

on the highway right of way within 150 yards of signal devices installed by lessor, except that permitted lessor under this contract.

\* \* \* \* \*

11. It is mutually agreed that lessor shall place at his expense, guide signs on the side of his signal devices next to the road. It is further agreed that lessor may also indicate on the road side of signal devices matters of historical interest in the neighborhood, that he may call attention to the fact that the advertiser on the signal is paying for its maintenance, and that he designate his agent or service station or both together with directions for reporting faulty operation or damage of signal devices.

\* \* \* \* \*

13. Subject to conditions of this contract lessee agrees to designate places at which signal installation is desired, and lessor to install, as soon as possible thereafter at such places, A. G. A. highway danger signals. It is agreed that this process will continue until the state highways are provided with such signal devices throughout."

It is quite plain from the foregoing that the primary consideration moving to lessor in return for its service in furnishing signal devices, is the right given it to maintain advertising signs on the signal devices. Has the state highway commissioner authority to grant the right of maintaining advertising signs along highways? Clearly not; for there is no statute giving him such authority, either expressly or by implication.

Moreover, it is to be observed that except in very rare instances, the fee in land used as a highway is in the abutting owners,—the right of the public consisting only of an easement for the purposes of travel and the exercise of such privileges as constructing sewers, drains and pipe lines for public use. Hence, it would appear that the right or title of the public in its highways is not of such extent or nature as that it may be diminished or encumbered through a grant to a purely private enterprise such as the maintenance of advertising signs. In other words, it is for the abutting owner to say what private enterprises not inconsistent or interfering with the use of the highway as such, may be carried on within its boundaries.

For the reasons noted, you are advised in specific answer to your inquiry that you are without authority to enter into the proposed lease, and that your signing it would confer no rights upon the company.

Respectfully,  
JOHN C. PRICE,  
*Attorney-General.*

1743.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS IN GUERNSEY, MADISON, AND HOLMES COUNTIES, OHIO.

COLUMBUS, OHIO, December 29, 1920.

HON. A. R. TAYLOR, *State Highway Commissioner, Columbus, Ohio.*