

Opinion No. 37-1758

September 15, 1937

BY: FRANK H. PATTON, Attorney General

TO: Mr. G. F. Conroy State Highway Engineer Santa Fe, New Mexico. Attention: R. W. Bennett Office Engineer

{*157} Your letter of September 13th requesting an opinion has been received.

It is the common law duty of railroad companies to keep and maintain crossings for roads already established at the time of the building of the railroad line, in a safe and suitable state of repair, including not only the crossing of the tracks but also the approaches thereto. 51 C. J. 659. By Chapter 97 of the Laws of 1929 (Section 116-1202, Compiled Statutes, 1929), the railroad companies are required to construct and maintain in good condition "at its own expense" crossings on highways "now or here after to be opened for public use."

This duty of maintaining and keeping in repair highway crossings is a continuing duty, requiring the railroad companies to put such highway crossings in such condition as changes in circumstances require. 51 C. J. 672. Therefore, where a highway is improved, as for example by widening the same to accommodate {*158} increasing traffic, it is the duty of the railroad company to also improve its crossing so that it will be reasonably comparable to the roadway approaching the crossing.

If the railroad company refuses to do the necessary work, it can not prevent the Highway Commission from going upon its right of way and performing the work in any suitable manner. 51 C. J. 672. For that purpose the State Highway Commission has authority to expend state funds. The railroad company, however, should ordinarily be held liable to the state for expense because of its duty to maintain the highway crossing.

In my opinion the railroad's only duty is to make the crossing safe and convenient to the public with proper regard, of course, for the class of traffic at such crossing; but if the Commission desires further improvement beyond that, it is my opinion that it has authority to so improve it and to expend state funds therefor. The crossing is as much a part of the highway as any other portion of the road.

By: A. M. FERNANDEZ,

Asst. Atty. Gen.