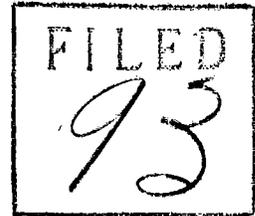


HIGHWAYS: Several questions concerning parking of vehicles on state highways, and authority of the Highway Patrol in connection therewith.

January 29, 1946



2-14

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

Dear Sir:

This office is in receipt of your request for our official opinion, as follows:

"We would like to have opinions from your office on the following questions which concern the control of the parking of vehicles along public highways.

"Section 8385a of the Motor Vehicle Laws of the State of Missouri requires that all vehicles not in motion shall be placed with their right sides as near the right-hand side of the highway as practicable.

"Does this section prohibit the parking of vehicles at an angle on the shoulder of a highway outside of an incorporated area?

"Does the term 'highway' as used in the Motor Vehicle Laws include the total distance between right-of-way lines or just the traveled portion of the roadway including the shoulder?

"On a highway, of which the traveled portion is maintained by the State and the shoulders have been improved by the property owners, can the State prohibit angle parking?

"Section 8361 requires the driver of any vehicle or the rider of any animal to obey any reasonable signal or direction of any member of the Patrol given in directing the movement of traffic on highways.

"Under this section, does the Patrol have authority to prohibit the parking of vehicles on highways outside of incorporated areas, when the parking of such vehicles constitutes a traffic hazard?

"Can the Patrol post signs prohibiting such parking and institute criminal procedure against persons who disregard such signs?

"Numerous requests have been received by this department and by the State Highway Department for the removal of traffic hazards caused by the parking of vehicles in congested rural areas.

"Therefore, we will appreciate receiving your opinion on the above questions as soon as possible."

Section 8385, subsection (a), of the Motor Vehicle Laws, Article 1, Chapter 45, R. S. Mo. 1939, is as follows:

"All vehicles not in motion shall be placed with their right sides as near the right-hand side of the highway as practicable, except on streets of municipalities where vehicles are obliged to move in one direction only."

In answering the questions submitted by you concerning this section, it is necessary to define the words "highway" and "practicable". Under Section 8367, R. S. Mo. 1939, a part of the Motor Vehicle Laws, we find the following definition of "highway":

"'Highway.' Any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways, or alleys in any municipality."

A "public thoroughfare" is further defined as "a place or way, through which there is passing or travel, and becomes 'public' when the public have a general right of passage." Vol. 35, Words and Phrases, p. 353.

The word "highways," as used in the Motor Vehicle Laws, has been the subject of judicial comment in this state. In Crocker v. Jett, 93 S. W. (2d) 74, we find the following reference to the word, l. c. 76:

"It is pertinent to observe in this connection that the word 'highways' is used in the statute in its popular, rather than its technical, sense, and is intended to include all highways traveled by the public, regardless of their legal status. Phillips v. Henson, 326 Mo. 282, 30 S. W. (2d) 1065."

In La Rue v. Borrman et al., 22 N. Y. S. (2d) 209, the question for determination was a proper definition of the word "highway." The shoulders were held to be an integral part, in the following language, l. c. 213:

"The shoulder of a highway is part of the highway and may be used for travel."

It can be seen from the statutory definition quoted above and the liberal interpretation given by our courts that the word "highway" would include the entire right-of-way, including parkways and shoulders.

The word "practicable," as used in the Motor Vehicle Act, is defined in Lauck v. Reis, 310 Mo. 184, l. c. 201, as synonymous with "possible." In Klohr v. Edwards, 94 S. W. (2d) 99, its meaning was compared with that of the word "practical," and the court stated, l. c. 104:

" * * * Though there is a difference in the strict lexical meaning of the two words, they are not uncommonly used as synonymous; that is, as meaning feasible, or capable of being done or accomplished. It is obviously in this sense that the word 'practical' is used in the instruction, and it could hardly be otherwise understood in the connection in which it is used. 49 C. J. 1309, 1310."

We can, therefore, give no steadfast rule for the exact position in which vehicles must be parked, under the statute quoted above, since the circumstances might vary with the condition of the highway at that point, and must resort to the statement that in each case it would be a question of fact whether the vehicle was parked "with its right side as near the right-hand side of the highway as practicable." If the condition of the highway or right-of-way is suitable for parallel parking, the vehicles should be parked in that manner.

As to your question whether angle parking may be prohibited by state authorities, we believe that to be fully answered by what has just been said, and fail to find any statutory authority permitting any state agency to specifically prohibit angle parking. Under the duties and powers of the State Highway Commission, we find:

"Sec. 8752. The commission shall:
(1) Have supervision of highways and bridges which are constructed, improved and maintained in whole or in part by the aid of state moneys, and of highways constructed in whole or in part by the aid of moneys appropriated by the United States government, so far as such supervision is consistent with the acts of congress relating thereto.
* * * "

Under this general authority, we believe that the State Highway Commission has power to direct that no use shall be made of any portion of the right-of-way which interferes with the use by the general public of the highway as a thoroughfare or which would obstruct or provide a hazard for the customary traffic. We do not believe that the Commission or any other agency, under the present laws, could arbitrarily prohibit parking in any area in which such parking did not interfere with or obstruct ordinary use of the highway.

Section 8361, R. S. Mo. 1939, referred to by you in your request, is as follows:

"It shall be the duty of the operator or driver of any vehicle or the rider of any animal traveling on the highways of this state to stop on signal of any member of the patrol and to obey any other reasonable signal or direction of such member of the patrol given in directing the movement of traffic on the highways. Any person who wilfully fails

or refuses to obey such signals or directions or who willfully resists or opposes a member of the patrol in the proper discharge of his duties shall be guilty of a misdemeanor and on conviction thereof shall be punished as provided by law for such offenses."

Your first question with reference to this section asks whether the Patrol may prohibit the parking of vehicles on the highways outside of cities or towns when such parking constitutes a traffic hazard. The only portion of the above section which might bear on this question is that portion requiring obedience to "any other reasonable signal or direction of such member of the patrol given in directing the movement of traffic on the highway," and here again we must resort to the question of fact as to whether or not an order given to the owner or driver of a parked vehicle to cease possible obstruction of traffic would be "reasonable." If such owner or driver was in fact obstructing the movement of traffic, then he should obey the order of the member of the Patrol to remove the vehicle so offending.

We find no provision in the laws permitting the Highway Patrol to post signs prohibiting parking or any other signs along the public highways. The State Highway Commission, under Section 8755, R. S. Mo. 1939, is authorized to erect proper markings, warning signs or danger signals. The pertinent portion of that section is as follows:

" * * * The commission is authorized to erect, or cause to be erected danger signals or warning signs at railroad crossings, highway intersections or other places along the state highways which the commission deem to be dangerous. * * * "

No penalty has been provided for failure to obey these warning signs. In *Roberts v. Wilson*, 33 S. W. (2d) 169, (Kansas City Court of Appeals), a stop sign erected at an intersection by the State Highway Commission under the above authority had been disregarded by the driver of a vehicle, and the court held that he was subject to no penalty, in the following language, l. c. 172:

" * * * There is no statute, so far as we know, requiring one to observe the warning implied in the stop signal, * * * ."

CONCLUSION

It is, therefore, our opinion that (a) vehicles not in motion should park with their right sides as near the right-hand side of the right-of-way as possible or practical; (b) that the term "highway" in the Motor Vehicle Laws includes the entire right-of-way; (c) that no agency is authorized to prohibit "angle parking" as such if the vehicle is as near the right-hand side of the highway as practical; (d) that a member of the Highway Patrol may direct the owner or driver of a vehicle to move his vehicle if same is an obstruction to the movement of traffic on the highways of the state, and (e) that the Patrol has no authority to post signs prohibiting parking along the public highways, nor could it institute criminal procedure against persons disregarding such signs.

Respectfully submitted,

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APPROVED:

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