

ROADS:
OVERSEERS:
OBSTRUCTIONS TO
HIGHWAYS:

The powers and duties of road overseers
in regard to removal of driveways or
crossings over ditches connecting high-
ways with private property.

February 1, 1940



Honorable Donald B. Dawson
Prosecuting Attorney
Bates County
Butler, Missouri

Dear Sir:

This is in reply to yours of recent date where-
in you submit the question of the powers and duties of
a township road overseer in regard to the removal of
crossings and driveways over ditches connecting high-
ways with private property.

Involved in this question is also the question
of whether or not the road overseer, in cleaning out
a ditch, destroys and tears up a bridge or culvert lead-
ing from the highway on to private property, is it the
obligation and duty of the land owner to replace the
bridge or culvert at his own expense, or is it the duty
and obligation of the road overseer to do this.

Pertaining to the powers and duties of road
overseers in such question, I find that Section 7932,
R. S. Missouri 1929, provides as follows:

"All driveways or crossings over
ditches connecting highways with
the private property shall be made
under the supervision of the over-
seer or commissioners of the road
districts. Any person or persons
who shall willfully or knowingly
obstruct or damage any public road
by obstructing the side or cross
drainage or ditches thereof, or
by turning water upon such road
or right of way, or by throwing
or depositing brush, trees, stumps,
logs, or any refuse or debris what-
soever, in said road, or on the

sides or in the ditches thereof, or by fencing across or upon the right of way of the same, or by planting any hedge or erecting any advertising sign within the lines established for such road, or by changing the location thereof, or shall obstruct said road, highway or drains in any other manner whatsoever, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment. The road overseer of any district, or county highway engineer, who finds any road obstructed as above specified, shall notify the person violating the provisions of this section, verbally or in writing, to remove such obstruction. Within ten days after being notified, he shall pay the sum of five dollars for each and every day after the tenth day of (if) such obstruction is maintained or permitted to remain; such fine to be recovered by suit brought by the road overseer, in the name of the road district, in any court of competent jurisdiction."

Section 7874, R. S. Missouri 1929, is also pertinent to the question and it provides as follows:

"It shall be the duty of the road overseer to keep the roads in his district in as good repair as the funds at his command will permit. He shall at all times conform to the plans and specifications and instructions of the county highway engineer for the character of the work in question."

In speaking of the implied powers of the overseer,

by virtue of the foregoing sections the Supreme Court, in The State ex rel. Faires v. Buhler, 90 Mo. 560, 568, said:

"Section 6941, of chapter 147, supra, provides, among other things, that: 'The several county courts shall divide their counties into convenient road districts, and shall appoint a road overseer for each district, and furnish him with the boundaries thereof, and, at the February term of the court in each year, the court shall appoint a suitable person in each district to act as overseer for the next ensuing year. * * It shall be his duty to keep the roads in his district in good repair, according to the provisions of this chapter. * * * ' Other sections point out specific circumstances under which he may be ordered by the county court to remove fences and other obstructions from public roads, none of which, however, have any application to the case at bar. It may also be concluded that, under the general power conferred by section 6941, supra,--'to keep the roads in his district in good repair'--that it was the duty of defendant, as such overseer, to remove any and all fences and other obstructions, if any, from any of the public roads in his said district."

It would seem from the ruling in the above case that under the general powers conferred under the foregoing sections that it is the duty of the overseer to remove any and all obstructions from any of the public roads in use in his district. The foregoing sections refer to road overseers under the general road law.

Since your county is under township organization

if there is any special law applicable to townships, then that must prevail over the foregoing general statute. Section 8149, R. S. Missouri 1929, which applies to road overseers in counties under township organization, provides as follows:

"All road laws of this state shall apply to counties under township organization, unless by their terms limited to counties not under township organizations, or in conflict with the provisions of this law."

And Section 8156, R. S. Missouri 1929, which is a part of the road law as it applies to counties under township organization, provides in part as follows:

"(a) It shall be the duty of the road overseer to keep the roads in his district in as good repair as the funds at his command will permit, * * * * *

The provisions of Section 7932, supra, indicate that the driveways or crossings from private property to the public road shall be built and constructed under the supervision of the road overseer. The language of this section also indicates that the lawmakers intended that the individual who constructs such a driveway or crossing must assume responsibility therefor; that is, he must bear the expenses thereof and if it has obstructed the highway in any manner, he is guilty of a misdemeanor, and if he fails to remove such crossing or driveway after having been given notice thereof, he is liable for the payment of five dollars per day for each day he permits the same to remain.

The powers and duties of the road overseers are statutory and, of course, must look to the statutes for whatever authority they exercise by virtue of holding that office.

While the case of *The State ex rel. Fairies v. Buhler*, supra, indicates that the overseer has implied power to remove obstructions from the highway, yet we

think the lawmakers, by the special provisions of Section 7932, supra, have set up a procedure for the road overseer to pursue in case a person obstructs a highway ditch by placing a crossing or driveway across it so that he stops the free flow of water along the ditch. If after the road overseer has pursued that course, then if the obstruction is not removed, under the Fairies case, supra, he would be authorized to remove the same.

In the absence of a statute authorizing the road overseer to replace a crossing or driveway across a road ditch, we think he would have no authority because such an expenditure would fall in the class of paying out public funds for private purposes which is prohibited by Section 46 of Article IV of the Constitution of Missouri.

By Section 7932, supra, the lawmakers have apparently contemplated that the crossing and driveways across road ditches may be constructed under the supervision of the road overseers. It seems that when such a course is pursued, then the controversy between the property owner and the overseer would not arise. Of course, if a road overseer is acting arbitrarily and insisting on the removal of a crossing or driveway which does not obstruct the highway, the party complained against could set that up as a defense in the action authorized under said Section 7932, in which case it would be a question of fact whether or not the crossing or driveway obstructs the ditch. If it is found that the ditch is obstructed, then under said Section 7932, the owner of the driveway or crossing would be liable for the penalties provided thereunder.

CONCLUSION

From the foregoing it is the opinion of this department that in removing obstructions from road ditches the overseer is required to follow the provisions of Section 7932, R. S. Missouri 1929, before he would be authorized to remove such obstructions himself.

We are further of the opinion that if the

Hon. Donald B. Dawson

(6)

February 1, 1940

road overseer removes a driveway or crossing leading over a ditch to the public highway that there is no duty or obligation upon him to replace the same and that he would not be authorized to expend public funds for that purpose.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

W. J. BURKE
(Acting) Attorney General

TWB:DA