

2480.

ROADS AND HIGHWAYS—RURAL MAIL BOXES—WHEN SUCH BOXES
MAY BE REMOVED BY DEPARTMENT OF HIGHWAYS AND PUBLIC
WORKS—WHEN DIRT SHOULDER WHICH IS PART OF PAVED
ROAD IS DEEMED PORTION OF PUBLIC HIGHWAY.

1. *Rural mail boxes, placed by owners and patrons of the rural mail service, in such locations as to become obstructions to the public highways, may under such circumstances, be removed by the department of highways and public works under the provisions of section 7204 G. C.*

2. *That portion of a public road termed the dirt shoulder, and which extends several feet from the edges of the actual pavement, and is necessary for the purposes of public travel is equally deemed a portion of the public highway.*

COLUMBUS, OHIO, October 17, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

GENTLEMEN:—Your letter of recent date was duly received, and reads as follows:

“This department is experiencing difficulty in some instances in securing the removal of mail boxes from that portion of the highway which it is necessary for us to maintain for public travel.

On various roads rural mail boxes are set within a foot or so of the edge of the pavement. It is our desire to have all boxes set no closer to the center of the road than the outer edge of the dirt shoulder, which we consider as constituting part of the road surface. This dirt shoulder usually is five feet in width and there is no objection on our part to setting the boxes along the outer edge of the shoulder. Where they are set near the edge of the metal, however, it is difficult to maintain the shoulder of the road and we contend that they also constitute a source of danger, due to the fact that the traveling public have a right to expect that the entire roadway from edge to edge of shoulder will be kept in shape for travel.

In certain places where we have demanded to have these boxes removed, we have been warned by the postmaster and rural mail carriers that we will be in trouble if we tamper with the mail boxes.

Kindly advise us as to our rights in removing mail boxes as well as other obstructions from the shoulders of the road, as above outlined.”

It is inferred from the condition of facts, as stated in your inquiry that the rural mail boxes by reason of their present location within or upon that portion of the highway extending along the edges of the paved portions thereof, and termed “shoulder” in the communication, may by reason of such location be deemed to be obstructions generally to the public highway, and consequently such as to interfere with the right of the public in its enjoyment and use thereof.

In discussing the legal status of the question presented, it becomes apparent that several parties or classes of persons, viewed from the different angles, are interested in a proprietary manner or otherwise in the right of use of the public highway, and it is thought that in relation to the question considered a classification of such viewpoints may be briefly made for the

purpose of discussion as follows: (1) Public use of the highway; (2) Rights of abutting landowners; (3) Use of highways by the United States postal authorities, and (4) Rights and duties of the department of highways and public works relative to the same.

It is believed to be unnecessary to consider at any great length the question of the public's right to the free and unobstructed use of the public highway, since such a right is so well established that it may be said to be fundamental. However, at least, one particular phase of the question seems important, and is relative to the matter under discussion, and which is, namely, the right of the traveling public to pass and repass upon the public highway conveniently and with safety, and the assumption is made that in the exercise of such a right or privilege, it frequently becomes necessary for the vehicle or traveler to use that portion of the highway which extends towards the outside limits of the same, and which portion, seemingly corresponds to the term "shoulder" as described in the inquiry; or it may equally as well be called that outside portion of the highway available for highway purposes, and not included within the actual pavement thereof, and which is usually graded, and in such repair as to permit the outside wheels of a traveling vehicle to extend out upon when necessary in passing or in the repassing of other vehicles traveling the highway. It is believed that in such a use of the highway the rights of the traveling public are not confined exclusively to the use of the actual paved portions thereof, but lawfully extend to the use of such portions of the highway as may be termed the shoulder, when traffic congestion may require, or the general law of the road demand.

Hence, it may be concluded that such portion of the road may be considered as part of the public highway equally with the paved portion thereof, and to the use of which the public is equally privileged to enjoy; and it would seem, therefore, that any obstruction placed upon such portions of the highway interfering with such a privilege, or which endangers the safety of travelers using those portions of the road, would become a matter of public concern requiring proper regulation by the state or local authorities.

Proceeding to a brief discussion of the rights of the abutting landowners in the use of the public highways, it may be stated as a general principle of law that every landowner whose lands abuts on a highway is supposed to be the owner of the soil to the middle of the highway in fee, subject to the easement of public travel, and may do in the highway on his side of the middle line anything which the owner in fee of land may do; provided, however, that he does not interfere with that easement. 3 Kent's Commentaries, 432; *Newton vs. New York*, 72 Conn., 420. Such an abutting landowner has by reason of that ownership some privileges in the highway which are not common to the public generally, and it has been held that he undoubtedly possesses the right of free ingress and egress, and for that purpose might grade the surface of the highway if he did not thereby render the same unfit for public travel. He might construct a sidewalk, set hitching posts, place a stepping stone to enable passengers to enter or alight from a carriage more readily, or he may set out shade trees, etc.; but equally as well, it is a fundamental principle of the law that in the enjoyment of such proprietary privileges, he must not interfere with that easement of the general public to use the highway free and unobstructed for the purposes of public travel.

Thus it becomes apparent that the general right of the public to the easement of use of the highways is paramount to any rights or privileges possessed by the abutting landowner in respect to the use of any portion of the same, and it equally follows that in the exercise of any of the private or proprietary interests, of which the abutting landowner may be possessed when

the same become such as to amount to an encroachment upon the public thoroughfare, or becomes an obstruction to public travel, or a menace to the safety of the traveling public, such a landowner by such an act, would obviously be held liable for any damage caused the public, as well as liable to any individual affected thereby.

In considering the question under discussion with reference to regulations of the United States postal authorities governing the distribution of United States mail and the consequent use of the public highways, it is thought that little or no comment in this regard is necessary, since a generic principle of the law imputes to the federal government and its departments likewise, a sovereignty over the states and their individuals, and it must be thoroughly conceded that when the laws of the state or the rights of individuals come into conflict with that of the federal government, the former must yield. It is likewise believed that it may be fairly stated as a legal proposition that when the laws of states, and the rights of individuals are not in conflict with the constitution of the United States, and with the law and policy of the federal government, such subordinate authorities and interests may lawfully function and equally operate in their separate and respective capacities.

In this respect article X of the United States Constitution provides that:

“The powers not delegated to the United States by the constitution nor prohibited by it in the states, are reserved to the states respectively or to the people.”

Also article I, section 8 provides that congress shall have power to establish postoffices and post roads. Also,

“to make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this constitution in the government of the United States, or in any department or offices thereof.”

An analysis of these and other sections of the constitution fails to reveal the fact that the state of Ohio has delegated to the federal government the power of control over its highways, other than is contemplated by the sections cited, authorizing congress to establish post roads and granting the power of regulation by its departments incident thereto. So it may be fairly assumed, that in the absence of any conflicting rules or regulations upon the subject under consideration made by the postoffice department upon the same, that the power of control of the state's highways may be said to still remain and be vested in the state. It is also thought that there is no conflict with such a power, made so, by postal laws or regulations, and in such a connection the following self-explanatory communication has been received by this department from the United States Department of Agriculture, bureau of public roads, Washington, D. C.:

“I have your letter of August 30 stating that your department has been requested to make a ruling relative to the matter of obstructions placed on public highways, and inquiring if this department has issued any rules or regulations relative to the location of rural mail boxes on public highways, or if there are any rules requiring such mail boxes to be located any given distance from the outer edge of the road.

This department has issued no rules or regulations governing the location of mail boxes along the public highways and would be without

authority to do so. That is a matter under the jurisdiction of the postoffice department, and is covered by the postal laws and regulations. The provisions of the postal laws and regulations which relate to the subject will be found in sections 827 and 830, which sections read, respectively, as follows:

'Sec. 827. Each box shall be erected on the road regularly traveled by a rural carrier and in such position as to be easily and safely accessible for the delivery and collection of mail by the carrier without leaving his conveyance.

2. Patrons shall keep clear the approaches to their boxes by prompt removal of snowdrifts or other obstructions by which the delivery of mail into them would be rendered impossible or difficult without the carrier leaving his conveyance.'

'Sec. 830. Rural carriers shall make report to postmasters of any boxes erected which do not conform to the regulations, or which are improperly erected. The postmaster shall notify the patron maintaining such box to remedy the defects, and if after reasonable time any patron fails to do so, the postmaster shall make report thereof to the fourth assistant postmaster general, division of rural mails, giving the name of the patron and a statement as to what is required in connection with the box.'

The question of the location of mail boxes along the public highways has recently been up in the states of West Virginia and Illinois, both of which states made inquiry of this bureau as to the laws or regulations relating thereto. At that time the question was taken up with the postoffice department by this bureau and that department advised that there were no other rules or regulations or laws applicable to the subject than those covered in the postal laws and regulations as issued by the postoffice department. It seems that in Illinois some of the rural mail carriers contended that in the case of a concrete road with gravel shoulders the mail box would have to be set so that the carrier could deposit mail therein without the necessity of his conveyance getting off of the concrete pavement. The rural mail section of the postoffice department advised this bureau informally that such was not the case and that the only requirement was that the mail box be set in such position as to be easily and safely accessible to the carrier without leaving his conveyance. It was further stated by the rural mail section that the adjustment of questions of that kind is left by the department to be made with the postmaster at the point from which the rural route on which may be located the mail boxes involved emanates."

A consideration of the sections of the United States postal regulations above cited, fails to reveal the fact that an abutting landowner or patron of the rural mail service is required or authorized to locate his receiving mail box in such a position or location as to become an obstruction or encroachment upon the highway. The regulations do, however, provide that such box shall be readily accessible for the delivery of mail by the carrier, and shall be erected on the road and in such a position as to be easily and safely accessible, etc. It is not thought that this regulation contemplates any unreasonable procedure which would in any manner authorize the owner of mail boxes to place the same anywhere upon the road, regardless of its position in relation to the general travel of the thoroughfare, as well as the safety and rights of individuals using the same, but rather that the more reasonable intention of

such a rule is that such boxes should be placed in a position or location convenient and safe, both for the carrier and the traveling public; and while it is believed that the matter of convenience for the carrier should be given due consideration, yet it is not thought that it should predominate over the rights of the traveling public.

In discussing the question presented from the viewpoint of the department of highways and public works, it is not believed that a removal of such obstructing mail boxes by lawful authority would be such as to constitute an interference with the transit of the United States mail, coming within the meaning of the provisions of the same and relating to the obstruction thereof. In such a connection several authorities may be cited, which though not entirely in point, yet would seemingly indicate that a temporary detention of the mail caused by the execution of a process of law where there is no intention of wilfully detaining the transit of the mail is not such as to come within the provisions of those sections. *U. S. vs. Kirby*, 7 Wall, U. S. 482; *U. S. vs. Hart*, 26 Fed., 390; *Harmon vs. Moore*, 59 Me., 428.

However pertinent the cited authorities may be in relation to the question under consideration, it is not thought that a removal of the obstructing mail boxes by lawful authority would under such circumstances amount to even a temporary detention of the mail, since the result of the same would merely cause, it is thought, even in the extreme case, an inconvenience to the owner of the box, who under such circumstances might be required to obtain his mail from the general delivery of the postoffice, but in any event his mail is ready for delivery to him when he places himself in a proper and receptive position. It is not thought, therefore, that this phase of the question should be too seriously taken, or should interfere with the general rights of the public in its use of the public highways.

The following sections of the General Code provide remedies in cases of obstructions to the highways, and are cited as having a general bearing upon the subject, although it is thought that your department should be chiefly interested in the provisions of section 7204 G. C.:

"Sec. 2424. If a bridge or any state or county road, or any public building, the property of or under the control or supervision of a county, is injured or destroyed, or when any state or county road or public highway has been injured or impaired by placing or continuing therein, without lawful authority, any obstruction, or by the changing of the line, filling up or digging out of the bed thereof, or in any manner rendering it less convenient or useful than it had been previously, by a person or corporation, such person or corporation shall be subject to an action for damages. The board of commissioners of the proper county may sue for and recover of such person or corporation the damages which have accrued by reason thereof, or such as are necessary to remove the obstruction or repair the injury."

"Sec. 13421. Whoever obstructs or encumbers, by fences, buildings, structures or otherwise, a public ground, highway, street or alley of a municipal corporation, shall be fined not more than five hundred dollars."

"Sec. 7204. It shall be the duty of the owners or occupants 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.

It shall be the duty of all telephone, telegraph, steam or electric railway, or other electrical companies, oil, gas, water or public service

companies of any kind, to remove their poles and wires, connected therewith, or any tracks, switches, spurs or oil, gas or water pipes, mains, conduits or other objects when the same in the opinion of the state highway commissioner constitute obstructions in any inter-county highway or main market road or interfere with the construction, improvement, maintenance or repair of such inter-county highway or main market road or the use thereof by the traveling public; or when the same in the opinion of the county surveyor constitute obstructions in any county or township road or interfere with the construction, improvement, maintenance or repair of such road or the use thereof by the traveling public, subject, however, to the rights of any such company to be or remain in such highways, by virtue of any grant or franchise to said company. If in the opinion of the state highway commissioner such companies have obstructed any inter-county highway or main market road, or if in the opinion of the county surveyor such companies have obstructed any county or township road, said state highway commissioner or county surveyor shall forthwith notify said owner, occupant or company, directing the removal of said obstructions, and if said owner, occupant or company, shall not within five days proceed to remove said obstruction and complete the work of such removal within a reasonable time the state highway commissioner may remove said obstructions. The expense thereby incurred shall be paid in the first instance out of any moneys levied and collected and available for highway purposes, and not appropriated for any other purpose, and the amount thereof shall be certified to the proper officials to be placed upon the tax duplicate against the property of such owner, occupant or company, as provided by law, to be collected as other taxes and in one payment, and the proper fund shall be reimbursed out of the money so collected, or the cost of removing such obstructions may be collected from the owner, occupant or company by civil action by the state of Ohio on the relation of the state highway commissioner or by the county commissioners or township trustees. All such persons, firms or corporations shall be required to reconstruct or relocate their properties or any part thereof upon any inter-county highway or main market road upon the order of the state highway commissioner if in the opinion of the state highway commissioner the same constitute an obstruction in such public highway; and all such persons, firms or corporations shall be required to reconstruct or relocate their properties, or any part thereof, upon any county or township road upon the order of the county surveyor if in the opinion of such county surveyor the same constitute an obstruction in such county or township road."

It may be noted that the powers and duties of the state highway commissioner relative to matters of obstructions of the highway, as provided for in section 7204 G. C. quoted, supra, are now by reason of House Bill No. 249 (Reorganization Code) transferred to the department of highways and public works by the provisions of section 154-40 of said act.

In view, therefore, of such considerations it is the opinion of this department that the department of highways and public works is amply authorized by the provisions of section 7204 G. C. to remove mail boxes which have become obstructions to the public highway, equally as well as any other obstructions which interfere with the public's right to use and enjoy the same. It is suggested, however, as a matter of comity between the state government

and federal authorities that before proceeding to the remedy provided by the section mentioned, your department attempt to adjust the matter through the local postmasters at points where such defective mail boxes may be located, who it is thought equally have authority to correct such defects under the provisions of section 830 of the United States postal laws and regulations.

Respectfully,

JOHN G. PRICE,
Attorney-General.

2481.

APPROVAL, DEFICIENCY BONDS OF LEWISBURG VILLAGE SCHOOL DISTRICT IN AMOUNT OF \$5,000.

COLUMBUS, OHIO, October 17, 1921.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

2482.

APPROVAL, FINAL RESOLUTIONS FOR ROAD IMPROVEMENTS, HARDIN AND VINTON COUNTIES, OHIO.

COLUMBUS, OHIO, October 17, 1921.

Department of Highways and Public Works, Division of Highways, Columbus, Ohio.

2483.

BUILDING AND LOAN ASSOCIATIONS—MAY NOT INVEST IDLE FUNDS IN FRENCH GOVERNMENT BONDS.

An Ohio building and loan association may not invest its idle funds in French government bonds.

COLUMBUS, OHIO, October 18, 1921.

Department of Commerce, Division of Building and Loan Associations, Columbus, Ohio.

GENTLEMEN:—You request the opinion of this department upon a question which may be put as follows:

May a building and loan association organized under the laws of Ohio invest its idle funds in bonds of the French Republic?

Authority to make such investments is claimed under that provision of section 9660, General Code, governing such investments, to the effect that