

**Opinion No. 15-1704**

December 27, 1915

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

**TO:** Mr. S. L. Barker, Beulah, N. M.

**Obstruction of public roads by means of gates.**

**OPINION**

{\*275} I have your letter of the 14th inst. asking for the opinion of this office as to the construction to be placed upon two laws of this state in regard to obstructing public roads, which seem to be in conflict. One of these laws appears as Section 2698 of the codification of 1915 and the other as Section 2630. Section 2698 makes it an offense for anyone to in any manner obstruct any public road in this state, and Section 2630 provides that where enclosures are constructed upon lands, they shall not be constructed in such a manner as to prevent travel on the roads, but the same shall be properly kept under gates, easy to be opened and closed.

There is no question but what a gate is an obstruction to a road. That question has been definitely settled by many of the courts of this country. Section 2630, which permits the placing of gates, is an act of the legislature of 1882, while Section 2698 became a law in 1903. Therefore, it is the opinion of this office that the act of 1903 repeals the act of 1882, and that persons may be prosecuted for obstructing a public road by means of a gate under the provisions of Section 2698. There are exceptions, however, to the law as to the maintaining of gates upon public roads. Those persons who have leased or purchased lands from the state, are permitted to fence up public lands and provide gates thereon.