



**WILLIAM J. SCOTT**  
**ATTORNEY GENERAL**  
**STATE OF ILLINOIS**  
**SPRINGFIELD**

January 21, 1971

FILE NO. S-258

**ROADS AND BRIDGES:**  
**Removal of Lateral Support**

Honorable Everett L. Laury  
State's Attorney of Vermilion County  
Courthouse  
Danville, Illinois 61832

Dear Sir:

This is to acknowledge receipt of your recent letter concerning the above subject which reads as follows:

"A question has arisen as to whether the first paragraph of Section 9-115 of the Act Concerning Roads and Bridges, Chapter 121 of the Illinois Revised Statutes, should be interpreted that the top of the slope of the excavation therein referred to should be ten feet plus one and one-half times the depth of any excavation or if the distance should be measured from the edge of the right-of-way horizontally to the point of intersection of the extension upward of the

vertical line at the bottom of the slope, (where the vertical excavation is for the purpose of removal of coal).

"The superintendent of highways of Vermilion County feels that the first interpretation is correct, and he has advised me that this is the interpretation of the Paris office of the Department of Highways. D. H. McFadden of Ayrshire Collieries feels that the second interpretation is correct.

"At the request of the superintendent of highways, I ask that you give me an opinion concerning this. If such an opinion has been rendered previously, I would appreciate it if you would furnish me with a copy of the opinion as I find no case law which interprets this matter."

As you are aware the rights of an abutting owner in a public highway are subordinate to the right of the public and accordingly the rights of an abutting owner are subject to the rights of the State to regulate and control the highways for the benefit of the driving public. For a discussion of this position, your attention is called to Illinois Law and Practice, Volume 32, page 267. Consistent with the above stated position it is noted that the General Assembly of the State of Illinois has enacted a statute for the purpose of regulating the manner in which

excavations may be made near public highways. This statute found in Illinois Revised Statutes 1969, Chapter 121, paragraph 9-115 reads in part as follows:

"It is unlawful for any person to excavate or remove or cause the excavation or removal of the lateral support within a distance of 10 feet plus one and one-half times the depth of any excavation adjacent to the established right-of-way of any public highway located outside the corporate limits of any municipality, except that if any of the excavated materials be of solid rock, the depth of such solid rock shall not be considered in computing the limit of excavation from such right-of-way line of such public highway."

I find no Illinois decision interpreting the above statute. It is, however, the rule that words are to be given the plain and ordinary or commonly accepted meaning unless to do so would defeat the legislative intent. (See Droste v. Curren, 34 Ill. 2d 495, 503.)

The legislature has provided that it is unlawful

"to excavate or remove or cause the excavation or removal of lateral support within a distance of 10 feet plus one and one-half times the depth of any excavation adjacent to the established right-of-way of any public highway located outside the corporate limits of any municipality, \* \* \*".

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There would appear to be no ambiguity presented by the words quoted above. Absent any ambiguity, the intention of the legislature can only be determined from the language of the statute itself.

It would seem clear, therefore, that the statute should be interpreted to mean that except for the presence of certain circumstances referred to in the statute and not in issue herein, the top of the slope should be 10 feet plus one and one-half times the depth of any excavation from a highway.

Very truly yours,

A T T O R N E Y G E N E R A L