

# Highway Encroachments in New Jersey

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THE encroachments with which the New Jersey State Highway Department is confronted consist of three general types, as follows: (1) fixed objects; (2) movable objects; (3) unauthorized works within highway rights-of-way.

## Fixed Objects

The classification of fixed objects covers a wide range of structures. The most numerous, however, are the advertising signs. These vary from a small, cheap, home-made affair to one consisting of a steel frame structure set on a concrete foundation, brilliantly lighted. Much less numerous but still somewhat of a problem are gasoline pumps, produce stands of varying extent, "hot dog" stands, and other miscellaneous small structures housing roadside commercial activities. Least numerous but most serious are large permanent buildings, both business and residential, many of which are unquestionably of long standing.

## Movable Objects

In the classification of movable objects, signs are again the most numerous. This type of encroachment is particularly difficult to deal with as it can be eliminated today and recur tomorrow. Although these numerous signs constitute a great problem in this category, they are by no means the most objectionable. Particularly in the agricultural areas approaching the resort sections of the New Jersey seashore, serious traffic conditions are created by itinerant vendors who park their trucks along the highway and display their wares even out to the paved surface of the highway. Motorists stopping to patronize these vendors cause traffic jams and endanger their own lives as well as the lives of other motorists.

Another serious problem arises from the itinerant ice cream vendor who parks along the highway and vends his wares to the motoring public. This type of encroacher has the backing of a large organization with a powerful lobby and hides behind a claimed privilege due to veteran status. Equally objectionable are the fund-raising campaign activities of rural volunteer firemen, first aid squads, and other community organizations.

## Unauthorized Work Within Highway Rights-of-Way

Although unauthorized work within highway rights-of-way is not at present actively a part of the encroachment abatement campaign, it is one which is recognized and with which it is proposed to deal after the other stages have been completed. The New Jersey Highway Department has definite rules and regulations covering performance of work within the highway right-of-way and quite thoroughly enforces the obtaining of permits issued for such work by abutting property owners. The great difficulty, however, is in obtaining compliance with the terms of the permit. The result is that in many cases the appearance of the highway is seriously compromised; in others, necessary or desirable appurtenances are destroyed or interfered with.

Unfortunately, these problems do not always arise with irresponsible individuals, but not infrequently with large, responsible commercial organizations, which should be above such practices. Perhaps, however, it is fair to say that in the latter case there are frequently definite clashes of opinion between the Department and these firms as to the propriety and reasonableness of the Department's rules and regulations.

## LEGAL BACKGROUND

The legal background for coping with the various encroachments is as follows.

Title 27 of the Revised Statutes of New Jersey deals particularly with highways. Under 27:7-1, referring to State Highways in general, "work" is defined in part as "... the laying out, opening, construction, improvement, repair and maintenance of highways

and removal of obstructions and encroachments from adjoining sidewalks; . . . removal of obstructions to traffic and to the view." Thus, there is a definite duty placed on the Highway Department to deal with encroachments.

Chapter 5 of Title 27 deals with advertising along highways, as follows:

27:5-1. Advertising on highways and private property prohibited; penalty

Whoever shall paint or place upon, or in any manner affix to, a fence, structure, pole, tree or other object which is the property of another, whether within or without the limits of a public highway, or maintain thereon any words, device, trade-mark, advertisement or notice not required by law to be posted thereon, without first obtaining the consent in writing of the owner or tenant of the property, or of the body having control of the highway if placed on a highway, shall, upon complaint of the owner or tenant, or of any police officer or other person, be liable to a penalty of twenty-five dollars upon conviction in the municipal court of the municipality wherein the violation occurred. If consent is obtained that fact shall be stated on the advertisement or notice.

This chapter shall not apply to cautionary signals or signs, or directional signs or notices erected on or along a highway by the body having control or by its consent.

27:5-2. Duty of State Police

Every subordinate officer or member of the Department of State Police shall report to the superintendent, or to any deputy or assistant superintendent of the State Police, any violation of section 27:5-1 of this title so far as it relates to public highways within the territory patrolled by him outside of municipalities having an organized police force. Thereupon, the superintendent of the department of state police, or a person designated by him, shall notify the person violating said section 27:5-1 to abate the nuisance forthwith. If the notice is not promptly complied with, suit shall be commenced for the penalty herein prescribed in the name and for the use of the state.

27:5-3. Duty of municipal police

The subordinate officers of the police force of every municipality having an organized police force, shall report to the chief of police of such municipality every violation of section 27:5-1 of this title so far as it relates to public highways within the municipality. Thereupon the chief of police or a person designated by him, shall notify the person violating said section 27:5-1 to abate the nuisance forthwith. If the notice is not promptly complied with, a summary proceeding shall be commenced for the penalty in the name and for the use of the municipality in accordance with The Penalty Enforcement Act Law (N. J. S. 2A:58-1 et seq.)

27:5-4. What constitutes a nuisance

Any word, device, trade-mark, advertisement or notice painted, placed, affixed or maintained within the limits of a highway in violation of the provisions of section 27:5-1 of this title, shall be a public nuisance.

At first glance, these portions of the statute would seem to be a convenient and expeditious instrument for dealing with signs. In actual practice, however, the Department has been unable to obtain any enforcement by either local or State Police.

Title 2A Revised Statutes—Disorderly Persons Act

Another statute which could be applied to the sign problem is contained in Title 2A of the Revised Statutes, known as the Disorderly Persons Act.

"Title 2A:170-67: Any person who erects within the limits of any state highway, county public road or municipal street or road any sign or encroachment without first having obtained permission to do so from the state highway commissioner, board of chosen freeholders or the municipality, as the case may be, is a disorderly person."

The penalty under this Act is as follows:

"Title 2A:169-4: General Penalty: Except as otherwise expressly provided a person adjudged a disorderly person shall be punished by imprisonment in the county workhouse, penitentiary, or jail for not more than 1 year, or by a fine of not more than \$1000 or both."

The provision of law which is actually being used in the encroachment removal program, however, is found in Title 27 of the Revised Statutes, as follows:

Title 27:7-44.1. Consents, grants and franchises affecting highways; approval of commissioner; removal of encroachments; penalty for violation.

No consent, grant or franchise affecting any portion of a state highway, or of any road included in the state highway system, shall be given for the construction of a railroad or street railway thereon except upon approval of and under conditions acceptable to the Commissioner; nor shall any person enter upon or construct any works in or upon any state highway, except under such conditions and regulations as the commissioner may prescribe. Whenever any encroachment may exist without warrant of law in any road when taken over as a state highway, the commissioner shall notify the attorney general, who shall proceed to cause the same to be removed as by law provided.

Any person guilty of any violation of this section shall be liable to a fine not exceeding one hundred dollars for each such day's violation, and the costs of prosecution, to be recovered by a civil action in the name of the state before any court of competent jurisdiction by the commissioner. Said fines shall be paid into the state treasury to the credit of the funds available for construction, maintenance and repair of roads.

Any such violation may be removed from any state highway as trespass by civil action filed by the commissioner in the Superior Court. The court may proceed in the action in a summary manner or otherwise.

It should be noted that the present campaign for the abatement of encroachments is not the first undertaken by the Department. In 1942, and again in 1947, campaigns were undertaken on a different basis which had some desirable results and some undesirable ones. In both cases, the basis used was a request for cooperation by the public and was handled by Department personnel.

Out of a listed 7, 438 encroachments in the 1942 campaign, there were actual abatements of 3, 627.

The 1947 campaign was state-wide only insofar as major oil company identification signs, and billboards were concerned. Routes 1 to 4 inclusive were surveyed for miscellaneous privately-owned signs by individuals or corporations. The program was dropped owing to pressure of routine work and lack of personnel to carry on the work of encroachment abatement.

The undesirable result, however, was a feeling by many persons that the Department had let them down by not enforcing compliance on the part of recalcitrant encroachers.

This time, therefore, it was decided to follow the law; first, however, giving notice to the encroacher through the Deputy Attorney General assigned to the State Highway Department.

To furnish the basic information for the notices, three glaring encroachments in

each of the state's 21 counties were selected. Commissioner then wrote each member of the Legislature a letter, as follows:

"Dear Senator: (or Assemblyman:)

"As I travel over our State Highways I have been increasingly impressed with the hazards created by numerous encroachments on our right-of-way.

"It is really amazing to note the extent to which some of these people have gone in their total disregard of the law and the people's rights.

"We are at this time instituting proceedings against a few of the most glaring cases and expect to follow up with a clear-cut attack on all encroachments. My purpose in apprising you of our plans is that I anticipate some of these people will, for selfish personal gain, try to impose upon you to intercede for them. I hope I may count on your full support in our attempt to clean up the many sores that have accumulated over a period of years.

"We expect to have a few 'rough' months as the interests behind the more glaring encroachments start working on us. However, I have every expectation it will not be long before the majority of encroachers will voluntarily move off the state's property."

The response to these letters was almost universally favorable. In addition, information was released to the press in connection with the proposed campaign.

To furnish the necessary information for the Deputy Attorney General's letter, two survey parties were sent into the field to determine and report on the location, character, amount of, and name of the property owner responsible for the encroachment.

The field reports are submitted to the Bureau of Maintenance office for editing as to right-of-way widths and other details.

Six copies of the field report are made. Three are given to the Deputy Attorney General, who, in turn, notifies the person maintaining the encroachment to abate and specifies the time of abatement as 30 days from the date of his letter. Three copies of this notice are forwarded to the Maintenance Bureau, one of which is sent to the Maintenance Foreman in charge of the section wherein the encroachment is located, and one copy to the Inspector of Highway Permits; one remains in the Maintenance Bureau file.

The copy sent to the foreman has typed on it a request to the foreman to notify the Bureau of Maintenance at the end of the deadline period whether or not the encroachment is abated. When the report comes in from the foreman, stating whether or not the encroachment has been abated, this information is noted on the Maintenance Bureau file. If abated, it is noted on a master sheet. The foreman's report is then forwarded to the Deputy Attorney General. All abatements are marked off in red on the master copy of the list retained in the Maintenance Bureau office.

The field sheets are numbered numerically. Correspondence is filed by route in separate folders, and alphabetically in the route folder. The work sheet numbers are entered on all correspondence, thus providing a cross reference.

The Deputy Attorney General, in his original notice, requests that the encroacher notify him of his intentions. If this is not done, approximately 15 days from the date of the original letter a follow-up letter is sent out.

All requests for extension of time must be directed to the Deputy Attorney General by letter. If he deems the request reasonable, the extension is granted by letter. One copy of this letter is sent to the foreman with a request to report as to the status of encroachment at the end of the extended period, and again the Deputy Attorney General is advised.

If the foreman reports that an encroachment has not been abated, the Deputy Attorney General sends a letter advising that inspection has been made and that an encroachment still exists. In this letter he requests that he be notified as to what is being done and states that unless reply is made, legal action will be instituted without further delay.

All letters received by the Deputy Attorney General requesting further details of encroachments are referred to the Bureau of Maintenance. The information requested is

furnished by the bureau in a memorandum to the Deputy Attorney General, who transmits it to the person making inquiry.

Although this outlines the general procedure, there are, of course, many instances where persons notified request further information or a meeting on the ground with Department personnel. Such instances, of course, must be handled in accordance with the circumstances and possibly at a variance with the normal routine procedure.

As of January 11, 1956, 1,483 notifications had been sent. Of these, 864 recipients had removed and 272 others had taken steps to remove the encroachment. Only 347 failed to reply.

None of the persons involved have questioned the Department's legal right to have the encroachments abated. There are, however, many requests for extensions of time to permit compliance. Upon advice from the encroacher that he is endeavoring to procure the services of a sign mover and is endeavoring to cooperate, a reasonable extension is granted.

Surveys made to date indicate that state-wide there ultimately may be found as many as 20,000 violations.

Up to the present, efforts have been concentrated on portions of the state highway system where the record as to the right-of-way is clear and not subject to doubt or controversy. Ultimately, however, it will be necessary to meet head-on questions of location and width between right-of-way lines on portions of the state highway system where the record is in many cases far from clear. Some of the highways involved were laid out in the late 1600's and practically none of them later than the early 1800's. It seems probable that not too much difficulty will be experienced with minor types of encroachment, but vigorous resistance may be expected in the case of large business and residential structures where large expenditures are involved in abatement.

The foregoing covers practically every case but that of the itinerant vendor or solicitor of funds. This group comes under the scope of that of Title 39 of the Revised Statutes covering Motor Vehicles and Traffic Regulations.

#### 39:4-60. Soliciting trade or contributions prohibited

No person shall stand in the roadway of a highway to stop, impede, hinder, or delay the progress of a vehicle for the purpose of soliciting the purchase of goods, merchandise or tickets, or for the purpose of soliciting contributions for any cause, and the only question of law and fact in determining guilt under this section shall be whether goods, merchandise or tickets were tendered or offered for sale, or whether a contribution was solicited.

In addition to the prohibition contained in the first paragraph of this section: whenever in his judgment the public safety so requires, the Director of the Division of Motor Vehicles may, by regulation, designate any highway as a location wherein the standing of any person or the parking of any vehicle for the purpose of soliciting the purchase of goods, merchandise or tickets, or for the purpose of soliciting contributions for any cause, is deemed hazardous or inimical to the proper flow of traffic and shall be so prohibited. Each highway or section thereof so designated shall be clearly marked by appropriate signs which shall be erected and maintained by the authority having the responsibility for the maintenance of such highway, upon receipt by such authority of written notice from the director of the adoption of such regulation. No person shall stand in, and no operator shall allow a vehicle to stand in, any section of a highway so designated and marked to stop, impede, hinder or delay the progress of a vehicle for the purpose of soliciting the purchase of goods, merchandise or tickets, or for the purpose of soliciting contributions for any cause, and the only question of law and fact in determining guilt under the section shall be whether goods, merchandise or tickets were tendered or offered for sale, or whether a contribution was solicited. Whenever in his judgment the public safety so requires the Director of the Division of Motor Vehicles may, by regulation, amend or alter any designation made by him pursuant to the provisions of this paragraph. Nothing contained in this paragraph shall be construed to

authorize or permit any person to stand in or to allow a vehicle to stand in any highway where the same is or shall be prohibited by any other provision of this Title or by any amendment thereof or supplement thereto; or by any ordinance, resolution, regulation or order duly adopted pursuant to authority thereunder.

The difficulty with this statute arises because of the definition of the word "roadway," which occurs in the first sentence. In the bill as originally introduced the word "highway" was used instead of "roadway," but the substitution was made before passage and approval.

39:1-1 contains, among other definitions, the following:

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

"Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways the term "roadway" as used herein shall refer to any such roadway separately, but not to all such roadways collectively."

Berm and shoulder are also defined in such a manner as to make this provision of law practically unenforceable. The only relief for this situation seems to be the amendment of the present law. The amendment of this act is highly desirable by reason of the unsatisfactory traffic conditions created by the terms of the present act.

There is, furthermore, much criticism and protest from the owners or operators of roadside enterprises conducted entirely on private property and whose establishments are set up in conformance with the Department's rules and regulations. It is claimed that this itinerant competition is grossly unfair in that the itinerant may and many times does park his vehicle in the immediate vicinity of the legitimate operator and competes with him on a decidedly unfair basis.