

OPINION
46-129

February 13, 1946 (OPINION)

HIGHWAYS

RE: Obstructions

This office is in receipt of your letter of February 11, 1946, in which you say:

This department has been experiencing considerable difficulty, especially with the advent of heavy snows, as the result of parking upon the highways. Not only is such a practice hazardous to the driving public, but it also increases the hazard and cost of snow removal. Furthermore, by parking a vehicle upon the highway, it provides an obstruction around which the snow quickly forms a drift."

You request the opinion of this office as to what action should be taken to stop the practice of parking motor vehicles on the highway.

In the first place, the owner or operator of a motor vehicle who willfully parks on the state highways should be made aware that in case of collision which such parked motor vehicle he would unquestionably be found civilly liable for any damages or injury sustained by anyone driving upon the highway. And in view of the well known hazards of obstructions on highways, it is probable that the operator of a parked vehicle would not only be found guilty of gross negligence in case of an accident but would also be criminally liable.

Section 24-1207, of the Revised Code, provides that: "Any person who shall obstruct any public highway in any manner with the intent to prevent the free use thereof by the public--shall be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred dollars. He also shall be liable for all damages to person and property resulting from such act."

It may be argued that a person who, because of the condition of side roads, parks his automobile or truck upon the highway, does not do so with the intent to obstruct or to prevent the use thereof by the public. Section 24-1207, of the Revised Code, has been on the statute books of North Dakota since 1889, and it may be admitted that the original intent and purpose of this law did not apply to parked vehicles. But said section must now be interpreted in the light of present-day conditions and in the light of the intent of the legislature when embodied into the Revised Code of 1943. When one willfully parks his automobile or truck on the highway, well knowing the danger and hazard thereof to the traveling public, his act in so doing might consistently be construed as willful intent.

Under the provisions of section 24-0211, of the Revised Code, the state highway commissioner has the authority, and it is his duty, "to regulate the use--of highways or any part thereof,--by persons and vehicles, and to do such other things as shall be necessary at all

times to provide and furnish the people of this state full and complete use of such highway system with due regard for public safety and the general public well-being."

It is my opinion that, in the interest of public safety, the state highway commissioner may prohibit the use of highways for parking and may declare vehicles willfully parked thereon, highway obstructions. Such declaration or ruling by the state highway commissioner should be given full publicity in the newspapers and on the radio.

Section 39-1022, of the Revised Code provides:

"No person shall park or leave standing any attended or unattended vehicle upon:

1. * * *
2. Any highway unless a clear and unobstructed width of not less than fifteen feet shall be left for the free passage of other vehicles upon the main traveled portion of such highway opposite such standing vehicle; nor
3. Any highway unless a clear view of such vehicle may be obtained from a distance of two hundred feet in each direction upon such highway.

If any peace officer finds a vehicle standing upon a highway in violation of the provisions of this section, he may move it or require the driver or person in charge thereof to move it to a position permitted by the provisions of this section, but such provisions shall not apply to the driver of any vehicle which is disabled while on the paved or improved or main traveled portion of a highway in such a manner and to such an extent that it is impossible to avoid stopping and temporarily leaving such vehicle in such position."

The penalty for violating the provisions of section 39-1022 is found under section 39-0706, of the Revised Code. It provides:

"Any person violating the provisions of this title for which another penalty is not provided specifically, upon conviction, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than twenty days,----."

I also direct attention to the provisions of section 39-1119, of the Revised Code, which provides:

"Whenever a motor vehicle is parked or stopped upon a highway, whether attended or unattended, during the time mentioned in section 39-1101, there shall be displayed thereon one or more lamps projecting a white light visible under normal atmospheric conditions from a distance of five hundred feet to the front of such motor vehicle and projecting a red light visible under like conditions from a distance of five hundred feet to the rear, except that local authorities may provide by ordinance that no lights need be displayed upon any such motor vehicle

when parked upon a highway in accordance with local ordinances, where there is sufficient light to reveal any person within a distance of two hundred feet upon such highway."

Section 39-1101 requires that: "During the period elapsing from one-half hour after sunset of each day to one-half hour before sunrise of the following day, and at any other time when there is not sufficient light to render clearly discernible to any person on the highway at a distance of two hundred feet ahead, every motor vehicle upon a highway, except as otherwise provided in section 39-1119, ---" sufficient lights shall be displayed.

Failure to comply with the provisions of section 39-1101 and 39-1119, of the Revised Code, is punishable as provided in section 39-0706 of said code.

NELS G. JOHNSON

Attorney General