



JOHN C. DANFORTH
ATTORNEY GENERAL

OFFICES OF THE
ATTORNEY GENERAL OF MISSOURI
JEFFERSON CITY

May 10, 1974

OPINION LETTER NO. 201

Honorable Michael L. Shortridge
Prosecuting Attorney
Texas County, Courthouse
Houston, Missouri 65483

Dear Mr. Shortridge:

This is in response to your recent opinion request regarding an interpretation of Section 229.150, RSMo. Your questions are as follows:

- "a) Whether a person may be prosecuted under Section 229.150 RSMo 1969 with a fact situation as stated in No. 4, infra?
- b) Whether the Township Road Board may seek a permanent injunction in a fact situation as stated in No. 4, infra?
- c) If the answer to 3(a) and 3(b) is in the negative, what, if anything, may be done to resolve this dilemma?"

You state that a landowner has constructed a levee on his property and that an adjacent township maintained road and adjacent land owned by other persons are inundated when there is a heavy rainfall.

Section 229.150, RSMo 1969, provides 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.

Honorable Michael L. Shortridge

"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 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."

From the facts you have given us, it is our view that the holding of the Missouri Court of Appeals, Kansas City District, in Camden Special Road Dist. of Ray County v. Taylor, 495 S.W.2d 93 (1973), is applicable.

In the Camden case the court held that a landowner may ward off surface water, even though in doing so he damages his neighbor under the "common enemy doctrine" and that the doctrine applies solely to surface water in its natural diffused state and not to water which has been artificially collected and accelerated in volume. It is our understanding that the surface water about which you inquire is not unnecessarily collected or discharged.

Honorable Michael L. Shortridge

The court held that Section 229.150 did not abrogate this "common enemy doctrine" and that such a landowner was not in violation of such statute.

Under the Camden ruling there appears to be no legal action available to the township against the landowner for inundating the road in such a manner.

As regards the rights of adjacent landowners, we believe that we cannot rule on their rights because the question of whether or not such private persons have a legal remedy must be left to the determination of private counsel.

This letter is based on the precise fact situation set out above and a different fact situation might well compel a different answer.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General