

**Highways—Crossings—Approaches—Construction Costs  
—Railroads.**

A railroad company is required to construct at its own expense a crossing when a highway is laid out subsequent to the construction of the railroad and crosses the same. The crossing includes the approaches thereto.

John S. Nyquist, Esq.,  
County Attorney,  
Scobey, Montana.

June 27, 1929.

My dear Mr. Nyquist:

You have requested my opinion upon the question of whether a railroad company is required to construct a crossing at its own expense when a highway is laid out subsequent to the construction of the railroad and crosses the same. If so required, you further inquire if a crossing includes the approaches thereto.

This office, in Volume 9, Page 124, Opinions of Attorney General, has held that a crossing as used in Section 6625 R.C.M., 1921, which requires railroad companies to construct and thereafter maintain in proper condition a good and safe crossing, includes the approaches. This opinion was written by former Attorney General Rankin. I concur therein.

Section 6625 above mentioned, reads as follows:

“At all places in the State of Montana, outside of incorporated cities and towns where a lawfully established public highway now crosses, or shall hereafter cross any railroad, it shall be the duty of the railroad company, owning or operating such railroad, to construct and thereafter maintain, in proper condition, a good and safe crossing.”

I understand your question involves a crossing outside of incorporated cities and towns, and therefore the above section is applicable. Under this section there can be no doubt that the legislature intended and has plainly said that under such circumstances the railroad company must construct a crossing, and, as stated above, this, in the opinion

of this office, includes the approaches thereto. The law does not say that the cost of construction shall be borne by the railroad, but there is no provision that it shall be borne by the county or anyone else where a duty is imposed as is done by the above section, and the law is silent as to the cost of performing the duty, it falls upon the person required to perform it.

The Supreme Court of the United States has held that under the police powers of a state a railroad company may be required to perform such duties as are required by the above section and to bear the expense of discharging the duty.

Erie Railroad Co. vs. Public Utilities Commissioners, 254  
U. S. 394;

Missouri Pac. R. R. Co. vs. Omaha, 235 U. S. 121;

N. P. Ry. Co. vs. Puget Sound, etc., 250 U. S. 332;

N. P. Ry. Co. vs. Minnesota, 208 U. S. 583.

For other cases see Notes 8 Ann. Cas. 1056, 20 Ann. Cas. 1208.

It is therefore my opinion that the railroad company is required to construct the railroad crossing in question (including the approaches) at its own expense.

Very truly yours,

L. A. FOOT,

Attorney General.