

1751.

## ADVERTISING SIGNS ON HIGHWAYS—SECTION 7204-1a, GENERAL CODE, CONSTRUED.

## SYLLABUS:

*By the amendment to Section 7204-1a, General Code (112 O. L. 495), the power to remove obstructions to view on private property near curves or road intersections was transferred from the Director of Highways to county commissioners.*

COLUMBUS, OHIO, February 24, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus, Ohio.*

DEAR SIR:—I acknowledge receipt of your communication of recent date as follows:

"I find that the law relative to the removal of advertising signs has been amended in such manner as to apparently negative the authority of this department to control the erection of advertising signs on private property where the signs are located in such manner as to obstruct the view at curves or intersecting roads.

Section 7204-1a which pertained to the removal of obstructions, insofar as it referred to the removal of signs was as follows:

'For the purpose of this act all advertising or other signs and posters erected, displayed or maintained on any public highway, or along or near the same and in such a location as to obstruct at curves or intersecting roads the view of drivers using such highway, shall be deemed obstructions but this section shall have no application to crossing signs erected in compliance with Section 8852 of the General Code of Ohio at the crossing of highways and railroads.'

Section 1199-1 which amends Section 7204-1a contains the following provision relative to advertising signs:

'It shall be unlawful for any individual, firm or corporation to hereafter place or maintain except as otherwise provided by law, any post, sign or obstruction within the bounds of any road or highway on the state highway system without first obtaining the consent and approval of the director.'

You will note that the amended section contains no provision relative to advertising signs erected 'along or near' the highway. It would appear therefore that this department no longer has authority to order the removal of signs erected on private property even though such signs might obstruct the view and prove serious hazards.

I am respectfully requesting your opinion as to the effect of this amendment of Section 7204-1a with respect to the authority of this department to regulate the erection of signs 'along or near' the highway."

You desire my opinion as to your authority to regulate the erection of signs which are not located within the bounds of roads and highways comprising the state highway system, but which are located along or near said highways.

In view of the statements made in your communication which lead up to the question propounded it is assumed that you are interested in the answer to the question as to your right to regulate those signs which are to be erected in the future,

as well as to whether you may cause the removal of signs which have been already located along or near a state highway.

Former Section 7204-1a, to which reference is made in your letter, prior to its amendment in 112 O. L., page 495, read as follows :

"It shall be the duty of the owner or occupant of lands situated along the highways to remove all obstructions within the bounds of the highways which have been placed there either by themselves or their agents, or with their consent.

However, by first obtaining the consent and approval of the director of highways and public works, obstructions heretofore erected within the bounds of the inter-county highways and main market roads of the state, or bridges or culverts thereon, and by first obtaining the consent and approval of the county commissioners, obstructions heretofore erected in highways, other than inter-county highways and main market roads or bridges or culverts thereon, may be permitted to remain upon such conditions as said officials may impose, provided such obstructions do not interfere with traffic or with the construction or repair of such highways.

It shall be unlawful for any person, partnership or corporation to hereafter erect within the bounds of any highway or on the bridges or culverts thereon, any obstruction whatever, without first obtaining the consent and approval of the director of highways and public works in case of inter-county highways and main market roads and the bridges and culverts thereon, and the consent and approval of the county commissioners in case of highways other than inter-county highways and main market roads and the bridges and culverts thereon.

For the purposes of this act all advertising or other signs and posters erected, displayed or maintained on any public highway, or along or near the same and in such a location as to obstruct at curves or intersecting roads the view of drivers using such highway, shall be deemed obstructions, but this section shall have no application to crossing signs erected in compliance with Section 8852 of the General Code of Ohio, at the crossings of highways and railroads.

It shall be the duty of the director of highways and public works and the county commissioners to enforce the provisions of this section and in so doing, said officials may avail themselves of all the provisions of Section 7204 of the General Code."

It is noted from the provisions of the above quoted section that prior to the enactment of House Bill 67 (112 v. 430) the Director of Highways could cause the removal of "all advertising or other signs and posters erected, displayed or maintained on any public highway, or along or near the same and in such a location as to obstruct at curves or intersecting roads the view of drivers using such highway. \* \* \* "

Section 7204-1a of the General Code, as amended in 112 O. L. v. 495, now reads :

"It shall be the duty of the owner or occupant of lands situated along the highways to remove all obstructions within the bounds of the highways which have been placed there either by themselves or their agents, or with their consent.

However, by first obtaining the consent and approval of the county commissioners, obstructions heretofore erected in highways, other than roads and highways on the state highway system, or bridges or culverts thereon,

may be permitted to remain upon such conditions as said officials may impose, provided such obstructions do not interfere with traffic or with the construction or repair of such highways.

It shall be unlawful for any person, partnership or corporation to hereafter erect within the bounds of any highway, or on the bridges or culverts thereon, any obstruction whatever, without first obtaining the consent and approval of the county commissioners in case of highways other than roads and highways on the state highway system and the bridges and culverts thereon.

For the purpose of this act all advertising or other signs and posters erected, displayed or maintained on any public highway, or along or near the same and in such a location as to obstruct at curves or intersecting roads the view of drivers using such highway, shall be deemed obstructions, but this section shall have no application to crossing signs erected in compliance with section 8852 of the General Code of Ohio, at the crossings of highways and railroads.

It shall be the duty of the county commissioners to enforce the provisions of this section and, in so doing, said officials may avail themselves of all the provisions of Section 7204 of the General Code."

It will be observed that said section as amended does not contain any reference to the Director of Highways whatsoever, the provisions thereof granting authority only to the county commissioners to cause the removal of "all advertising or other signs and posters erected, displayed or maintained on any public highway, or *along or near* the same and in such a location as to obstruct at curves or intersecting roads" (except railroad crossing signs as erected in compliance with Section 8852 of the General Code), which said advertising signs or posters obstruct the view of drivers using such highway.

Therefore it is only reasonable to assume that the Legislature in amending Section 7204-1a, *supra*, intended to take away the authority of the Director of Highways to cause the removal of signs and advertising matter, "along or near" highways and place such authority entirely with boards of county commissioners.

We find that under the provisions of Sections 1199 and 1199-1 of the General Code (112 O. L. v. 460-461) the sole authority which the Director may now exercise is in causing the removal or relocation of obstructions *within the bounds* of a road or highway which is a part of the state highway systems.

Said sections read respectively as follows :

Section 1199. "It shall be the duty of all individuals, firms and corporations using or occupying any part of a road or highway on the state highway system, or the bridges or culverts thereon, with telegraph or telephone lines, steam, electrical or industrial railways, oil, gas, water or other pipes, mains, conduits, or any object or structure, other than by virtue of a franchise or permit legally granted and in force and effect, to remove from the bounds of such road or highway, bridge or culvert, their poles and wires connected therewith, and any and all tracks, switches, spurs, or oil, gas, water, or other pipes, mains, conduits, or other objects or structures, when the same in the opinion of the director constitute obstructions in such roads, or highways, or the bridges and culverts thereon, or interfere or may interfere with the contemplated construction, reconstruction, improvement, maintenance or repair of such roads or highways, or the bridges and culverts thereon, or interfere or may interfere with the use of such roads or highways, or the bridges and culverts thereon, by the traveling public.

It shall be the duty of all individuals, firms or corporations so occupying any road or highway on the state highway system, or the bridges or culverts thereon, under and by virtue of a franchise or permit legally granted and in force and effect, to relocate their properties and all parts thereof within the bounds of such road or highway, bridge or culvert when the same in the opinion of the director constitute obstructions in any such road or highway, bridge or culvert, or interfere with, or may interfere with the contemplated construction, reconstruction, improvement, maintenance or repair of such road or highway, bridge or culvert, or interfere with, or may interfere with the use of such road or highway, or bridge or culvert, which relocation within the bounds of such road or highway, or bridge or culvert, shall be in the manner and to the extent prescribed by the director.

If, in the opinion of the director, such individuals, firms or corporations have obstructed any road or highway on the state highway system, or the bridges or culverts thereon, or if any of their properties are, in his opinion so located that they do or may interfere, with the contemplated construction, reconstruction, improvement, maintenance or repair of such road or highway, or bridge or culvert, or, if, in his opinion, they interfere with, or may interfere with the use of such road or highway, or bridge or culvert, by the traveling public, said director shall notify such individual, firm or corporation directing the removal of such obstruction or properties, or the relocation of such properties, as the case may be, and, if such individual, firm or corporation shall not within five days from the service of such notice proceed to remove or relocate the same and complete the removal or relocation of the same within a reasonable time, the director may remove or relocate the same by employing the necessary labor, tools and equipment. The costs and expense thereof shall, in the first instance, be paid by the director out of any appropriation of the Department of Highways available for the construction, reconstruction, improvement, maintenance or repair of highways, and the amount thereof shall be certified to the Attorney General for collection by civil action. Said notice shall be served by the sheriff in the manner as summons in civil actions."

Section 1199-1. "It shall be the duty of occupants of land situated along the roads and highways on the state highway system to remove all obstructions within the bounds of such roads and highways which have been placed there either by themselves or their agents, or with their consent, and not under a franchise or permit legally granted. Provided, by first obtaining the consent and approval of the director, obstructions heretofore placed within the bounds of such roads or highways may be permitted to remain upon the conditions hereinbefore in this act prescribed.

It shall be unlawful for any individual, firm or corporation to hereafter place or maintain except as otherwise provided by law, any post, sign or obstruction within the bounds of any road or highway on the state highway system without first obtaining the consent and approval of the director."

There being nothing in the provisions of Sections 1199 or 1199-1, supra, which authorizes the Director of Highways to cause the removal of advertising signs or posters which have been erected, displayed or maintained on private property, along or near a state highway, in such a position as to obstruct at curves or intersecting roads the view of drivers using such highways, it is my opinion that the

effect of the amendment of Section 7204-1a in 112 Ohio Laws, pages 495, 496, was to deprive the Director of such authority and to place such authority in the county commissioners of the respective counties.

Respectfully,  
EDWARD C. TURNER,  
*Attorney General.*

1752.

FORMS—TO BE USED FOR PROCEEDINGS UNDER HOUSE BILL NO. 67,  
87TH GENERAL ASSEMBLY.

COLUMBUS, OHIO, February 24, 1928.

HON. GEORGE F. SCHLESINGER, *Director of Highways, Columbus Ohio.*

DEAR SIR:—In your communication of December 28, 1927, you request that I give my opinion on numerous questions pertaining to certain Sections of House Bill No. 67, passed by the last General Assembly, and found in 112 O. L. page 430, and that this department prepare numerous forms to be used by your department in proceeding under various provisions of this act.

I am, at your request, enclosing two of the forms requested previous to rendering a formal opinion on all of the questions presented in said request.

On page 4 of your communication you refer to Section 1191, General Code, and to a resolution by the county commissioners proposing co-operation with the Director of Highways, and, likewise, you have orally requested that I submit to you a form of ordinance to be passed by the council of a municipality, when such council is proposing to co-operate with the Director of Highways in the elimination of a crossing at grade on the extension of a state highway located within such municipality, as provided in Section 1229-15, General Code. I have prepared these forms, which read as follows:

At a meeting of the Board of County Commissioners of \_\_\_\_\_  
County, Ohio, held at its office on \_\_\_\_\_, 192\_\_\_\_\_  
presented the following resolution and moved its adoption:

RESOLUTION

Proposing to cooperate with the Director of Highways of the State of Ohio in the elimination of a crossing at grade with the tracks of the \_\_\_\_\_ Company, on State Highway Number \_\_\_\_\_; said crossing being located at \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_County, Ohio, by separating the grades of the said highway and the tracks of the said railroad company in such manner that the highway will pass over (or under) the tracks of the said railroad company.

WHEREAS, the above mentioned crossing is hazardous to the traffic proceeding over State Highway Number \_\_\_\_\_, due to the amount of traffic moving over said highway; and