

1102.

APPROVAL, BONDS OF AUGLAIZE COUNTY, OHIO, IN AMOUNT OF \$5,500 FOR ROAD IMPROVEMENTS.

COLUMBUS, OHIO, March 25, 1920.

*Industrial Commission of Ohio, Columbus, Ohio.*

1103.

ADVERTISING SIGN RESEMBLING RAILROAD CROSSING WARNING SIGN—AN OBSTRUCTION UNDER PROVISIONS OF SECTION 7204 G. C.—FINDINGS, HOW MADE—PROSECUTIONS UNDER SECTIONS 13421-11 AND 13421-22 G. C.

1. *Under the provisions of section 7204 G. C. (107 O. L. 116), the state highway commissioner in the case of intercounty highways or main market roads, and the county surveyor in the case of county and township roads, are authorized to make a finding that the placing within the limits of the highway or road of an advertising sign resembling in appearance the standard railroad crossing warning sign, constitutes an obstruction. Upon the making of such finding the state highway commissioner or county surveyor may proceed as pointed out in said section 7204 in the removal of such obstruction.*

2. *Prosecution for the placing of such signs within the limits of a highway may be had under the provisions of sections 13421-11 and 13421-22 G. C.*

COLUMBUS, OHIO, March 27, 1920.

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

DEAR SIR:—Your communication is received, reading as follows:

"I have at hand considerable correspondence from officials of railroads and people in general making complaint about signs resembling railroad crossing signs being placed along a public highway. The signs are for commercial purposes and are upon the right of way of the public highway. They are of such nature as to lead approaching pedestrians to the belief that a railroad crossing is near the sign.

In a number of instances we have advised county surveyors and county commissioners to have the signs destroyed. The county officials have refused on the ground that they did not know of any legal authority for such action.

I would be pleased to have your opinion as to whether or not we have authority for destroying signs of this nature."

The only statute which has been found having a bearing on your inquiry so far as the state highway commissioner is concerned is section 7204 G. C. (107 O. L. 116) reading as follows:

"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 high-

ways which have been placed there either by themselves or their agents, or with their consent. \* \* \*

(Here follow provisions relative to removal by public service companies of their poles, wires, tracks, etc.) \* \* \*

If in the opinion of the state highway commissioner such companies have obstructed any intercounty 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 or the county surveyor 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 construct or relocate their properties or any part thereof upon any intercounty 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."

While, of course, the erection within the limits of a public road of a sign resembling a railroad crossing sign may under certain circumstances constitute an actual physical obstruction in the road, yet the condition which you describe indicates that the erection of the signs is objectionable because the signs constitute mental obstructions rather than physical obstructions. However, the serious nature of the placing of such signs in the roadway becomes evident when reference is had to section 8852 G. C., reading as follows:

"At all points where its road crosses a public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, each company shall erect a sign, with large and distinct letters placed thereon, to give notice of the proximity of the railroad, and warn persons to be on the lookout for the locomotive. A company which neglects or refuses to comply with this provision shall be liable in damages for all injuries which occur to persons or property from such neglect or refusal."

In conformity with the provisions of the section just quoted, railroad companies have come to use at railroad crossings a sort of standard warning sign well known

to practically every one. Hence, the use of a similar sign for advertising purposes along the public highway not only tends to interfere with travel in the sense of misleading travelers into believing that a railroad crossing is near at hand, but in the further sense of weakening, so to speak, the warning character of the standard railroad crossing sign.

Under these circumstances, it is the opinion of this department that the state highway commissioner in the case of intercounty highway and main market roads, and the county surveyor in the case of county and township roads, are fully warranted under section 7204, above quoted, in making a finding that the signs in question constitute obstructions. In the event of such finding, proceedings for the removal of the signs are to be had as pointed out by section 7204, which proceedings need not be here discussed in detail.

It is proper also to call attention to sections 13421-11 and 13421-22 enacted as part of chapter XII (Penal Provisions) of the so-called Cass highway act, which two sections read respectively as follows:

"Sec. 13421-11. Whoever unlawfully places any obstruction in, or upon a public highway, shall be fined not more than fifty dollars, nor less than five dollars."

"Sec. 13421-22. It shall be the duty of the prosecuting attorney of the county to prosecute all offenders under this chapter upon application of any official or individual filing any affidavit before any magistrate of the county, charging an offense under this chapter. Nothing herein shall prevent the prosecuting attorney or any other official from prosecuting offenders under this chapter upon his own initiative."

Said section 13421-11 leaves much to be desired in the way of definiteness. It may be stated, however, that it affords grounds for a criminal prosecution and the leaving to the jury of the question whether an obstruction has been placed in the road, and the further question whether the obstruction has been "unlawfully" placed or not, just as section 12423 relating to assault and battery, leaves to the jury the question whether there has been an assault, and whether the assault has been unlawful or not.

Section 13421-22 makes general provision for the filing of affidavits and for prosecution where the provisions of section 13421-11 have been violated.

Respectfully,

JOHN G. PRICE,  
*Attorney-General.*