

August 31, 1965



Honorable Paul McGhee
Prosecuting Attorney Stoddard County
16 North Elm Street
Dexter, Missouri 63841

Dear Mr. McGhee:

This letter is in answer to your request for an opinion of this office on three questions concerning Section 229.180 et seq. RSMo. Your first question is whether the measurement of the 200 feet mentioned in the statutes commences at the edge of the ordinarily traveled portion of the road or at the edge of the right-of-way of the road. Said section 229.180 reads as follows:

"No auto wrecking yard or junk yard shall be established, maintained or operated within two hundred feet of any state or county road in this state, unless such auto wrecking yard or junk yard is screened from said road by tight board or other screen fence not less than ten feet high, or of sufficient height to screen the wrecked or disabled automobiles or junk kept therein from the view of persons using such road on foot or in vehicles in the ordinary manner; provided, that nothing in this section shall apply to any auto wrecking yards, or junk yard located in any town, village, or city."
(emphasis supplied)

Sections 229.190 and 229.200 RSMo make violations of Section 229.180 a misdemeanor and provide for punishment for such violation.

Honorable Paul McGhee

The term "road" is ordinarily defined as the traveled or improved portion of the ground used for travel by pedestrians and vehicles, 37A "Words and Phrases", 503. In the case of State ex rel. vs. Public Service Commission, Mo., 100 SW2d 522, l.c. pages 525 and 526, the Missouri Supreme Court stated, "A road or a highway is nothing more than a strip of ground set aside, improved and dedicated to the public for use as a passageway." It is clear from the context of Section 229.180, supra, that the term "road" as used therein means the traveled portion of such strip of ground.

It is our view that the cited statute uses the term "road" in its commonly understood application, so that the statute prohibits the maintenance of a junkyard within 200 feet of the edge of the traveled portion of a road.

Further, Section 229.180 is a penal statute, and should therefore be strictly construed against the State. Borden Company v. Thomason, Mo., 353 SW2d 735.

Your second question is whether a police officer can legally enter upon the premises of a junkyard to measure the distance to a road without the consent of the owner of the premises.

The law does not require a search warrant or special permission for an officer to enter a place of business to which the public is invited. 79 C.J.S., Searches and Seizures, Section 65, p. 829. While lawfully upon the premises, an officer would not be violating any rights of the owner by taking measurements.

The court stated in Application of Zerga, Petitioner, 218 F.Supp. 759, 761 (U.S. Dist. Court, N.Y., 1963):

"[2] The propriety of the officers' entry into the candy store was well established. The store was a public place. The events took place in broad daylight, shortly before noon, apparently during normal business hours. This is shown by the easy access of the four unknown males and of the officers. It is clear that the premises were open to the public, and there is neither claim nor evidence to the contrary. Moreover, the

Honorable Paul McGhee

officers entered in good faith to investigate further, not, as petitioners urge, to arrest and search. Patrolman Kennelly intended to arrest only if the circumstances, disclosed by the investigation, warranted it."

Your third question is whether an injunction suit, brought by the prosecuting attorney against persons maintaining and operating junkyards in violation of the above statutes will lie. We enclose a copy of the opinion of the Attorney General, dated February 14, 1964, to Charles P. Moll, which addresses itself to this inquiry.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

DLR/sj/aa

Enclosure