

## Opinion No. 15-1422

January 18, 1915

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. Hugh H. Williams, State Corporation Commissioner, Santa Fe, N. M.

**As to authority of Corporation Commission to require railroads to provide crossings for public highways.**

### OPINION

{\*15} I have just received your letter of even date herewith, asking as to the power of the State Corporation Commission under that clause of Section 7 of Article XI of the Constitution, which gives the Commission power "to provide and maintain necessary crossings, culverts and sidings upon and alongside of their road beds whenever, in the judgment of the Commission, the public interests demand and as may be reasonable and just."

It appears from your letter that difficulty has arisen because in a community, the majority of the citizens desire a crossing, while the County Road authorities decided the crossing was not necessary, {\*16} because, as I assume, that there is no public highway established across the point where the crossing is desired, and you desire to know whether the county authorities can be required to conform to the wishes of the majority of the citizens in the locality.

I cannot see that the authority of the Corporation Commission could extend so far as the creation of a public highway, as that is entirely under the control of the County Road Board. As to whether the Commission could require the railroad company to put in crossings at places other than where public roads exist, might be very doubtful, although power is given to require crossings, when in the judgment of the Commission, the public interests demand, but that is coupled with the further qualification "as may be reasonable and just." There might be cases where it would be reasonable and just to have a crossing even though there were not a public highway, but as to that each case would have to be decided upon its own facts.