

State Department of Health (1958), 352 Mich. 597, wherein it was held that the Department of Health has no power or duty to approve or disapprove the lease of a well and pump site to a water company.

Therefore, it is my opinion that a county which operates a water system may not lay its pipes under or through city streets, without first obtaining the consent of the city; however, the city may not withhold such consent arbitrarily and unreasonably. The city may condition its consent to the use of its streets upon the county submitting the plans and specifications for the construction of the water line to the city for approval, the inspection of the work by city employees, and the payment of reasonable permit and inspection fees; such conditions, however, may not be imposed arbitrarily and unreasonably.

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**RAILROAD CROSSING PROTECTION - COUNTY LOCAL ROADS -
TOWNSHIP:**

At a grade crossing between a railroad and a county local road located in a township, the County Road Commission is the highway authority solely and exclusively responsible for the maintenance of the highway and thus must bear equally with the railroad the cost of installing flashing-light installations. The township is not required to contribute any part of the cost of such installation.

No. 4651

September 25, 1968.

Mr. Donald A. Burge
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You have requested my opinion on a question which you stated in your letter as follows:

"Under Michigan law, are the costs of installing flasher signals at railroad grade crossings with local roads, other than the 50% of the costs required to be paid by the railroad, to be divided equally between the township wherein the crossing lies and county road commission?"

Your correspondence indicates that the flasher signals were ordered to be installed by the Public Service Commission under the provisions of § 8, Act 270, P.A. 1921, as amended; M.C.L.A. § 469.8; M.S.A. Vol. 16 § 22.768, and that the road is a county local road.

Section 8, Act 270, P.A. 1921, as amended, *supra*, provides in part:

". . . The cost of all flashing light installations and alterations or relocations of same shall be borne equally by the railway and highway authorities, and thereafter they shall be maintained by the rail-

way authorities at their own expense except that the highway authorities shall pay ten dollars (\$10.00) per month to the railroad authorities for each crossing protected by flash light signals. . . ."

It thus appears that the term "authorities" in the phrase "railway and highway authorities" refers to both railway authorities and highway authorities.

The authorities which shall equally bear the costs are described elsewhere in said § 8 where they are described as "the railway authorities owning the tracks of such crossings," and "the highway authorities responsible for the maintenance of the highway." More than one railway authority, as defined in § 8, may be involved, as, for example, in a situation where the crossing is at or near intersecting railroads. Similarly, if the crossing should be at or near a county line or if such a county road be constructed and maintained pursuant to § 17, Act 283, P.A. 1909, as amended; M.C.L.A. § 224.17; M.S.A. 1958 Rev. Vol. § 9.117, at the joint expense of adjoining counties more than one highway authority may be involved. But in all cases, the only railway authorities referred to in the statute are those which in fact own the tracks of such crossings, and the only highway authorities referred to in the statute are those which are in fact and in law responsible for the maintenance of the highway.

Thus, unless the township is responsible for the maintenance of the highway at the crossing in question, it is not a highway authority within the contemplation of § 8, *supra*, and so cannot be required to participate in paying half the cost of the flashing-light installation.

Section 18, chapter 4, Act 283, P.A. 1909, as amended; M.C.L.A. § 224.18; M.S.A. 1968 Cum. Supp. § 9.118, provides:

" . . . any road heretofore laid, out, or any part thereof, shall become county roads if the board of county road commissioners shall at any time so determine. . . Notice of determination shall be forthwith given by the clerk to the highway commissioner of each township. . . After service and publication of such notice, the board of county road commissioners shall have sole and exclusive jurisdiction and control of such road so embraced within such determination, and the township or municipality within which the same is situated shall be relieved from all responsibility therefor. . . ."

Since, under this statute, the county road commission has "sole and exclusive jurisdiction and control of such road," there can be no other highway authority "responsible for the maintenance of the highway." See also 1941-42 O.A.G. p. 188.

In your correspondence, the question has been raised whether Act 51, P.A. of 1951, as amended, and particularly § 12(j) thereunder; M.C.L.A. 1967 Cum. Supp. § 247.662(j); M.S.A. 1968 Cum. Supp. § 9.1097(12)(j), does not require the township to pay one-half of that part of the cost of installing flashing-light signals which under the provisions of § 8, Act 270, P.A. of 1921, as amended, is to be borne by the highway authorities responsible for the maintenance of the highway which sole and exclusive

highway authority, as has been pointed out above, is the county road commission. Section 12(j) provides:

"Any other provision of this act to the contrary notwithstanding, moneys distributed from the motor vehicle highway fund may be expended for construction purposes on county local roads only to the extent matched by moneys from other sources."

Act 51, P.A. 1951, as amended; M.C.L.A. 1967 Cum. Supp. § 247.651 *et seq.*; M.S.A. § 9.1097(1) *et seq.*, provides for the classification of all public roads, streets, and highways in Michigan and sets up and establishes the motor vehicle highway fund. Section 12(j) permits the use of funds from the motor vehicle highway fund on county local roads only when and to the extent to which such funds are matched by moneys from other sources. No limitation is placed by the language of § 12(j) on the nature of the "other sources" from which such matching moneys must come. The plain meaning of the phrase "other sources" indicates that the matching funds may come from any source other than the motor vehicle highway fund. In view of the fact that the railway authorities are required to pay one-half of the cost of the flashing-light installation under the provisions of § 8, Act 270, P.A. of 1921, as amended, the requirements of § 12(j), Act 51, P.A. of 1951, as amended, appear to be met.

However, Act 51, P.A. of 1951, as amended, is not determinative of the issue raised in your letter. Assuming *arguendo* that, in the absence of a township contribution the county road commission could not meet the requirements of this act, this would merely mean that the county road commission could not use moneys from the motor vehicle highway fund to pay its share of the installation of the flashing-light signals and would have to use other funds. County road commissions have other sources of revenue, such as taxes raised under the provisions of Chap. IV, § 20, Act 283, P.A. of 1909, as amended; M.C.L.A. § 224.20; M.S.A. 1958 Rev. Vol. § 9.120. If the county were legally precluded from using moneys from the motor vehicle highway fund, this other revenue source could be utilized to pay its share of the installation of the flashing-light signal installation.

Accordingly, I conclude that, with respect to a county local road, a township is not a highway authority within the meaning of § 8, Act 270, P.A. of 1921, as amended; M.C.L.A. § 469.8; M.S.A. Vol. 16 § 22.768, and thus is not required to pay any part of the cost of installing flashing-light signals at a railroad grade crossing with a county local road.

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