

**Opinion No. 15-1514**

May 4, 1915

**BY:** H. S. CLANCY, Assistant Attorney General

**TO:** Mr. J. A. Murphy, Cromer, N. M.

**Fencing of public roads.**

**OPINION**

{\*102} I am just in receipt of your letter of the 30th ult. in regard to the fencing of a certain road in your locality. You state that your county commissioners have refused to declare the road in question a public highway, and that the road has been used as such for only eight years. In view of these facts, it is difficult to see how the road, under our law, can be said to be a public one, although if the United States mails were carried over this road prior to the time of its being fenced and are still carried over it, the United States authorities, if they saw fit, could require that the gates in the fence be taken down. Another question might arise as to the manner in which the owner of the fence came into possession of the land. If it happens that he has leased this land from the State of New Mexico, he then has a right to fence across a public road and provide gates at the intersections of the road with the fence. It would seem to me from the statements contained in your letter, that the owner of the fence has the better of the situation, unless as before stated, the United States should take some action because of the obstruction of one of its mail routes.