

ON THE ROAD

By Norm Bowers, Local Road Engineer

Removing Obstructions

It seems like many adjacent landowners do not consider roadway safety and do things on road right-of-way that are hazardous to traffic. The most common obstructions are crops, culvert headwalls, monument mailboxes, hay bales, farm equipment, junk cars, and electric fences next to the road.

Counties have a duty to construct and maintain public roads reasonably safe for use by motorists. We understand that objects close to the road can cause damage to errant vehicles and injury to the driver and occupants. We are careful in our maintenance and construction to make roads safer. We avoid building rigid objects such as headwalls close to the road, and if that cannot be avoided we may install guardrail and at least provide proper signing to warn the driver. Land owners should also consider traffic safety when they work on road right-of-way.

KSA 68-115 states that the county and the township “shall keep the same in repair, and remove or cause to be removed all obstructions that may be found therein.” An obstruction does not have to block the road; almost anything that could block sight distance, or cause damage if hit is an obstruction. In 1928 the Supreme Court of Kansas (126 Kan. 81) determined that a sign 20 by 14 inches, 6 feet above ground, extending 8 or 9 inches over the highway right-of-way line is an obstruction that can be removed by the county, and were of the opinion the board of county commissioners has the right to remove any and all obstructions from the public highway.

Farming of the right-of-way is fairly common; you might wonder if farm crops are an obstruction. In 2000 the Supreme Court of Kansas (268 Kan. 432) stated that Kansas case law dating back to the late 1800s establishes a well-articulated principle of law that where there is an obstruction across a public right-of-way which obstructs the travel of an individual, the obstruction is a nuisance per se, and the affected individual may remove the obstruction by way of abatement. The court found that wheat growing in the public right-of way was

an obstruction and a nuisance per se. If a small sign extending 9 inches over the right-of-way line is an obstruction, and farm crops are an obstruction I think it is fair presumption to conclude that large hay bales, electric fences, culvert headwalls, rigid mailboxes and trees are all obstructions that could be removed by the county. See Figure 1 below for an example of a rigid mail box violation, and Figure 2 for an example of vehicle obstructions.



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Figure 1. A nice looking \$2000 traffic hazard



Figure 2. Inoperable vehicles. No Parking signs may be needed to prevent parking next to the road.

Theoretically we should not have a problem with landowners installing obstructions on the right-of-way. KSA 68-545 clearly states written permission is required from the county or township prior to performing work on the right-of-way:

“68-545. Unlawful obstructions, excavations, removal of materials, dumping trash or other materials or plowing of roads; penalty; payment of cost to restore. It shall be unlawful for any person or persons to obstruct any portion of a public highway, including any portion of the entire right-of-way, in any manner with intent to prevent the free use thereof, or to make any holes therein, or to remove any earth, gravel or rock therefrom or any part thereof, or in any manner to obstruct any ditch on the side of any such highway and thereby damage the same, to dump trash, debris, sewage, or any other material, on any highway or any ditch on the side of any highway, or to plow any public highway for the purpose of scouring plows, or for any other purpose except for the improvement of such highway and as directed in writing by the county engineer and the township board of highway commissioners acting jointly. Any person or persons violating the provisions of this section shall be guilty of a misdemeanor, and upon conviction before any court having competent jurisdiction shall be fined for each and every offense under this act in the sum of not more than \$200, and shall pay costs of the action and the cost of cleaning the public highway and restoring it to its prior condition.”

Clearly road departments are in the business of keeping the roads in repair and removing obstructions. Should a land owner ask permission to install a unnecessarily hazardous obstruction we would not give permission. But what do we do if someone installs an obstruction, without permission as required by law? Although the land owner will be unhappy with us, we obviously have the authority, and perhaps the duty, to remove the obstruction. Installing the obstruction is a criminal act, a misdemeanor, but likely our aim is not prosecution, but removal of the obstruction and restoration of the right-of-way. See Figure 3, pictured below, for an example of a traffic hazard on a right-of-way.



Figure 3. An unauthorized traffic hazard on the r/w.

First, you need to make a decision if this matter is important enough to invest your time. Do not start something unless you are going to finish it. Few things are worse than backing down to an unhappy property owner when you are right and they are wrong but mad.

Obstructions in the road, blocking sight lines at intersections, or otherwise an immediate threat to public safety should be removed at once by the county crew. For obstructions that are not an immediate threat to traffic safety, the owner should be given an opportunity to remove his property and/or restore the road. The initial contact with the owner is usually a phone call notifying the owner he installed a traffic hazard in the right-of-way, that for public safety it needs to be removed. I would suggest you give the owner a reasonable time to remove the obstruction. Tell him that after that time you will remove it and send him a bill, or perhaps you will just file a complaint with the county attorney.

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If the land owner objects to removing the obstruction you should suggest he talk with his insurance company to make sure he is insured for illegally installing traffic hazards in front of his property. If the land owner does not remove the obstruction in the stated time period, you could follow up with a demand letter stating the same things as in the phone call. Then if the land owner does not respond you do exactly what you said you would do in the letter.

If we do remove an obstruction from the right-of-way we need to consider if the material has any value. For instance, large hay bales may have some value, and we should probably just push them off the right-of-way, not remove and sell them. See Figure 4 below for an example of hay bales as an obstruction.



Figure 4. Bales block sight distance and obstruct maintenance operations.

Sometimes an obstruction is accidentally damaged by the county. We need to avoid using public funds to repair a traffic hazard, even if we damaged it. If we repair an obstruction we are perpetuating a traffic hazard. We are supposed to remove traffic hazards, not perpetuate them. A good example would be the headwall in Figure 5, pictured below. If we replaced the culvert because it was rusted out, we would not replace the headwall. Another common example is a monument mailbox that might be damaged by a mower or snowplow. We would decline to repair the mailbox, and might offer to replace it with a standard mailbox. This might cause some hard feelings with the landowner, but our duty is to the travelling public.



Figure 5. Headwalls are a hazardous obstruction



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Farming the right-of-way has become more common in the last 50 years and needs special mention in this article. Crops, especially when they restrict sight distance at an intersection, are a major issue. It is a common legal principle that every person is expected to know where their property line is located. A landowner that farms close to the road is aware that he is over the line and farming right-of-way. I tell people when you are mowing, do not mow around crops. Don't send your mower out looking for crops, but if the policy is to mow 10 feet, then when the mower

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gets to a crop, mow the standard 10 feet. If you mow around growing crops you have just implied it is ok to farm the right-of-way. Of course, the county is supposed to know where the right-of-way line is located, so don't go over the line, stay back a few feet.

If a farmer plants too close to the road at an intersection that is a major safety issue. If an accident would occur at an intersection due to bad sight distance, the farmer could be liable for causing the accident by illegally planting crops on the right-of-way. You are doing the farmer a favor by mowing off crops on the right-of-way to clear sight distance.

If you haven't done so recently it would be a good idea for the commission, county counselor, and the road supervisor to discuss how to handle obstructions in the right-of-way. Removing obstructions is our duty, but it can cause hard feelings with land owners, so everyone needs to be on the same page.

If you like roads, and who doesn't, you may be interested in my twice monthly email on current road issues and road items of statewide interest. If you would like to receive these emails just send me an email request with position, and county or company at bowers@kansascountries.org. ■

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