

"In the trial court one of the defenses of the board was that at the time of the accident that part of the highway was an inter-county highway, and under the control of the State Highway Department. In the Court of Appeals and in this court counsel for the board complain that that feature of the cause was not submitted to the jury under the evidence offered. However, it is unnecessary to dispose of that feature, in view of our decision upon the other branch of the case."

Since the decision in the *Harrigan* case, *supra*, I do not find that Sections 7563 to 7565, *supra*, have been amended by the legislature, or that the state highway law has been so changed as to make inapplicable the conclusions and reasoning of the opinion in that case.

In answer to your first and second questions it is, therefore, my opinion that there is no legal duty placed upon the Department of Highways and Public Works to erect and maintain guard rails at either fills, dangerous curves and other dangerous places on inter-county highways and main market roads, or at approaches to bridges. However, since guard rails in dangerous places are necessary to render the public roads and highways reasonably safe for travel and are an integral part of the roads and highways, the Department of Highways and Public Works may expend funds appropriated for the construction or maintenance and repair of state roads for the purpose of paying the whole or a part of the cost of erecting and maintaining guard rails at dangerous places. Such authority is necessarily to be implied from Section 1178 and related sections of the General Code. I am further of the opinion that in view of the holding in the case of *Harrigan, Administrator, vs. Commissioners*, *supra*, the duty enjoined on county commissioners to erect and maintain guard rails at the places specified and in accordance with the provisions of Section 7563, General Code, was not removed by the passage of the state highway law (105-106 v. 623,—General Code, Section 1178 and related sections) or any later amendment thereto.

Answering your third and fourth questions, I am of the opinion that it is not the legal duty of county commissioners to erect and maintain guard rails at all fills, dangerous curves, and other points of danger on inter-county highways or at all approaches to bridges, but only at the places specified in Section 7563, General Code, not located in a municipality receiving a part of the bridge fund, *viz.*, (1) at each end of a county bridge, viaduct or culvert more than five feet high, (2) at every approach to a county bridge, viaduct or culvert if the approach or embankment is more than six feet high, and (3) at wash banks more than eight feet in height, where such banks have an immediate connection with a public highway, or are adjacent thereto, in an unprotected condition.

Respectfully,  
EDWARD C. TURNER.  
*Attorney General.*

462.

APPROVAL, TRANSFER OF LEASE TO BUCKEYE LAKE LAND KNOWN AS "ROWND ISLAND."

COLUMBUS, OHIO, May 7, 1927.

HON. GEORGE F. SCHLESINGER, *Director of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your communication of recent date which reads as follows:

"On April 22nd, 1925, Hon. C. C. Crabbe, then Attorney General, advised the Division of Public Works, that it had been temporarily restrained by the Common Pleas Court of Franklin county, Ohio, from approving the transfer of the title of a certain lease held by L. D. D. for a small island in Buckeye Lake, commonly known as 'Rownd Island.'

This case is No. 101696 on the docket record of Franklin county Common Pleas Court.

This case was heard in the Common Pleas Court, but so far as we know, no decision thereon has ever been rendered.

We have been asked to approve the transfer of this leasehold from L. D. D. to J. C., but do not wish to take any action on this application for transfer until you have advised us whether or not, we can do so without violating the restraining order."

You desire my opinion as to whether you are permitted to approve the application of the transfer of a lease from one L. D. D. to one J. C.

The lease referred to in your letter involves a small island in Buckeye Lake commonly known as "Rownd Island," which was heretofore leased by the Department of Highways and Public Works, Division of Public Works, to one L. D. D.

I have carefully examined the docket of the Court of Common Pleas of Franklin county, Ohio, and the pleadings and entries in cause No. 101696, and fail to find wherein the Court of Common Pleas ever issued an injunction restraining either Lewis A. Boulay, who was Director of Highways and Public Works at the time such action was filed or Richard T. Wisda, Assistant Superintendent of Public Works, from approving a transfer of the leasehold interest of the said L. D. D. in said island.

In the absence of any order of court restraining such an approval, and in view of the fact that Sections 464, 154-3, 154-40 and 13965, General Code, vest authority in the Director of Highways and Public Works to lease canal and other state lands, it is my opinion that you may lawfully approve the transfer of this lease.

Respectfully,

EDWARD C. TURNER.

*Attorney General.*

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463.

APPROVAL, NOTES OF SCHOOL DISTRICTS IN GALLIA, HAMILTON,  
JACKSON, LAWRENCE AND PERRY COUNTIES.

COLUMBUS, OHIO, May 7, 1927.

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