PUBLIC SERVICE COMMISSIONS: Safety of Crossings
whether commission has authority to order flasher light
protection at highway grade crossings.

May 21, 1943.

Hon. Clayton M. Bailey, Director,
Railroad Department,
Public Service Commission of Indiana,
State House,
Indianapolis, Indiana.

Dear Sir:

This is in response to your recent request for an opinion as
to the authority of the Public Service Commission of Indiana
in the matter of ordering the installment of flasher light crossing
signals at extra hazardous highway crossings at grades
over railroads. You say:

"Do we, or do we not have the authority under exist-
ing statutes to order flasher light crossing protection
at any highway grade crossing other than a state high-
way, and who will pay for same?"

I understand that you are not referring to streets or highways
within a municipality.

Substantially the same question was submitted to this office
in August, 1935, and the opinion there given was that the
power of the commission to enter such an order was limited
to State Highways, that is, highways under the control of the
State Highway Commission.


Section 1 of Chapter 89 of the Acts of 1931 as amended in
1935, provides that the Commission "shall have the power and
it shall be its duty, upon proper petition and hearing, to
declare as extra hazardous any grade crossing in this
state, * * * ."

Section 2 of said Chapter 89 is as follows:

"The term 'grade crossing' as used in this act shall
be construed to mean a crossing of a steam or interur-
ban railroad and a state highway at grade."
The 1931 Act was amended in 1933 and in 1935, but no change was made in Section 2. The Act provides that the cost of the crossing sign shall be paid in equal proportions by the railroad affected and the Highway Commission, but the Highway Commission cannot be called on more than twenty times a year to pay for such a sign.

Burns' 1933 Ind. St. Ann., Sec. 55-2012 and 55-2015. (See pocket supplement.)

The fact that the highways are referred to as "State Highways" and the further fact that the Highway Commission is to pay part of the cost is evidence that the legislature intended the Act to apply only to those highways of the State under the jurisdiction of the Highway Commission. There are practical reasons why the State Highway Commission should not be called on to take care of an automatic device on a highway not under its control.

The conclusion of the opinion from this office above referred to is as follows:

"Considering all of the various Acts on the subject of crossing signs at railway crossings over highways at grades, and the fact that section 2 of the Act of 1931 was continued in force, while other sections of the Act were amended or repealed, and taking into account also the provisions in the 1935 Act which provide for the participation by the State Highway Commission in the matter of crossing signs, I am of the opinion that the jurisdiction and power of the Commission as to additional signs at extra hazardous crossings are limited to those steam and interurban railway crossings at grades over state highways."

There has been no further legislation on that subject since 1935. I see no reason to change the above opinion given by this office and I advise that the Public Service Commission of Indiana has authority under existing statutes to order flasher lights at crossings found to be extra hazardous only at those highways under the control of the State Highway Commission.