

Opinion No. 37-1621

April 28, 1937

BY: FRANK H. PATTON, Attorney General

TO: Honorable G. F. Conroy State Highway Engineer Santa Fe, New Mexico. Attention: Mr. R. W. Bennett.

{*86} This is to acknowledge receipt of your letter of even date in which you desire an interpretation of Chapter 123 of the Session Laws of 1929, the same being Article 20 of Chapter 64, New Mexico Statutes Annotated, 1929 Compilation, relating to signs upon highways. Your inquiry is divided into four questions, which will be discussed in order.

Under your first inquiry, you wish to know if the employees of the State Highway Commission have the right to require the removal of signs from a state highway right-of-way fence, both inside and outside of incorporated municipalities. Section 64-2002 prohibits the erection or maintenance of signboards of any character upon the right-of-way or right-of-way fences of any public highway within this state **outside** of the limits of any incorporated city, town, or village. Section 64-2005 provides that signs erected in violation of the section first quoted may be summarily removed by any employee of the Highway Commission. Therefore, as to all signs on rights-of-way outside of incorporated municipalities, the right of removal is vested in employees of the Highway Commission. No such right is given when the signs are on rights-of-way inside of incorporated municipalities. The wording of the sections of this act is very specific.

In your second question, you inquire if under the meaning of Section 64-2003, prohibiting the placing of signs within 300 feet of corners, turns, etc., and within 500 feet of the intersection of a highway with a railroad, the distance is to be measured as a radius from the turn, or whether it is to be measured along the highway from the point where the curve begins. This act was obviously designed to prevent accidents by reason of the view along the highway being obstructed. Therefore, we are of the opinion that the proper way of measuring this distance is along the highway from the point where the curve begins.

In the third question, you wish to know if under Section 62-2004, prohibiting the placing of signs within 100 feet of any state highway, the distance is to be measured from the center of the highway or from the highway fence. If the legislature had intended to make the distance from the right-of-way fence they would have so stated in specific terms. We are, therefore, of the opinion that the distance is to be measured from the extreme side of the highway on which the sign is placed.

Under the fourth question, you make the following inquiry:

"Under 'Permits' paragraph (b), it states that permits may be granted if the signs were installed {*87} prior to January 1st, 1930, within the limits specified by law. If a permit is

issued, would such sign have to be placed between the 50 foot and 100 foot distances from the highway as specified?"

We have been unable to locate the section referred to in the above quotation. However, we advise you that if such a permit is issued the sign would have to be placed as specified in the act.

By: RICHARD E. MANSON,

Asst. Atty. Gen.