

HIGHWAYS: A motor vehicle may be parked or abandoned on the
MOTOR VEHICLES: public roads and highways in such a manner as to
NUISANCE: constitute a public nuisance; each situation
must be appraised to determine whether there is
a public nuisance. Motor vehicles which are public
nuisances may be summarily removed by Highway
authorities. Such Highway authorities cannot
incur liability on the part of the owner for
the cost of towing such vehicle to a garage and
storing it.

July 6, 1953

Honorable Hugh H. Waggoner
Superintendent
Missouri State Highway Patrol
Jefferson City, Missouri

Dear Colonel Waggoner:

In your letter of April 28, 1953, you requested
an official opinion of this Department as follows:

"The members of this department often find
wrecked vehicles or illegally parked vehicles
on the right of way of highways throughout
the State. Your opinion is respectfully
requested as to the authority of the mem-
bers of the Patrol to have such vehicles
towed in to a garage for safe keeping
under each of the following conditions:

- "1. If a vehicle has been involved in
an accident, or has become dis-
abled and is on the traveled por-
tion of the roadway and the owner
or driver is physically unable to
make arrangements for its removal
or refuses or neglects to make
such arrangements.
- "2. If a vehicle has been involved in
an accident or has become disabled
and is not on the traveled portion
of the highway and the owner or
driver is physically unable to make
arrangements for its removal or re-
fuses or neglects to make such ar-
rangements.
- "3. If a vehicle is parked unattended
upon a highway or shoulder adjacent
thereto without exhibiting lights
as required in section 304.450.

"If, under any of the conditions stated above,
a vehicle is ordered towed in by a member of



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this department, who is responsible for the payment of tow-in and storage charges."

An examination of the statutory laws of Missouri discloses no summary provision for removing such motor vehicles from the highways.

Any authority to remove such vehicles must be based upon the premise that such vehicles are nuisances.

The right of the public to the use of highways is discussed in Cohen vs. Mayor, Etc. of New York, 21 N.E. 700, l.c. 701:

"* * * The primary use of a highway is for the purpose of permitting the passing and repassing of the public; and it is entitled to the unobstructed and uninterrupted use of the entire width of the highway for that purpose, under temporary exceptions as to deposits for building purposes, and to load and unload wagons, and receive and take away property for or in the interest of the owners of the adjoining premises, which it is not now necessary to more specifically enumerate. * * * * * It is no answer to the charge of nuisance that, even with the obstruction in the highway, there is still room for two or more wagons to pass, nor that the obstruction itself is not a fixture. If it be permanently or even habitually in the highway, it is a nuisance. The highway may be a convenient place for the owner of carriages to keep them in, but the law, looking to the convenience of the greater number, prohibits any such use of the public streets. The old cases said the king's highway is not to be used as a stable-yard; * * *."

What constitutes a nuisance is defined in 66 C.J.S., page 727:

"Although the term 'nuisance' has been regarded as incapable of precise definition so as to fit all cases, it has

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also been held to be a term with a well defined legal meaning, and in legal phraseology applies to that class of wrongs which arise from the unreasonable, unwarrantable, or unlawful use by a person of his own property, real or personal, or from his own improper, indecent, or unlawful personal conduct, working an obstruction or injury to a right of another, or of the public, and producing material annoyance, inconvenience, discomfort, or hurt."

Nuisances are usually classified either as public or private. A public nuisance is one which interferes with the rights enjoyed by the public, and which damages all persons who come within the sphere of the operation of the nuisance, or which injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public. A private nuisance is one that affects a single individual or a determinative number of persons in the enjoyment of a private right. A motor vehicle so placed on the highway as to endanger the persons traveling thereon, and cause them inconvenience, would be a public nuisance.

Nuisances may be further classified as "per se" or "per accidens". A nuisance per se is an act or thing which is at all times and under all circumstances a nuisance. A nuisance per accidens may be an act or thing which may be under some circumstances a legitimate and desirable act or thing, but which under other circumstances may become, in fact, a nuisance. Obviously, a motor vehicle is not a nuisance per se, but may become a nuisance per accidens.

That a motor vehicle may become a public nuisance by reason of its presence on the highway, is indicated by this excerpt from *Carson vs. Baldwin*, 144 S.W. (2d) 134, 1.c. 135:

"The common law condemns as a public nuisance any unauthorized or unreasonable obstruction of a highway which necessarily impedes or incommodes its use by the travelling public. * * *"

25 Am. Jur., page 565, also states that an obstruction of a highway may constitute a public nuisance:

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"The public is rightfully entitled to the use of a highway free of all unauthorized or unlawful obstructions or impediments which tend to delay or obstruct traffic, and free of all nuisances which tend to annoy or endanger the safety of travelers. It has long been recognized that any object, condition, or occurrence, whether within or outside the way, which materially and unlawfully interferes with the free and safe enjoyment of the public easement constitutes a public nuisance. * * *."

That an appropriate officer may remove an obstruction from the highway is made clear by 66 C.J.S., page 854:

"* * * The right of summary abatement of nuisances, without judicial process or proceeding, was an established principle of the common law, * * *."

Having determined that an automobile left on the highway may constitute a public nuisance, and having determined that public nuisances may be summarily abated, it is necessary to examine each of the instances you cite to determine whether they constitute a public nuisance. The first instance you mention is when a disabled vehicle is on the traveled portion of the roadway. That such vehicle on the traveled portion of the roadway would be a great danger to the public traveling thereon is clear. Thus, such vehicle may be removed from the traveled portion of a road.

Your second instance involves a disabled vehicle not on the traveled portion of the highway. To determine whether a vehicle parked on the shoulder is a public nuisance, the prevailing circumstances must be considered. Among the items of importance to the determination is the width of the traveled portion of the road, the width of the shoulder and the distance the vehicle is from the traveled portion. The amount and type of traffic on the highway where the vehicle is parked, the speed of such traffic and the distance from which an oncoming traveler may see such vehicle, must all be balanced together to see whether the vehicle does, in fact, create a public danger or material inconvenience. It also is proper to consider the length of time which the vehicle is left on the shoulder. A vehicle which may cause a small amount of danger or annoyance to the public might, in the aggregate,

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over a period of time be so great as to constitute a public nuisance, and thus be summarily abated.

The third instance about which you inquire is whether an unlighted vehicle parked unattended may be removed. Section 304.450, RSMo 1949, requires that parked vehicles be lighted, as follows:

"304.450. Parked vehicles--how lighted--exception.--Whenever a vehicle is parked or stopped upon a highway or shoulder adjacent thereto, whether attended or unattended during the times when lighted lamps are required, such vehicle shall be equipped with one or more lamps which shall exhibit a white light on the traffic side visible from a distance of five hundred feet to the front of such vehicle and a red light visible from a distance of five hundred feet to the rear; provided, that local authorities in cities, towns and villages may provide by ordinance that no lights need be displayed upon any such vehicle when stopped or parked in accordance with local parking regulations upon a highway where there is sufficient light to reveal any person or object within a distance of five hundred feet upon such highway. Any lighted head lamps upon a parked vehicle shall be depressed or dimmed."

Although the above section makes it a misdemeanor to park unlighted cars in the manner prohibited, that alone does not give the Highway authorities the right or power to remove them from the highway unless such vehicles become a public nuisance as discussed above.

Even though the common law may authorize the removal of obstructions on the highway, there is no indication where such obstructions are to be placed. The only places that such obstructions may safely be left would be either on public property, on the property of the owner of the obstruction, or on the property of a stranger who consents thereto. If there be a place on the highway where such obstruction may be placed where it would not be a nuisance, it should be placed there. There is no authority empowering a highway officer to cause the offending vehicle to be towed to a garage. In the absence of such authority a public official cannot obligate any person

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for the towing and storage charge which that individual did not himself authorize. Such charges must be recovered from the person who entered into the contract for towing and storage.

In recapitulation, we find that a motor vehicle parked or abandoned on the traveled portion of a roadway is a public nuisance which may be summarily abated; and a parked or abandoned vehicle on the shoulder of a highway may also be a public nuisance if it endangers or annoys or inconveniences the traveling public. Such vehicles as are public nuisances may be removed from the point where they do constitute a nuisance, to a place where they are not. Thus, as a practical matter in order to remove an automobile, the highway authorities should move it only so far as is necessary for the public safety and convenience.

CONCLUSION

It is, therefore, the opinion of this office that a motor vehicle may be parked or abandoned on the public roads and highways in such a manner as to constitute a public nuisance, and that each situation must be appraised to determine whether there is a public nuisance. Those motor vehicles which are public nuisances may be summarily removed by Highway authorities. Such Highway authorities cannot incur liability on the part of the owner for the cost of towing such vehicle to a garage and storing it.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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