

**OPINION NO. 69-050****Syllabus:**

County commissioners and township trustees have no authority to require an individual to remove hedges, fences, or trees located entirely on private property that obstruct the view at intersections.

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**To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio**  
**By: Paul W. Brown, Attorney General, May 27, 1969**

I have before me your request for my opinion on the following question:

"What rights other than by appropriation proceedings does the County Commissioners or the Township Trustees have to require an individual to remove hedge fences, trees, etc. located on private property that obstruct the view at intersections?"

Your specific question relates to obstructions located on private property. However, in order to establish a frame of reference, a discussion of obstructions located within or along the boundaries of public roadways is necessary.

Section 971.27, Revised Code, allows the cultivation of hedges or line fences "on the line" of public highways, together with a protective fence and reads as follows:

"An owner or occupant of land bordering upon a public road or highway, except a street or alley in a municipal corporation, or through which a public road or highway passes, may set, plant, and cultivate a hedge or live fence on the line of such road or public highway, and place on the margin of such road a protection fence, not to occupy more than six feet of such margin. Such protection fence, when placed opposite a live fence or hedge, set or planted, may remain for seven years.

"The board of township trustees may grant permission in writing to the owner of the hedge or live fence, described in this section, to continue the protection fence as long as is necessary."

The height and width of said objects are restricted by Section 971.28, Revised Code, which states in pertinent part:

"The owner of a hedge fence on a partition line, or along a public highway, shall not permit it to remain of a greater height or width than six feet, for a longer period than six months, or leave the cuttings from it on the public highway for more than ten days.

Likewise, the planting of trees and shrubs is permitted by Section 5529.11, Revised Code, subject to approval by the county engineer or township trustees. This section reads as follows:

"The director of highways may, by a permit in writing, authorize the owners of property adjoining inter-county and state highways, at their own expense, to locate and plant trees and shrubs along such highways, subject to his approval as to kind, size, and location. The county engineer shall have the same authority on county roads and the board of township trustees on township roads."  
(Emphasis added)

It may be noted that wherever the code provides for removal of highway obstructions, the particular section refers to the obstruction as being either wholly or partially within the public right-of-way. Nowhere in the code is there mention of the removal of obstructions on private property, with the singular exception of Section 5547.04, Revised Code, to which you referred in your letter. This section provides as follows:

"The owner or occupant of lands situated along the highways shall remove all obstructions within the bounds of the highways, which have been placed there by them or their agents, or with their consent.

\* \* \* \* \*

"All advertising or other signs and posters erected, displayed, or maintained on, along, or near any public highway, and in such a location as to obstruct, at curves or intersecting roads, the view of drivers using such highway, are obstructions, but this section has no application to crossing signs erected in compliance with section 4955.33 of the Revised Code, at the crossings of highways and railroads.

\* \* \* \* \*

(Emphasis added)

Be that as it may, Opinion No. 1751, Opinions of the Attorney General for 1928, clearly states that the above section of the code relates only to posters and signs. Indeed, even where Section 971.28, supra, has been violated, my predecessor, in Opinion No. 535, Opinions of the Attorney General for 1917, Volume 2, stated that the only remedy under that section is damages.

It is well established that the owner of land abutting on a

highway possesses the same rights in a tree located within a public right-of-way as he has in the land itself, so long as the purpose thereof is not incompatible with the use of the right-of-way. Phifer v. Cox, 21 Ohio St. 248, 8 Am. Rep. 58. And the court in Schuerzler v. Cleveland, Medina, 2d, S.E.R.C., 25 O.C.C. (N.S.) 401, 35 CD 292, held that where a fence, located within a public highway, does not interfere with public travel on the highway, one does not have the right to abate the nuisance unless he can show a peculiar injury. This is precisely the point in issue here.

Therefore, it is my opinion and you are hereby advised that county commissioners and township trustees have no authority to require an individual to remove hedges, fences, or trees located entirely on private property that obstruct the view at intersections.