

ROADS:  
DRAINS:

The willfull and knowing depositing of refuse in the side drainage ditches of a public road in sufficient quantities substantially to obstruct the water therein, regardless whether the road is damaged or the traveled portion thereof is obstructed, is a punishable offense under Section 229.150, RSMo 1949.



June 2, 1953

Honorable Leon McAnally  
Prosecuting Attorney  
Dunklin County  
Kennett, Missouri

Dear Mr. McAnally:

We render herewith our opinion based upon your request of May 14, 1953, which request reads as follows:

"I would like your opinion as to whether prosecution is authorized under Section 229.150 R.S. Missouri 1949 where individual by use of cans, bottles, dirt etc. dams up side ditch to public road without obstructing or damaging the public road itself."

The pertinent part of the statute to which you refer, Section 229.150, RSMo 1949, reads as follows:

"2. 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

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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."

We believe that this statute makes it a punishable offense to obstruct a side drainage ditch of a public road without any proof of damage to the road or obstruction of the traveled portion thereof.

The phrases "by obstructing the side or cross drainage ditches thereof" and "by throwing or depositing \* \* \* any refuse or debris whatsoever \* \* \* in the ditches thereof" modify both the word "damage" and "obstruct" used in the fore part of the quoted portion of the statute. Therefore, the statute defines two offenses, so far as the factual situation in your letter is concerned. They are:

"\* \* \* willfully or knowingly obstruct \* \* \* any public road by obstructing the side or cross drainage ditches thereof, \* \* \* or by throwing or depositing \* \* \* any refuse or debris whatsoever \* \* \* in the ditches thereof, \* \* \*;

"\* \* \* Willfully or knowingly \* \* \* damage any public road by obstructing the side or cross drainage ditches thereof \* \* \* or by throwing or depositing \* \* \* any refuse or debris whatsoever \* \* \* in the ditches thereof \* \* \*,"

A careful reading of the statute reveals that the word "road" as used in the phrase "obstruct or damage any public road" means something more than the traveled portion of the road, but means all that goes to make up a road, including the traveled portion, the shoulders, the side and cross drainage ditches and all that area within the lines established for the road. We concluded, therefore, that obstructing the road drains, they being a part of the "road" within the meaning of the statute, is prohibited by the statute.

#### CONCLUSION

It is the opinion of this office that the willful

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or knowing depositing of refuse in the side drainage ditches of a public road in sufficient quantities substantially to obstruct the water therein, regardless whether the road is damaged or the traveled portion thereof is obstructed, is a punishable offense under Section 229.150, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. W. Don Kennedy.

Yours very truly,

JOHN M. DALTON  
Attorney General

WDK:lw