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gross income taxes by receipt or other evidence from an appli-
cant for an alcoholic beverage permit.

2. Nor, as an adjunct to some specific power or duty con-
tained in the Liquor Control Acts, is there any implied author-
ity in the commission to create a requirement of proof of
gross income tax payment as a prerequisite to the issuance of
an alcoholic beverage permit.

3. That while the end sought to be accomplished by the
commission may be a good and desirable one, nevertheless
there is neither authority in the commission to prescribe ques-
tions relating to gross income tax payment information in the
application for alcoholic beverage permits, nor the authority
to refuse to issue such a permit on the sole ground that such
questions, if included, were either not answered or were
wrongly or falsely answered.

OFFICIAL OPINION NO. 36
May 31, 1962

Hon. Joseph E. Klen
State Representative
6607 Marshall Avenue
Hammond, Indiana

Dear Representative Klen:

This is in answer to your letter of May 15, 1962, requesting
an Official Opinion with regard to the following question:

"Is it necessary to obtain the consent of the Public
Service Commission in order to establish a street or
highway at grade across a railroad within a city or a
town?"

The authority of the Public Service Commission in the
matter of establishing or extending a highway at grade over
the right of way and tracks of any railroad is set out in the
Acts of 1913, Ch. 182, Sec. 7, as found in Burns' (1951 Repl.),
Section 55-1807, which reads, in part, as follows:

"* * * Whenever it shall be desired to establish or
extend a highway at grade over any railroad, street
railroad, interurban street railroad or suburban street railroad in this state, it shall be necessary, before so establishing or extending the same, that the petitioners therefor shall, by procedure to be prescribed by the railroad commission [public service commission] of Indiana, obtain the authority of said commission therefor. The grant or refusal of authority therefor by said commission shall be final and conclusive except as hereinafter provided. * * *” (Our emphasis)

The language of the act, itself, would not indicate that its application should be limited to grade crossings outside a city or town limits, but whether or not such a construction may obtain, clearly seems to depend upon the meaning of the word “highway” as used in the act.

“Highway” has consistently been given a broad interpretation by Indiana courts both before and after the passage of the act in question. In a case frequently cited for its construction of the word “highway,” the Supreme Court of Indiana said:

“Roads and highways are generic terms, embracing all kinds of public ways, such as county and township roads, streets, alleys, township and plank roads, turnpike or gravel roads, tramways, ferries, canals, navigable rivers, including also railroads. * * *

“A street is a highway, but a highway is not necessarily a street. * * *

“A street is a public highway in an incorporated town or city. * * *

“In the case of Mobile, etc., R. Co. v. Davis, supra, it is held that a street is a highway, under a statute requiring signals by operatives of railroad trains at ‘any public highway.’ * * *”

Strange v. Board, etc. (1910), 173 Ind. 640, 652, 91 N. E. 242.

In a later decision, the same court said:

“Appellant contends that under article 4, § 19, of the state Constitution, the act is void as to ‘streets and alleys,’ because the title thereof refers only to ‘high-
ways and bridges.' Upon this proposition it is to be observed that the term 'highways' is a generic term, and includes streets, alleys and other public ways, and as disclosed by the title and the body of the act, as referring to 'highways' in cities and towns, the term is broad enough to include streets and alleys, for they are distinctive highways of cities and towns, as distinguished from rural highways. * * *

"So while a street is distinctively a public highway, a public highway is not necessarily a street. * * *"

Gribben v. City of Franklin (1911), 175 Ind. 500, 502, 94 N. E. 757.

In Murphey v. Inter-Ocean Casualty Co. (1933), 98 Ind. App. 668, 671, 186 N. E. 902, the case of Strange v. Board, etc., supra, was cited with approval as to the interpretation of the word "highway."

The Indiana Supreme Court also applied the broad interpretation of the word "highway" to the provisions of Burns' 55-1807, supra, in the case of Louisville and Nashville Railroad Company v. Public Service Commission of Indiana (1933), 206 Ind. 51, 188 N. E. 321. In that case, the question presented was whether or not it was necessary under the above statute to obtain authority from the Public Service Commission before extending a street over the right of way and tracks of the railroad, which street was part of a subdivision adjoining the City of Evansville. In answering that question, the court held that the street in question was a public highway within the meaning of Burns' 55-1807, supra, and that the commission had jurisdiction of the matter. In so holding, the court said at page 57:

"Except for the statute requiring permission of the Public Service Commission before establishing a public highway across a railroad at grade, there seems to be no limitation upon the right to establish such crossings. Aside from the statute in question, we know of no law or reason that would prevent a public highway, privately laid out and dedicated and accepted by the public, from crossing a railroad right of way in the same manner as it would cross a public highway, since, after
all, the right of way of a railroad is dedicated to a
public use.” (Our emphasis)

See also: Public Service Commission v. Ft. Wayne Union
R. Co. (1953), 232 Ind. 82, 111 N. E. (2d)
719.

Probably the first interpretation of Burns’ 55-1807, supra,
was offered by the Attorney General in his Opinion of 1921,
pages 384, 385, in which it was stated:

"'A highway at grade over any railroad * * * in
this state,' seems to me to include highways in towns
and cities in this State, even though they are designated
as streets.

* * *

"It was also held in the case of Board, etc., v. Cas-
tetter, 7 App. 309, that the term 'highways' includes
streets in cities and towns. It is therefore my opinion
that before a town can open up a highway and extend
it across the right of way of a steam railroad or inter-
urban railroad at grade it must secure consent of the
Public Service Commission to do so. * * *

In 1929 the Indiana Attorney General rendered an Opinion
to the effect that it was not necessary to secure the consent of
the Public Service Commission before relocating a grade
crossing over the tracks of a railroad company some six hun-
dred feet distant from its present location. However, in 1934
the then Indiana Attorney General on pages 98 and 100 over-
ruled this Opinion in the following language:

"I have carefully analyzed this opinion and agree,
for the most part, with the propositions therein set out.
However, I can not and do not agree with the sugges-
tion therein contained, that a crossing may be estab-
lished or relocated at a grade across the right of way
of a railroad company by the State Highway Commis-
sion without the consent and approval of the Public
Service Commission."

Attorney General Lutz then said in conclusion:

"In conclusion, it is my opinion that while the Public
Service Commission, which has succeeded to the duties
of the Railroad Commission, has no right or power to prescribe the location of any crossing of a railroad by a state highway, yet it is necessary that the location as proposed by the State Highway Commission, must be approved by the commission before such crossing may be established."

Therefore, from the broad interpretation placed upon the word "highway" by the Indiana Supreme and Appellate Courts, and from the broad interpretation of Burns' 55-1807, supra, by the courts and former Attorneys General, it is my opinion that it is necessary to obtain the consent of the Public Service Commission in order to establish a street or highway at grade across the right of way and tracks of a railroad within or without the limits of a city or town.

OFFICIAL OPINION NO. 37
June 4, 1962

Mr. Eugene Garrison, Executive Secretary
Public Employes' Retirement Fund
501 State Office Building
Indianapolis 4, Indiana

Dear Mr. Garrison:

This is in reply to your request for an Official Opinion on the following question:

"In the light of the State Constitution, are stocks in opened-end investment trusts a legal investment for the Public Employes' Retirement Fund?"

The Public Employes' Retirement Fund was created by the Acts of 1945, Ch. 340, as since amended and found in Burns' (1961 Repl.), Section 60-1601 et seq. Section 13 of the Act, as found in Burns' 60-1613, supra, created a five member board of trustees which is responsible for the general administration and proper operation of the fund. The board's powers are prescribed in Section 14 of the Act, as found in Burns' 60-1614, supra. These powers include, in subsection (i), the power to make contracts and to sue and be sued in the