

## Opinion No. 39-3195

June 27, 1939

**BY:** FILIO M. SEDILLO, Attorney General

**TO:** Mr. B. G. Dwyre, State Highway Engineer, Santa Fe, New Mexico. Attention: W. R. Eccles, Sign and Traffic Engineer

{\*72} We have your letter of June 24th asking our advice with regards to certain provisions of Chapter 123 of the Laws of 1929. You have submitted to this office the following questions which I will attempt to answer.

1. "Section 4 of the Act states as follows: "The State Highway Commission may \_\_\_\_ issue such permits under and pursuant to rules to be adopted by such Commission not contrary to the provisions of this Act." By this authority the State Highway Commissioners have ruled: Article 3, Section a, "No permit will be granted for a new sign, signboard or device to be installed within fifty (50) feet of the highway right of way line." Is this ruling in conflict with Section 4 of the original law which states that a permit may be granted for a sign located within one hundred (100) feet of any State Highway?"

This ruling of the Highway Commission does not conflict with Section 4 of Chapter 123, the Commission having a perfect right to rule as to the land adjacent to or within 100 feet of any state highway outside of a corporate city, town, or village.

2. "Section 3 of the Act provides: ' \_\_\_\_ nor shall any person erect, place or maintain any such advertising sign \_\_\_\_ within three hundred (300) feet of any corner or turn of such highway \_\_\_\_ or within five hundred (500) feet of any intersection of such highway with a railroad.' The State Highway Commissioners have ruled that the word 'turn' in this section (Article 3, Section c) 'is considered as any change of direction of 45 degrees or more.' Does the State Highway Commission have the authority under this Act to prescribe the above regulations?"

The Highway Commission has the authority to prescribe the above regulation since it is up to the Commission to define the word "turn" as it sees fit.

3. "Section 3 of the law provides: "No person shall place \_\_\_\_ any sign \_\_\_\_ which shall obstruct or impair the view of or by persons using such highway at corners, curves, angles \_\_\_\_ nor shall any person erect \_\_\_\_ any such sign \_\_\_\_ within three hundred feet of any corner or turn of such highway \_\_\_\_" Under the above provision of Section 3 would it, in your opinion, be unlawful to grant permits for signs on the outside of 'turns' of 45 [degrees] or more where the sign would not obstruct {\*73} or impair the view of or by persons using such highway?"

Section 3 reads that no person shall erect, place, or maintain any such advertising sign, signboard, or device upon any land adjacent to a public highway outside of an

incorporate municipality within 300 feet of any corner or turn of such highway or intersection of such highway with another highway, or within 500 feet of any intersection of such highway with a railroad. I am of the opinion that it would be contrary to the statute to grant permits to erect signs within 300 feet of any corner or turn of such highway.

4. "Section 5 states: 'All such advertising signs \_\_\_\_ may be summarily removed by any member or employee of the State Highway Commission.' Under this provision, may we request the owners of the signs between the fifty foot and one hundred foot lines to take out a permit for their signs and if, after a reasonable length of time, they fail to make application for a permit or to pay the \$ 5.00 fee, then may we summarily remove these signs without further notice? Also, may we summarily remove any signs installed within fifty feet of the highway right of way line (Article 3, Section a) without notifying the owner? In either case, would the State employee removing such signs on private lands be liable to prosecution for trespassing."

Any member or employee of the State Highway Commission may remove any sign which is erected contrary to Section 5, or the rules and regulations adopted by the Highway Commission in conformity with this Act.

5. "Section 4 of the law states that no permit shall be issued for any sign which endangers the public peace, health or safety and, Section 6 of the law states that all signs erected contrary to the provisions of this law shall be deemed and considered a public nuisance. Under these provisions, could the State Highway Commission refuse to grant a permit where the location of the sign is in accordance with the law on the grounds that it impaired the view of the natural scenery or on the grounds that it distracted the attention of drivers of vehicles along the highway, thereby endangering the lives of the public?"

It is doubtful if the Highway Commission could refuse to grant a permit on the grounds that a sign impairs the view of the natural scenery, or that it attracts the attention of the drivers of vehicles along the highways unless such sign would actually endanger the public peace, health, or safety.

6. "The above law applies to the erection of signs on all public highways but gives the State Highway Commission jurisdiction only over designated state highways. Who has jurisdiction over roads which are not included in the State highway system?"

Chapter 123 of the Laws of 1929 is silent as to who has jurisdiction over roads which are not included in the State Highway system. The County Commissioners of the various counties have jurisdiction of the roads in their respective counties which are not included in the jurisdiction of the State Highway Commission.

Trusting that the foregoing sufficiently answers your questions, I remain,