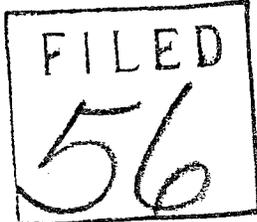


CRIMINAL LAW: A person who knowingly obstructs a public high-  
HIGHWAYS: way by parking a trailer, housing a business  
enterprise, upon the right of way is subject to  
prosecution under Section 229.150, RSMo 1949.



June 17, 1954

Honorable Douglas Mahnkey  
Prosecuting Attorney  
Taney County  
Forsyth, Missouri

Dear Sir:

Reference is made to your request for an official opinion from this office as to the applicability of Section 229.150, RSMo 1949, to a stated factual situation. Your request reads as follows:

"The community of Rockaway Beach is not incorporated as town or city. Heavy resort business during the summer. A sixty foot street runs the full length of the Beach, being dedicated to the public by the owner, in duly recorded plat. This street follows the old county road.

"Numerous persons have set up little booths and other business places on the side of the road or street, on the right of way but out of the lane of traffic. There has been objection to a certain shooting gallery which is actually a trailer parked on the right of way (presuming this is actually on the right of way).

\* \* \* \* \*

"QUESTION: Would Section 229.150 R.S.MO. 1949, or any other criminal section apply to this use of the right of way so long as traffic was not obstructed?"

We assume for the purpose of this opinion that the trailer to which you refer is, in fact, actually upon the right of way

Honorable Douglas Mahnkey

as you have indicated, and that the road or street referred to is actually a public road or street.

Section 229.150, RSMo 1949, reads as follows:

"1. All driveways or crossings over ditches connecting highways with the private property shall be made under the supervision of the overseer or commissioners of the road districts.

"2. Any person or persons who shall wilfully 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 whatsoever, 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 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.

"3. 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 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."

It is our opinion that if such is the case and if said trailer would constitute an obstruction that the person

Honorable Douglas Mahnkey

responsible for the placing of the trailer in this location would not be excused from prosecution under this provision by reason of the fact that traffic was not obstructed.

Every person has the right to go over or upon any part of the highway and is not restricted to that portion which is ordinarily or customarily traveled. This proposition is announced in the case of State v. Campbell, 80 Mo. App. 110, l.c. 113, as follows:

"\* \* \* Any encroachment upon any part of the highway, whether upon the traveled part thereof or on the sides comes clearly within the idea of nuisance. Every person has a right to go over or upon any part of the highway, and the fact that from notions of economy, or otherwise, the public authorities having the same in charge have not seen fit to work the whole of it, does not alter or change the right. A traveler has the right to go anywhere on the right of way outside of the beaten track of the highway if he so chooses, and any obstacle placed in the way of his doing so is an infringement and obstruction of a public right, and an annoyance and therefore a public nuisance."

See also State v. Asbell, 192 S.W. 469, and State v. Feitz, 154 Mo. App. 578.

Whether or not the trailer to which you refer constitutes an obstruction presents a different question. The general rule in regard to what constitutes an obstruction is announced in the Campbell case, noted supra, in the following terms:

"The obstacle must however, be of such a character and kind as to operate as an obstruction to public travel, or to public rights, or to endanger the safety of persons traveling there, or as to offend and annoy those who come in contact with it.

\* \* \*"

We are of the opinion that a trailer housing a shooting gallery located upon the right of way would constitute an obstruction as contemplated by Section 229.150, since it would

Honorable Douglas Mahnkey

preclude a person or persons from using, for the purpose of travel, such right of way.

CONCLUSION

Therefore, it is the opinion of this office that a trailer, housing a business enterprise, which is parked upon the public highway although not upon the regularly traveled part thereof, would constitute an obstruction of the public way and the person responsible therefor would be subject to prosecution under the provisions of Section 229.150, RSMo 1949, which makes it a misdemeanor for any person to wilfully or knowingly obstruct the public way.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donal D. Guffey.

Yours very truly,

John M. Dalton  
Attorney General

DDG/vtl