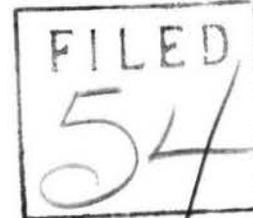


HIGHWAY PATROL:
PARKING CARS ON
SHOULDERS OF THE
HIGHWAY:

Highway patrolmen in performing their duties in regulating movement of traffic may prohibit parking on shoulders of highways, and persons so parking may be prosecuted for obstructing the highway, under Sec. 7932, R. S. Mo. 1929.

November 2, 1938

Honorable Edward V. Long
Prosecuting Attorney
Pike County
Bowling Green, Missouri



Dear Sir:

This is in reply to yours of the 25th wherein you request an opinion from this department based upon the following statement of facts:

"Please give me an opinion as to whether or not a member of the State Highway Patrol has the authority under section 8203-0, Laws of 1931, page 230, to forbid the parking on the shoulder and bank of a State Highway when in their opinion the parking of such a number of automobiles creates a traffic hazard. Would the placing of sign by them on the shoulder of said Highway saying, 'No Parking', be construed as a reasonable direction of the Patrol in regulating the movement of traffic. And if a person has parked on such shoulder in violation of this sign or instruction of the Patrol would he be guilty of a misdemeanor as provided in said section."

The State Highway Patrol Act, which is found in Laws of Missouri, 1931, page 230, in Section 12 thereof, sets out the duties of patrolmen, which are as follows:

"It shall be the duty of the patrol to police the highways constructed and maintained by the commission; to regulate the movement of traffic thereon; to enforce thereon the laws of this state relating to the operation and use of vehicles on the highways; to enforce and prevent thereon the violation of the laws relating to the size, weight, and speed of

commercial motor vehicles and all laws designed to protect and safeguard the highways constructed and maintained by the commission. It shall be the duty of the patrol whenever possible to determine persons causing or responsible for the breaking, damaging or destruction of any improved hard surfaced roadway, structure, sign markers, guard rail or any other appurtenance constructed or maintained by the commission and to arrest persons criminally responsible therefor and to bring them before the proper officials for prosecution. It shall be the duty of the patrol to cooperate with the secretary of state and the motor vehicle commissioner in the collection of motor vehicle registration fees and operators and chauffeurs licenses and to cooperate with the state inspector of oils in the collection of motor vehicle fuel taxes."

This section requires the patrolmen to regulate the movement of traffic on the highways and to enforce thereon the laws of the state relating to the operation and use of vehicles on the highways.

Your request is directed at those who park cars on the shoulders of the highways. The patrolmen desire to prohibit this parking and claim they have authority to do so by virtue of the provisions of the foregoing statute which authorizes them to regulate the movement of traffic and to enforce the laws of the state relating to the use and operation of vehicles on the highways.

We do not think that the State Highway Patrol Department would be authorized to make a rule prohibiting parking on the shoulders of the highways and file charges against a person who violates such rule, unless we have some penal statute which authorizes the punishment for the violation of a rule of the State Highway Patrol. In other words, the State Highway Patrol is only a ministerial body and it must look to the statute for its powers and duties. It is not a lawmaking body and therefore can not make rules or laws pertaining to the highways or the motor traffic of this state and prescribe a punishment for the violation of such rule or law.

In our research on your question we find a statute which we believe would be applicable to a case where cars were so parked on the shoulders of a highway that they obstructed and endangered the free passage of traffic thereon. We refer to Section 7932, R. S. Mo. 1929, which is in part as follows:

" * * * 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 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 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. * * *"

In the case of State v. Campbell, 80 Mo. App. 110, 113, the court in speaking of unauthorized obstructions to the highway, said:

"But any unauthorized or unreasonable obstruction of a highway which necessarily impedes or incommodes the use thereof, is a public nuisance at common law. Elliott on Roads and Streets, 476 and cases there cited. Bishop 's Crim. Law, sec. 531; Wharton's Crim. Law, sec. 1274. 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.

"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. Wood's Law Nuis., sec. 248; Wharton's Crim. Law, sec. 1473."

And in the case of State v. Turner, 21 Mo. App. 324, an indictment was found against a person based on the following clause, which is now in Section 7932, supra: "or shall obstruct said road or highway in any other manner whatsoever." As to an offense based on this clause, the court said, l. c. 326:

"Here, however, the statute creates no new offence, but merely enlarges an offence indictable at common law. 2 Bishop on Crim. Law, sect. 1273, note 6, and sect. 1284.

"If there was no statute on the subject, the indictment would have been good at common law. The State v. Appling, 25 Mo. 315; The State v. Rose, 32 Mo. 560.

"In view of the general rule that statutes should be construed with reference to the subject matter, the objects which prompted their enactment, and the mischief they were intended to remedy, the general clause in this statute should be construed as referring to any other obstructions of a highway indictable

at common law. It would be a forced and irrational construction to hold that the statute provided for the punishment of one, who, by throwing brush into the highway, partly obstructed the unlimited use thereof, and yet permitted one to go scathless who, by digging a pit therein, endangered the safety of the traveling public."

From the reasoning applied by the courts in the two foregoing cases, if a person parks his car on any part of the highway in such a manner that he partly obstructs the unlimited use of such highway to the traveling public, and as a result thereof endangers the lives and property of such travelers, then he has violated the provisions of said Section 7932, supra, which prohibits "obstruction of the highway in any other manner," and may be arrested and charged with the commission of such offense, and, if found guilty, punished as provided by said Section 7932, supra.

The State Highway Patrol Department, in the performance of its duties, may place "No Parking" signs on the highway, but the person violating such "No Parking" rule could not be prosecuted for such act because there is no statute providing for the patrolmen to make such a regulation, and there is no statute providing a penalty for the violation of such a rule even if the patrolmen would make the rule. However, if the facts justify it, that is, if such parking is such an obstruction that is prohibited by said Section 7932, supra, then the patrolmen may obtain the same results by proceeding under said Section 7932.

CONCLUSION

From the foregoing, it is the opinion of this office that the State Highway Patrol may not establish "No Parking" zones on the shoulders of the state highways and prosecute a person for the violation of such regulation. As there is no law that prohibits a person from traveling on the shoulders of the improved highways, an obstruction to such highway could

Nov. 2, 1938

be created not alone by stopping on the slab or improved part of the highway, but under some circumstances an obstruction to the free passage of the traveling public on the highway could be created by parking on the shoulders of such highway, especially on a curve or where there is a probability of the travelers having to travel on the shoulders of the highway under extraordinary circumstances. Therefore, if the parking of a motor vehicle on the shoulders of an improved highway would, under the foregoing circumstances, obstruct the traffic and endanger the free passage of the traveling public, then such person could be informed against by the patrolman or any other person having knowledge of such offense, charging them with the obstruction of the public highways as is provided by said Section 7932, supra, which is a misdemeanor and punishable by fine and/or imprisonment in the county jail.

Respectfully submitted

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. W. BUFFINGTON
(Acting) Attorney General

TWB:HR