

## Opinion No. 66-67

May 25, 1966

**BY:** OPINION OF BOSTON E. WITT, Attorney General Paul J. Lacy, Assistant Attorney General

**TO:** Herbert J. Taylor, State Representative, McKinley County, P. O. Box 268, Gallup, New Mexico

### QUESTION

#### QUESTIONS

1. Which governmental agency has the primary responsibility for installing automatic lights, barricades, etc., at railroad grade crossings on country roads?
2. If there are automatic signal lights at a railroad crossing on a country road but they are out of order and an accident occurs who is liable for the injury?

#### CONCLUSIONS

1. See analysis.
2. See analysis.

### OPINION

#### {\*83} ANALYSIS

No New Mexico governmental agency is primarily responsible for installing lights or barricades at railroad crossings on any roads. The State Highway Commission probably has authority to participate in the cost of installing them by virtue of the broad grant of authority to it under Article V, Section 14, New Mexico Constitution. In your query you do not say whether the country road in question is maintained or constructed wholly or partly by state aid. If the road was constructed or is maintained wholly or partly by state aid, then the State Highway Commission probably is constitutionally authorized to negotiate with the railroad for the installation of automatic signals.

In New Mexico the fact that an automatic railroad crossing signal fails to function prior to an accident {\*84} is an important factor in the consideration of who is liable for damages. **Landers v. A.T. & S.F. Ry. Co.**, 68 N.M. 130, 359 P.2d 522; 73 N.M. 131, 386 P.2d 46. In speaking of railway crossings equipped with automatic safety devices our Supreme Court, in the first Landers case set forth the rule as follows:

"In the case of a guarded crossing no precise rule can be stated as to the quantum of care required of the traveler in all cases or under all circumstances. The test is whether the traveler exercised that degree of care which a reasonable person would have exercised under the circumstances, and where the traveler exercised some care it is a question of fact for the jury to determine, not one of law for the court. *Toschi v. Christian*, 24 Cal. 2d 354, 149 P.2d 848; *Spendlove v. Pacific Electric Ry. Co.*, 30 Cal. 2d 632, 184 P.2d 873; *Ogburn v. Atchison T. & S.F. Ry. Co.*, 110 Cal. App. 587, 294 P. 491; Annotation 99 A.L.R. 733 and cases collected. That the failure of a warning signal to operate lessens the imperative duty of the traveler to stop, look and listen and is even the practical equivalent of an invitation to cross is recognized in *Wabash Ry. Co. v. Walczak*, 6 Cir.,

Therefore, the presence of automatic signals on railroad crossings in New Mexico lessens the duty of the traveler to stop, look and listen, but does not absolve the traveler of all duty of care. In the final analysis, determination of liability rests on the facts of each case.