

**Opinion No. 353****Cities and Towns—Street Railways  
—Grades of Streets—National  
Industrial Recovery Act**

HELD: Where the federal government undertakes to improve the streets of a city without changing the grade as established by the city, a street railway company, operating a street car line on said street, may not be required to pay a part of the expense of such improvement.

October 4, 1933.

Your request for an opinion has been received. It is so lucid and complete that we take pleasure in reproducing it as follows:

"Under the provisions of the National Industrial Recovery Act, highway improvements may be undertaken on the Federal Aid System within the limits of incorporated cities and towns, to be financed entirely with Government funds. Such improvements have been recommended by the Montana Highway Commission to the Bureau of Public Roads on Park Street in Butte and also on Arizona Street-Utah Avenue. Both streets have street railway tracks upon them.

"The Federal Bureau of Public Roads has requested an opinion as to whether or not the Street Railway Company is liable for the cost of the new paving between the tracks. It appears that the Federal Government will be able to pay the cost of the entire new pavement from curb to

curb, including the cost of paving between the tracks, unless the present law requires the Street Railway Company to pay the cost of the new paving between the rails.

"The grade of the street, that is the present curbs, gutters and sidewalks, will not be changed in any way. The grade of the street railway tracks will not be changed, except for a slight raise of one or two inches in some places to accommodate the new paving.

"The existing paving between the tracks throughout most of the distance consists of granite blocks about six inches high and about four inches thick. It is intended to remove these blocks, which are badly worn and entirely unsatisfactory, and fill in this space with concrete, raising the tracks slightly at the same time, so that the new thin asphaltic surface which is to be placed on top of the existing pavement outside of the rails will be flush with the top of the rails. The project, therefore, constitutes an entirely new paving and the street grade, as established by the city, is not changed.

"Will you kindly furnish us your opinion as to the liability of the Street Railway Company as to payment of any portion of this project."

It is made the duty of the Street Railway Company to fully repair any injury or damage to the pavement of a street within a special improvement district caused by the operation of its cars or the laying or mending of its tracks on such street. (Sec. 5238, R.C.M. 1921, as amended by Sec. 1, Chapter 163, Laws 1925).

It is also made the duty of the Street Railway Company to raise or lower its tracks at its own expense so as to make the grade thereof conform to any new grade of the street or streets on which such tracks are laid established by the City of Butte through resolution or ordinance. (Sec 5039, R.C.M. 1921, (subd. 13) as amended by Section 1, Chapter 20, Laws 1927; City of Little Rock v. Citizens St. Ry. Co., 19 S. W. 17; Hammond, W. & E. C. Ry Co. v. State Highway Commission, 152 N. E. 806; City of Syracuse v. New York State Rys., 189 N. Y. S. 763; City of Burlington v. Burlington

Traction Co., 124 Atl. 857; City of Reading v. United Traction Co., 52 Atl. 106; 60 C. J. 278; Opinion No. 343, this volume.)

But there is no law or ordinance which requires the Street Railway Company to bear a part of the expense of the improvements contemplated. That being so, it cannot, of course, be forced to assume any financial obligation in the matter. (60 C. J. 267). Besides, it may be said that neither the City of Butte nor the Street Railway Company is directly involved.