

## Opinion No. 16-1857

August 7, 1916

**BY:** H. S. CLANCY, Assistant Attorney General

**TO:** Mr. C. W. White, Rana, New Mexico.

**Obstruction of public roads.**

### OPINION

{\*413} Replying to your letter of the 4th instant, I have to say that Section 2638 of the Codification of 1915 declares "all post roads {\*414} over which mails of the United States are carried, to be public roads", and Section 2701 makes it a criminal offense for any person to erect a fence across any public highway. Section 2698 makes it an offense "to, in any manner obstruct any public road in this state by putting therein or thereon any obstruction whatsoever." A gate is an obstruction to a road, and a person may be prosecuted for erecting one across any public road, unless such public road happens to run through property which has been sold or leased by the State of New Meico. However, if a person erects a gate upon a road over which the United States mails are carried, they can also be prosecuted under the laws of the United States for obstructing the mails. I believe if you will call the attention of the owners of these gates to the fact that they are liable to prosecution under both the State and the United States laws, that they will remove the obstruction and in case they do not, you should report the matter to the Postmaster General at Washington, D. C., who will undoubtedly communicate with the Department of Justice and that department, through the United States Attorney for the District of New Mexico, will probably look into the matter with a view to instituting criminal proceedings.