the railroad and in part on the state, or altogether on the railroad, would depend on the same conditions to which reference has already been made, to wit, whether the reconstruction involves a departure from the existing right-of-way and whether the highway had been extended across the railroad after its construction. In other words, railroads are not exempted from the provisions of Section 1182-20, so far as reconstruction of these bridges is concerned, merely because they were con-

structed and were to be kept in repair under the provisions of the old statutes to which your second question refers.

In so far as these old statutes contain provisions relative to repair of bridges, they would of course control the rights and obligations of the parties, but they form no impediment to the right of the General Assembly to provide, as it has done, for their replacement by new structures when the safety and convenience of the public requires their construction.

Your third question does not present sufficient facts to enable me to answer it. Upon ascertaining all the circumstances you may be able to apply the conclusions which I have indicated in the foregoing.

It is hardly practicable to frame an answer to your questions that will cover every possible situation. However, I have endeavored to cover them so far as possible on the facts submitted. Accordingly, it is my opinion:

1. A bridge or other structure separating a grade crossing of a railroad and a state highway, which was not constructed pursuant to Section 8863 et seq. or Section 6956-22 et seq., of the General Code, and which is located on a road or highway which was laid out and opened after the construction of the railroad may, when the safety and convenience of the traveling public requires it, be widened, realigned and reconstructed by the Director of Highways under the provisions of Section 1182 et seq., particularly Section 1182-20 of the General Code, and the railroad company whose tracks are so separated may be required to bear a part of the expense of such reconstruction as provided in Section 1182-9, General Code.

2. A bridge or other structure separating a grade crossing of a railroad and a state highway, which was not constructed pursuant to Section 8863 et seq. or Section 6956-22 et seq., of the General Code, may, when it is necessary for the safety and convenience of the traveling public to relocate and reconstruct the same in whole or in part without the right-of-way of such road or highway, be so relocated and reconstructed by the Director of Highways under the provisions of Section 1182 et seq., particularly Section 1182-20 of the General Code, and the railroad company

whose tracks are so separated may be required to bear a part of the expense of such reconstruction as provided in Section 1182-9, General Code.

3. Where a bridge was built by a railroad company separating the grade of its tracks so as to place them over or under a state highway which had been laid out before the laying of such tracks, and such bridge was constructed either for the convenience of the railroad, or because of public requirements before the enactment of grade separation statutes applying to such crossings, and such structure has become wholly inadequate and insufficient for the present travel upon such highway, an obligation is imposed by the final paragraph of Section 1182-20, General Code, on such railroad company to make such crossing safe, adequate and sufficient, if necessary, by complete reconstruction of such bridge and approaches thereto.

4. Where bridges separating the grades of railway tracks crossing state highways were built prior to the Highway Act passed April 21, 1927, 112 O. L., 430, pursuant to statutes then in force but since repealed, and such bridges have become wholly inadequate and insufficient for present day traffic, the railroad company may under the terms of the last paragraph of Section 1182-20, General Code, be required to replace them with structures which will provide a safe, adequate and sufficient crossing.

Respectfully,

HUGH S. JENKINS,
Attorney General.