

## Opinion No. 14-1408

December 30, 1914

**BY:** FRANK W. CLANCY, Attorney General

**TO:** Mr. E. S. Silva, Dilia, New Mexico.

### **FENCES.**

Gates to fences on roads crossing state lands.

### **OPINION**

{\*269} I have just received your letter dated December 29th, in which you ask for my opinion as to matters of roads upon lands of the state. You ask in what shape should roads be left by a person who rents, say, 10,000 acres of state land, which he fences, but in this connection you say that in each mile there must be a road. I know of nothing in our laws which requires a road in each mile or within any other particular distance. If there are any established public roads running through the land which a person leases from the state, I am of opinion that he ought not to obstruct such roads, but Section 51 of Chapter 82 of the Laws of 1912 appears to give the lessee of state lands who fences the same, the right to put up gates at intersections of public highways, and if he fails to do so, he may be punished by criminal prosecution. The same section also makes it the duty of any person passing through such gate, to close the same, and if he should not do so, he may be prosecuted criminally.

If the lessee of public lands fails to put gates where established highways cross the land, the method to pursue would be to make a complaint against him under said Section 51, before some justice of the peace, and prosecute him the same as any other person accused of crime.

You also ask as to what is the law with regard to roads in places where a homestead entry has been made. I can see no difference between the general law applicable to state lands or the law applicable to land covered by homestead entries. If there is a regular established public highway when a man makes his homestead entry, he must not obstruct that highway, but if there is no such established public road across his land, he is not required to make one.

You further ask if a person makes a homestead entry under the three-year law, whether he can make his final proof at the end of five years. Under the three-year law, he may make his final proof at the end of the three years, but if not then ready to do so, he can have two more years, within which he can make the final proof -- that is to say, he is not compelled to make the final proofs at the end of the three years, but may delay it for two years longer if he desires.