

Opinion No. 52-5506

March 5, 1952

BY: JOE L. MARTINEZ, Attorney General

TO: Mr. B. G. Dwyre State Highway Engineer Santa Fe, New Mexico. Attention J. A. Kennedy Traffic & Safety Director File E-2 Advertising Signs

{*218} This is in reply to your inquiry of February 26th concerning the protests made by certain of the residents of Santa Fe along the Las Vegas Highway who made objection to the action of the Department in removing certain directional signs placed on the highway right-of-way.

There are several sections of the statutes regulating highways and their use by the public. Under Sec. 68-803 New Mexico Statutes Annotated certain prohibitions are supplied for other than official signs. This section states:

"No unauthorized person shall erect or maintain upon any highway any warning or direction sign, marker, signal or light in imitation of any official sign, marker, signal or light erected under the provisions of this act, and no person shall erect or maintain upon any highway any traffic or highway sign or signal bearing thereon any commercial advertising, provided nothing in this section shall be construed to prohibit the erection or maintenance of signs, markers, or signals bearing thereon the name of an organization authorized to erect the same by the state highway commission or any local authority as defined in this act."

Section 58-709, N.M.S.A. 1941 states:

"No person shall place, erect or maintain any advertising sign, signboard or device of any character upon the right-of-way or right-of-way fences of any public highway within the state outside of the limits of any incorporated city, town or village."

Section 58-712 NMSA 1941 states:

"All such advertising signs, signboards and devices which are placed, erected or maintained in violation of the provisions of this act at a time more than sixty (60) days from and after the date when this act becomes effective shall be deemed and considered to be public nuisances and may be summarily removed by any member or employee of the state highway commission."

The provisions of the three sections quoted give adequate authority to the State Highway Department to clear away all unauthorized {*219} signs upon the highway right-of-way.

There is in addition to our state statutes a further provision of law found in our Federal Aid to Highways Act of 1944, which is found under Title 23 of our United States Code under "Highways", in Chapter 1, dealing with Public Roads Administration, Section 1.18 entitled "Traffic Signs and Signals" (a):

"All signs and traffic-control devices and other protective structures, whether paid for from Federal or other funds, erected on or in connection with highways or structures on which Federal funds are expended shall be in conformity with such manual or uniform traffic-control devices as may be adopted by the American Association of State Highway Officials, approved by the State Highway Department, and concurred in by the Commissioner.

"(b) The rights-of-way provided for Federal-aid highway projects shall be held inviolate for public highway purposes and no signs (other than those specified in paragraph (a) of this section), posters, billboards, roadside stands or other private installations shall be permitted within the right-of-way limits."

If there is any doubt as to the authority of the Highway Department under the two state statutes to remove any unauthorized signs from the highway right-of-way the authority is clearly and certainly given in the Federal law above quoted.

The failure of the Highway Department to comply with this requirement of the statute last quoted would jeopardize the right of the State of New Mexico to highway aid funds.

I trust that this will answer your inquiry fully.