

## Opinion No. 15-1427

January 27, 1915

**BY:** IRA L. GRIMSHAW, Assistant Attorney General

**TO:** Hon. Antonio Lucero, Secretary of State, Santa Fe, N. M.

**As to passing of automobiles upon the public highways.**

### OPINION

{\*17} We have your oral request for our opinion upon the question submitted in the letter of Mr. W. W. Lynam to you under date of January 15, 1915. Mr. Lynam asks for your opinion concerning the overtaking of a vehicle upon the public road and as to whether or not the forward vehicle is bound to give half of the road to the rear or overtaking vehicle.

Our statute is silent upon this proposition and there seems to be no well-defined doctrine of law concerning it except as found in the case of Adolph vs. Central Park N. & E.R.R.R. Co., decided in 1879, reported in 76 N.Y. 530, 533-534, wherein the court said:

"Each individual of the entire public, as a general rule and in the absence of especial regulation by law, has as good right to be upon the common street or highway as any other individual thereof; yet each must use this right in a reasonable manner, so as to give a like reasonable use to every other. The rights are equal, and the duties in the use thereof are equally great and pressing. Each must look out for meeting another; and by turning out in time, on such hand, and so far as the law has prescribed, take care to avoid doing harm. One person may choose to go at a slow pace along the way, and has a right so to go. Another may choose to go at a faster pace, and has a right so to go. Yet each must exercise his right, so as not unnecessarily to abridge the use by the other of his right. The one choosing to go fast may turn out and go past the one choosing to go slow, but must keep clear of him in doing it. The one choosing to go slow may keep in the beaten track, and is not bound to give way for the other to pass, if there be room on either hand for the other to go by, without way being given; nor is he bound to give way, where there is not space for him so to do, or it may not be done safely. He has the first right of way, under such circumstances, over so much space of road as his team and vehicle cover at the moment. Hence, he is not bound to look back, or to listen for the coming of another, so as to make clear the way before him. But if, by keeping in his place, he will stop the faster driver from passing, when, by turning aside, without meeting obstruction or danger in doing so, he could give way for passage, he is bound to do so, on being asked to. His duty is summed up, in keeping on his way, avoiding collision with those whom he meets, and in yielding way enough for those behind him to pass, when it is needful and practicable so to do, and he is thereunto requested. {\*18}

His duty has its measure of extent, from the measure of his right upon the road, which is fully equal to that of any one else using it."

The quotation heretofore cited fully advises you in reference to this matter.