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RAILROAD OVERHEAD CROSSING—COUNTY COMMISSIONERS MAY NOT LEGALLY CONTRACT FOR LIGHTING OF “CLOVERLEAF” OVERHEAD CROSSING OR RAILROAD OVERHEAD CROSSING.

SYLLABUS:

County commissioners may not legally contract for the lighting of a “cloverleaf” overhead crossing or a railroad overhead crossing.

Columbus, Ohio, January 9, 1950

Bureau of Inspection and Supervision of Public Offices
Columbus, Ohio

Gentlemen:

Your request for my opinion reads as follows:

“May the county commissioners legally contract for the lighting of a ‘clover leaf’ overhead crossing that does not span a stream?”

“May the county commissioners legally contract for the lighting of a structure which is a railroad crossing overhead?”

The questions presented by your communication may be answered concurrently since the law applicable to these questions is the same. It undoubtedly comes to your office as an elementary proposition of law that the authority vested in the county commissioners is strictly limited to that expressly or impliedly conferred upon them by statute, and they can act for and bind the county only within the limits of such authority.

With this in mind, your attention is directed to Section 7561, General Code, which provides for the lighting of bridges by the county commissioners. This statute reads as follows:

“The county commissioners, when in their opinion the safety of the public travel requires it, may contract for the proper lighting of such bridges when the span or two or more spans of which cross the same stream or streams and which spans are connected by levees, and when such span or spans 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 county commissioners except that this section shall not apply where the county commissioners have constructed three or more bridges within the limits of a municipal corporation. In such case the municipal corporation shall light the bridges within its limits and at its own expense.”

It may be noted from this statute that there are occasions when the county commissioners may contract for the proper lighting of bridges, but it may also be noted that the qualifications placed upon this authority by Section 7561 exclude the authority to contract for the lighting of a “clover leaf” overhead crossing that does not span a stream or a railroad crossing overhead. County commissioners may contract for the proper lighting of bridges pursuant to this statute only “when the span or two or more spans of which cross the same stream or streams and which spans are connected by levees, and when such span or spans and levees taken together have a combined length of not less than five hundred feet.”

The construction, improvement, maintenance and repair of roads of the county highway system are clearly within the authority of the county commissioners, Section 7466, et seq., General Code.

And the question thus arises whether the duty to maintain the roads also implies an authorization or duty to keep the bridges over such roads properly lighted.

The word "maintenance" as so used was defined in Opinions of the Attorney General for 1927, page 246, at page 247, as follows:

"The word 'maintenance' as used in the above section refers to the physical upkeep of roads when once constructed, and not to the furnishing of light upon roads or bridges for safety purposes."

I am unable to find any other statute which either expressly or by implication might justify the county commissioners in contracting for the lighting of the bridges referred to in your communication.

It is therefore my opinion in specific answer to your questions that the county commissioners may not legally contract for the lighting of a "cloverleaf" overhead crossing or a railroad overhead crossing.

Respectfully,

HERBERT S. DUFFY,
Attorney General.