

May 3, 1915.

W. A. McDowell, Esq.,

Lexington, Ky.

Dear Sir:

Replying to yours of the 1st instant, in reference to warning signal at Neon crossing, the law is (Ky. Stats., Sec. 773) that signal boards shall be placed and constantly maintained "at each public highway where it is crossed by the railroad at the same level." In cases construing the Section, it has been decided that a public crossing is a way that has been dedicated to the public use. In *L & N v. Survant*, 96 Ky. 197; s.c. 27 S.W. 999, it is said, construing this Section, --

"The contention of appellees that the Pipes road was a public road, and the crossing thereover a public crossing is not sustained by the evidence. It was never created a public road by the county court, or dedicated as such by any of the owners of the land over which it passed. The County court of Marion County never at any time exercised in any way the least control over it. * * A public road can only be established in two ways: One is in the manner prescribed by the statute; the other by dedication; and in the latter case it must be accepted by the County court."

In the later case of *L. H. & St. L. Ry. Co. v. Comth.*, 104 Ky. 35; s.c. 46 S.W. 207, it was held that the act or a similar act is applicable to a public road which has become such by prescription. In this case, the Court said --

"The proof in this case shows that as early as 1828 this was recognized as a public road. For more than 20 years before the indictment was returned, under appropriate orders of the county court of Meade county, surveyors and overseers were appointed, and hands allotted to work on it. Although the road may not have been established by an order of the county court, still, under adjudications of this court, the facts which we have stated constitute it a public road by prescription. A continued, uninterrupted, and adverse use of a highway as such by the public, as a right, for the period of 15 years, creates a conclusive presumption of dedication and acceptance of it."

Applying these statements of the law to the situation in