

It is noted that in your communication you state specifically that in the reconstruction of the underpass it is not proposed to relocate and reconstruct the same, in whole or in part, without the right of way of such state highway. From a reading of the first portion of Section 1229-19, General Code, just quoted, it is apparent that in order for the director of highways to have jurisdiction to initiate proceedings for the reconstruction of an existing separated crossing, upon a cooperative basis, between the state, county and railway company, it is necessary, first, that the separated crossing be one that was not constructed under and in accordance with the provisions of Sections 8863 to 8894, both inclusive, General Code, or under and in accordance with the provisions of Sections 6956-22 to 6956-39, both inclusive, General Code; and, second, that the plans provide for a relocation and reconstruction of said separated structure, in whole or in part, *without* the right of way of such highway.

It is also apparent from a reading of the latter portion of the first paragraph of Section 1229-19, General Code, that those provisions are only applicable to separated crossings, where the highway was laid out and opened after the construction of the railroad.

Since the plans for the reconstruction of the crossing in question do not call for a relocation and reconstruction of said crossing, in whole or in part, without the right of way of the highway or an extension thereof, and since the tracks of the railroad were not in existence prior to the construction of the highway, the provisions of Section 1229-19, General Code, are not applicable and, therefore, you have no authority to initiate proceedings for the reconstruction of the separated crossing, upon a cooperative basis, between the state, county and railway company.

The last paragraph of the section is not applicable to the case under consideration. It is true that the underpass in question is a separated crossing and was not constructed under the provisions of Sections 8863 to 8894, both inclusive, of the General Code, or in accordance with the provisions of Sections 6956-22 to 6956-39, both inclusive, of the General Code; nor was it constructed under the provisions of the Norton-Edwards Act. However, that portion of the section requires the company to *maintain* and keep in good repair good, safe, adequate and sufficient crossings and approaches thereto. This paragraph undoubtedly requires the railroad company to maintain and keep the present crossing in good repair, etc. "Maintenance" usually relates to keeping in good condition that which is in existence, as distinguished from reconstruction or increasing or enlarging. The project in question requires an enlargement of the underpass, and the language of the paragraph under consideration is not broad enough to require such to be done by the railroad company for the reason that it would not be maintaining the crossing in question.

Answering your question specifically, it is my opinion that, on the facts stated in your communication, the provisions of Section 1229-19, General Code, do not authorize you to initiate proceedings to bring about the reconstruction of the underpass in State Highway No. 553.

Respectfully,

EDWARD C. TURNER,
Attorney General.

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APPROVAL, BONDS OF BUCKSKIN TOWNSHIP RURAL SCHOOL DISTRICT, ROSS COUNTY, OHIO—\$72,000.00.

COLUMBUS, OHIO, October 2, 1928.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.