

## SUMMARY OF MILLER V. NICHOLS

363 Pa.Super. 508, 526 A.2d 794 (1987)

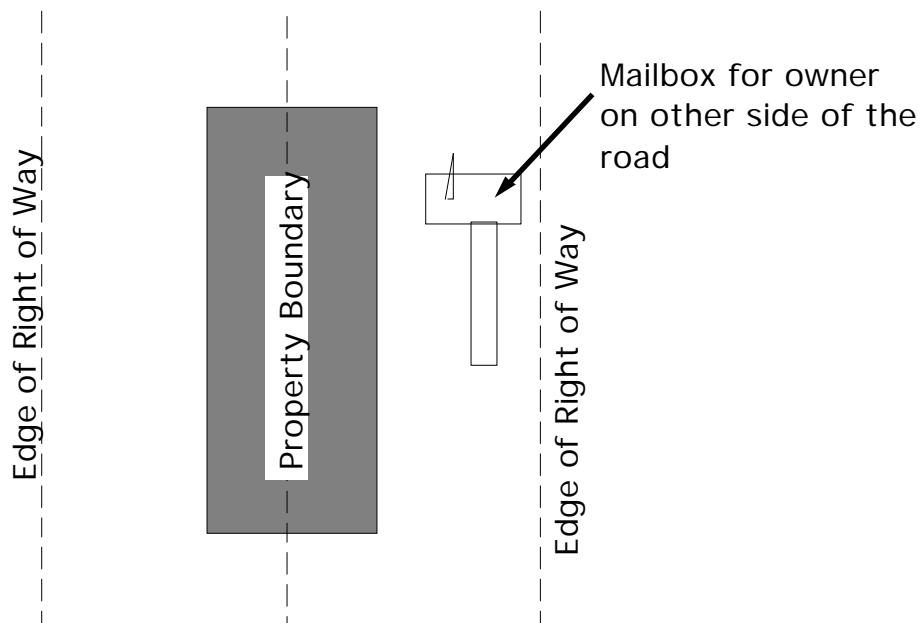
by

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Note: The principles discussed may not apply to all states. The reader is encouraged to research the law in their own state.

*Miller v. Nichols* is a case that surveyors should note. *Miller v. Nichols* is important to the surveyor for two reasons. First, it highlights the fact some people are able and willing to litigate over even the smallest encroachments (i.e. 16 square inches). Second, it points out a potential encroachment that is frequently overlooked by the surveyor when performing a boundary survey or mortgage inspection or caused by the surveyor when preparing development plans.



As typified by the diagram, the case of *Miller v. Nichols* involved the placement of a neighbor's mailbox on another person's property but within a public road easement. The main question addressed by the court was whether a mailbox is a public use that may be maintained in the public easement or a private use that the fee title owner can remove. The Pennsylvania Appellate court held that rural mailboxes which are authorized depositories for United States mail are a part of the postal system and

therefore constitute a public use (p. 511). As a public use, they may be placed within the public road easement.

The case was not without dissent and questions. Only two judges out of three felt a mailbox is a public use. The dissenting judge wrote a compelling and perhaps convincing argument that a mailbox is a private interest and as such may be removed from the public road easement unless sanctioned by the owner of the underlying fee.

For the surveyor, the concern is threefold: First, the majority opinion appeared to limit their decision to rural mailboxes. Does this mean that suburban mailboxes should be treated as encroachments under similar circumstances? Second, this case only excuses mailboxes that are authorized depositories for United States Mail. Often the paper box is next to the mailbox. Would this be a private use and be considered an encroachment? Third, the case is not binding outside of Pennsylvania. While surveyors practicing in Pennsylvania may find this case a welcome relief, surveyors practicing in other states may now have to question their responsibility toward their client when faced with a similar situation. Obviously, if one landowner is willing to go through the trouble and expense of litigating this seemingly minor encroachment there will be others that are similarly inclined. Does this mean surveyors must take on an additional burden of examining each rural mailbox and the fee title underlying each public road easement to determine if the ownership of the mailbox and underlying fee conflict?

Certainly, to be safe from liability (albeit probably minimal), the surveyor may wish to note the situation where the ownership of the mailbox and fee title underlying a road easement differs. If the surveyor is preparing a development plan, the surveyor should consider including an easement or covenant that will permit placement of a mailbox on the neighbor's property if the situation should warrant. Justifiably, many surveyors will consider the potential liability for nonfeasance minor and not worth the additional trouble.