

Opinion No. 16-1850

July 20, 1916

BY: H. S. CLANCY, Assistant Attorney General

TO: Mr. Isaias Sandoval, Jemez Springs, New Mexico.

Bridges across acequias put in at expense of owner, and maintained by county authorities. Obstruction of a public road.

OPINION

{*409} I am in receipt of your letter of the 17th instant in which you ask for the opinion of this office as to who should maintain bridges which have been constructed across acequias.

Under the provisions of either Section 2692 of the Codification, or Section 5708, it is perfectly clear that a bridge across an acequia shall be maintained by the county authorities, but that the owner or owners of any such acequia must put in the bridge at their own expense. This law applies to any ditch whether the main ditch or any lateral thereof, where the same crosses any public road. The mere fact that such acequias have existed for years without any bridges across them does not relieve the owners thereof from putting in bridges. You are, as I take it, an agent or employe of the county road board. You sign your letter as "Road Supervisor of Precinct No. 10", but the office of Road Supervisor has been abolished. Wherever it is necessary to have a bridge across an acequia, I believe that you should notify the owners thereof to put in the bridge at their expense, and in case they fail to do so, you should report the matter to the County Road Board who can then take the matter up with the District Attorney so that proper proceedings may be had in the court to compel the owners of the acequia to comply with the law.

So far as the obstruction of a public road by the building of a fence across it is concerned, proceedings may be taken before a justice of the peace under the provisions of Section 2698, which makes it unlawful to in any manner obstruct a public road. There is no question but that a fence or a gate is an obstruction to a road. So far as Section 2630, which permits the placing of gates in a fence where the same crosses a public road, is concerned, that law, in the opinion of this office is not in force, and in that connection I enclose to you herewith an opinion addressed to Mr. S. L. Barker of Beulah, New Mexico, on December 27, 1915, which fully sets out the views of this office upon the subject.