

Opinion No. 58-99

May 16, 1958

BY: OPINION OF FRED M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Mr. Robert L. Guice, Administrative Officer, State Soil Conservation Committee, P.
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QUESTION

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Do existing laws, federal or state, prohibit soil conservation districts placing boundary signs on highway rights of way?

CONCLUSION

Yes, but see opinion.

OPINION

ANALYSIS

Reference is here made to a legal memorandum submitted to this office by Mr. Hadley Kelsey, Special Assistant Attorney General, in the Legal Section of the State Highway Commission.

Although the question refers to "existing laws" prohibiting the same, this office is required to include as though in that category rule and regulation which the State Highway Commission is authorized by law to make. Obviously, while such rule and regulation, if valid, is required to be observed, it does not constitute "law" in its usual sense.

First, referring to pertinent laws of the State of New Mexico, we find in Sec. 55-2-8, entitled "General charge and supervision of highways - Rules and Regulations" which provides:

"The State Highway Commission shall have general charge and supervision of all highways and bridges in the state which are constructed or maintained in whole or in part by the aid of state moneys . . . and such other rules and regulations as they may think necessary to carry into effect the provisions of this article".

Again in Section 55-2-29:

"The State Highway Commission shall have full control over all roads designated by the said Commission as state highways or created as state highways by acts of the Legislature . . ."

A reading of the above makes quite obvious that the State Highway Commission has the authority within its own discretion to grant or refuse permits such as are here referred to. Hence, it is the opinion of this office that on a road over which the State Highway Commission has exclusive jurisdiction without regard whatsoever to obligations incurred to another governmental agency, the Highway Commission can grant or refuse permission to post signs.

On such highways, the State Soil Conservation Committee can make application subject to the discretion of the Highway Commission.

Coming now to those roads in which the Federal Government participates, we have a different situation. The State Highway Commission is bound by its commitments to the Federal Government when it accepts Federal aid on its projects. Pursuing this matter further, we find in "Regulations for Administration of Federal Aid for Highways", effective February 21, 1957, Sec. 1.11, subsection "c", the following:

"The rights of way provided for Federal aid highway projects shall be held inviolate for public highway purposes. No project shall be accepted as complete until all encroachments have been removed from the right of way. No signs (other than traffic signs and signals) . . . shall be permitted within the right of way limits: . . ."

Hence, we are driven to the conclusion on roads wholly or partially built with Federal funds, the State Highway Commission is required, by agreement, to observe the rules and regulations of the Federal Government anent the posting of signs. In these instances, the Highway Department may not grant a sign permit in violation of federal rule and regulation.