

Opinion No. 14-1268

July 9, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. W. W. Bracken, Valley View, New Mexico.

FENCES.

Lessees of state lands may fence the same and maintain gates at intersections of public highways.

OPINION

{*128} Referring again to your letter of May 14, inquiring whether a person who has leased state lands may fence the same, provided that {*129} he furnish gates at points where any public road crosses such lands, I have to say that the statute upon that subject is found at Section 51 of Chapter 82 of the Laws of 1912, and is as follows:

"Every lessee of State lands, who shall fence the same, shall erect and maintain gates at all intersections of public highways, and failure so to do shall constitute a misdemeanor, upon conviction of which the lessee so convicted shall be punished by a fine of not more than twenty-five dollars, and in default of payment thereof, shall be imprisoned not more than thirty days. Any person passing through such gate and failing to close the same shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by this section."

The law upon this subject has been by the courts declared to be, that while a gate or fence is an obstruction to a public highway, yet such an obstruction, which would otherwise constitute a nuisance, may be legalized, so far as the public is concerned, by legislative enactment, because that which the State has authorized cannot be a public nuisance. There would, therefore, seem to be no question as to the validity of the section of our statute above quoted.