S T A T E O F T E N N E S S E E
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Opinion No. 01-066

Payment for Railroad Crossing Signs

QUESTIONS

1. Under Tenn. Code Ann. § 65-12-108, the officials having jurisdiction over every public road crossed by a railroad must place a sign at the crossing in the form approved by the Department of Transportation. The statute provides "[t]he county legislative body shall appropriate money to defray the expenses of the signs." Does this statute require Obion County to reimburse cities within the county for expenses they have previously incurred in erecting railroad crossing signs?

2. If the answer to Question 1 is yes, is the county liable for the entire expense incurred by each city or only a portion of such expenses?

3. If the answer to Question 1 is yes, should the reimbursements be made from the county's general fund or the county highway department's budget?

OPINIONS

1. Yes, the statute appears to contemplate that the county will bear the expense of providing railroad crossing signs on roads throughout the county, including those within the corporate limits of cities in the county.

2. The county is liable for the entire expense incurred by each city.

3. Reimbursements to the cities for installing signs on streets within municipal boundaries should be from the county's general fund, since the county highway commission has no authority over those roads.

ANALYSIS

1. Payment for Railroad Crossing Signs

This opinion concerns a county's responsibility for reimbursing cities within the county for installing

railroad crossing signs on roads within the city limits. Tenn. Code Ann. § 65-12-108 provides in relevant part:

> In order to prevent accidents upon railroads, the following precautions shall be observed:
>
> (1) The officials having jurisdiction over every public road crossed by a railroad shall place at each crossing a sign, marked as provided by § 65-11-105. *The county legislative body shall appropriate money to defray the expenses of the signs*. The failure of any engine driver to blow the whistle or ring the bell at any public crossing so designated by either the railroad company or the public official shall constitute negligence with the effect and all as set forth in § 65-12-109.

Tenn. Code Ann. § 65-12-108(1) (emphasis added). Until the statute was amended in 1959 to place the responsibility of building the crossing sign on "officials having jurisdiction over every public road crossed by a railroad," that duty belonged to "overseers," who were appointed by the county, and not to municipal corporations where the road was located. *State v. Manchester*, 62 Tenn. 416 (1874). The question is whether, under this statute, Obion County is required to reimburse various municipalities within the county for expenses previously incurred in erecting railroad crossing signs. The statute appears to place this responsibility on the county, at least with regard to signs the cities have built since 1959. Therefore, under this statute, Obion County is required to reimburse various municipalities within the county for expenses the cities have incurred in erecting railroad crossing signs.

2. Apportionment of Costs

The second question is whether, assuming the county must reimburse the cities for the cost, the county is liable for the entire expense or only a portion. The statute does not provide for any allocation of costs. The county is therefore liable for the entire expense.

3. Source for Payment

The last question is whether, assuming the county must reimburse the cities for the cost, payment to the cities should be made from the county's general fund or the county highway department budget. Presumably, the cities incurred the costs of erecting crossing signs on roads located within the city. The Board of Highway Commissioners of Obion County is charged with control and maintenance of the "county road systems of Obion County . . .." 1984 Tenn. Priv. Acts Ch. 202, § 4. In a different context, our Office has concluded that the term "county road" is a road dedicated to the use of the public and accepted by the county as part of its road system, outside the corporate limits of a municipality and not a part of the state system. Op. Tenn. Atty. Gen. 99-166 (August 19, 1999) (a county may not use county-designated gas tax funds to maintain municipal roads and bridges). Further, the private act governing the Obion

County Highway Department provides that the county commission will provide for its budget for the maintenance of "roads and bridges of the county." For this reason, we think a court would conclude that funds to reimburse

cities for erecting railroad crossing signs on city roads should be reimbursed from county general funds.

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