

Opinion No. 14-1353

October 5, 1914

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. George Bringle, Nara Visa, New Mexico.

ROADS.

As to the placing of gates across public highways.

OPINION

{*215} I am in receipt of your letter of the 3rd instant in regard to the placing of gates upon public highways, and asking for the opinion of this office as to what, if any, relief the laws of New Mexico afford.

You state that in some instances, lands leased by the state have been fenced and gates placed where public highways cross the same. In such cases, Section 51 of Chapter 82 of the Laws of 1912, provides that such gates may be maintained. That section 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."

It will be observed that this privilege to maintain gates is not afforded to a person who purchases state lands, but only to those who may lease the same, and, if the legislature deems it proper that the public roads of this state should be obstructed, the privilege of fencing roads should also be extended to the purchaser of state lands. That a gate is an obstruction to a road there can be no question, and in view of what you say in your letter that the roads, about the fencing of which you complain, are roads over which the United States mail is transported, it is possible that the federal authorities may interfere and cause the gates to be taken down. That is a question, however, with which the state government has nothing to do. If roads not passing over lands leased by the state have been fenced and gates erected, there is no question but what the state authorities can compel the person who erected such gates to remove them, provided that the road is a public one.

I am inclosing, under separate cover, a pamphlet copy of the road laws of New Mexico, which will give you information as to obstructions of public roads.