Date Issued: January 29, 1986 (AGO 86-3)

Requested by: Walter R. Hjelle, State Highway Commissioner

- QUESTIONS PRESENTED -

I.

Whether the highway commissioner had the authority to issue single-trip permits for the operation of an overweight vehicle, including one carrying a divisible load, on July 1, 1956.

II.

Whether, as of January 4, 1975, the motor vehicle weight laws of the State of North Dakota provided for the non-permitted operation of a vehicle with a tandem axle gross weight in excess of that established by 23 USC section 127.

III.

Whether, on January 4, 1975, the highway commissioner had the authority to issue permits authorizing the operation of a vehicle with an overweight axle load.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that the highway commissioner had the authority to issue single-trip permits for the operation of an overweight vehicle, including one carrying a divisible load, on July 1, 1956.

II.

It is my further opinion that as of January 4, 1975, the motor vehicle weight laws of the State of North Dakota did not provide for the non-permitted operation of a vehicle with a tandem axle gross weight in excess of that established by 23 USC section 127.

III.

It is my further opinion that on January 4, 1975, the highway commissioner did not have the authority to issue permits authorizing the operation of a vehicle with an overweight axle load.

- ANALYSES -

I.

When 23 USC section 127 was enacted in 1956, the authority to issue a single-trip permit for an overweight vehicle had been established in North Dakota. Such authority had its origins in the 1927 N.D. S.L. 162, section 40. This enactment was ultimately codified as N.D.C.C. section 39-12-02, and, in 1956, it provided as follows:

39-12-02. SPECIAL PERMITS FOR VEHICLES OF EXCESSIVE SIZE AND

> WEIGHT ISSUED; CONTENTS. The commissioner and local authorities in their respective jurisdictions, upon a written application and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every such permit shall be issued for a single trip, may designate the route to be traversed, and may contain any other restrictions or conditions deemed necessary by the body granting such permit. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace officer. It shall be a violation of the provisions of this chapter for any person to violate any of the terms or conditions of such special permit.

The 1956 version of 23 USC section 127 provided as follows:

> 127. VEHICLE WEIGHT AND WIDTH LIMITATIONS - INTERSTATE SYSTEM. No funds authorized to be appropriated for any fiscal year under section 108(b) of the Federal-Aid Highway Act of 1956 shall be apportioned to any State within the boundaries of which the Interstate System may lawfully be used by vehicles with weight in excess of eighteen thousand pounds carried on any one axle, or with a tandem axle weight in excess of thirty-two thousand pounds, or with an overall gross weight in excess of seventy-three thousand two hundred and eighty pounds, or with a width in excess of ninety-six inches, or the corresponding maximum weights or maximum widths permitted for vehicles using the public highways of such State under laws or regulations established by appropriate State authority in effect on July 1, 1956, whichever is the greater. Any amount which is withheld from apportionment to any State pursuant to the foregoing provisions shall lapse. This section shall not be construed to deny apportionment to any State allowing the operation within such State of any vehicles or combinations thereof that could be lawfully operated within such State on July 1, 1956. With respect to the State of Hawaii, laws or regulations in effect on February 1, 1960, shall be applicable for the purposes of this section in lieu of those in effect on July 1, 1956.

The statutory authority to issue a single-trip permit under N.D.C.C. section 39-12-02 antedates the federal law and qualifies as an exception to the vehicle weight limitation imposed by 23 USC section 127. (See South Dakota Trucking Association v. South Dakota Department of Transportation 305 N.W.2d. 682 (S.D. 1981)).

Moreover, the permit contemplated under N.D.C.C. section 39-12-02 would authorize the movement of the vehicle and the load thereon. In 1956, the following statutory provisions from N.D.R.C. 1943, are germane to this issue and warrant this conclusion.

N.D.R.C. 1943, section 39-0101(1), defined a vehicle as:

> "Vehicle" shall include every device in, upon, or by which any person or property may be transported or drawn upon a public highway . . .

> * * *

N.D.R.C. 1943, section 39-1201, provided as follows:

> State and Local Authorities May Classify Highways as to Weight and Local Capacities. The commissioner, the board of county commissioners, and other appropriate bodies having control of roads, may classify public highways and roads under their respective jurisdictions and enforce limitations as to the weight and load of vehicle thereon for such classifications.

N.D.R.C. 1943, (1953 Supp.) section 39-1205(2), addressing weight limitations for vehicles, provided as follows:

> Subject to the limitations imposed by the above subsection (1) on tires, wheel and axle loads, no vehicle or combination of vehicles shall be operated whose gross weight, including the load, exceeds that . . .
>
> * * *

Although N.D.R.C. 1943, section 39-1205, did not make reference to a "vehicle and load," such an interpretation is the only one that is viable. The South Dakota Supreme Court in South Dakota Trucking Association supra, on a similar point, observed as follows:

> SDC 44.0343 allows for local authorities to regulate the operation of "vehicles" on highways within their jurisdiction. It is highly significant that SDC 44.0343 provides for "restrictions as to the weight of vehicles." Nowhere is any term other than vehicles used. Thus, if we were to follow the FHWA's logic, we must conclude that SDC 44.0343 only allowed for the regulation of the vehicle's weight; any load it carried could not be regulated, rendering the statute ineffective and meaningless. This is an aberration which could not have been intended by the legislature. We must "presume that the legislature intended to enact a valid and effective statute, and there is a presumption against a construction which should render a statute ineffective or meaningless." (Citation omitted). We therefore hold that SDC 44.0343 was not limited merely to the vehicle itself. Rather, it applied to the gross vehicle, to wit: vehicle and any load. 305 N.W.2d. at 686.

In 1956, the statutory authority granted to the highway commissioner to issue a single-trip permit for the movement of an overweight vehicle was not self-limiting as to the type of load carried. The statute made no distinction between a divisible and nondivisible load. Likewise, no other statutory provision provided for such distinction, whereby such a permit could be issued only for a nondivisible load.

The Montana Supreme Court, in resolving a statutory conflict between a statute that granted the Montana Highway Commissioner unlimited authority to issue single-trip permits for an overweight vehicle and a statute that purported to grant a limited authority, held, in State, ex rel. Dick Irvin, Inc. v. Anderson 525 P.2d. 564, as

follows:

> . . . We find the only reasonable resolution of the conflict between this subparagraph and section 32-1127, R.C.M.1947, is by a construction of these statutes together, to the effect that subparagraph (5)(f) of section 32-1123 is an expansion of the powers granted in section 32-1127. A contrary interpretation would necessarily lead to the following conclusions: that subparagraph (5)(f) is a nullity; that the legislature did not mean what it said when it granted exclusive powers to the State Highway Commissioner; and, that each time the subparagraph was reenacted the legislature was performing an idle act. This strained interpretation would also violate established principles of statutory construction. * * * Id. at 570.

Thus, in view of the persuasive arguments presented by the case law on this point, it is my opinion that the highway commissioner had the authority to issue single-trip permits for the operation of an overweight motor vehicle, including one carrying a divisible load, on July 1, 1956.

II.

In 1974, the maximum gross weight for a tandem axle on a vehicle using the interstate highway system was determined by N.D.C.C. section 39-12-05(1).

> 39-12-05(1). No single axle shall carry a gross weight in excess of eighteen thousand pounds nor a wheel load to exceed nine thousand pounds. No wheel shall carry a gross weight in excess of five hundred and fifty pounds for each inch of tire width. Axles spaced forty inches apart or less shall be considered as on axle and on axles spaced over forty inches and under eight feet apart, the axle load shall not exceed sixteen thousand pounds per axle. The wheel load, in any instance, shall not exceed one-half the allowable axle load. Spacing between axles shall be measured from axle center to axle center.

Under the above criteria, the maximum legal gross weight on a tandem axle would be thirty-two thousand pounds. There are no statutory exceptions to this limitation. Therefore, in absence of a single-trip permit, the limitations on the maximum gross weight for a tandem axle as stated in 23 USC section 127 are controlling as to vehicles using the interstate highway system.

III.

The Federal-Aid Amendment of 1974 provided a "grandfather" clause as to the maximum gross weight for a tandem axle, by authorizing the continued use of a tandem axle gross weight that could be legally operated in the state on January 4, 1975.

In 1975, N.D.C.C. section 39-12-02 did not grant the highway commissioner the authority to issue a single-trip permit for an "overweight axle." Rather, the grant of authority related to the

gross vehicle weight as opposed to an individual axle weight. This was in keeping with the 1975 legislative axle weight limitations expressed in N.D.C.C. section 39-12-05. The only exception stated in that section relates to the gross vehicle weight and not to the gross axle weight. Other than for that exception, the maximum gross vehicle weight under N.D.C.C. section 39-12-02 is made contingent upon compliance with the statutory axle weights.

The North Dakota Supreme Court in Knoepfle v. Suko 108 N.W.2d. 456 (N.D. 1961), construed exceptions to the general law, by stating:

> . . . This policy of strict construction long applied by this court to the statute in question is in accord with the general rule that exceptions to the statutes of general application must be construed strictly and that where a general rule is established by a statute with exceptions, the court will not curtail the former or add to the latter by implication. (Citation omitted.) Id. at 462.

Given the general tenor of the statutes regulating the gross vehicle and axle weights in 1975, it is obvious that the exception provided by N.D.C.C. section 39-12-02 does not countenance a permit for an overweight axle.

- EFFECT -

This opinion is issued pursuant to N.D.C.C section 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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